



Scott M. Petersen

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Practice Areas



Employment & Labor



ERISA & Employee Benefits



Litigation, Trials & Appeals

Biography

Scott Petersen specializes in ERISA law, and has defended employers, plans, fiduciaries and other entities in lawsuits focused on benefits and fiduciary duties. He has successfully argued several ERISA cases before the 10th U.S. Circuit Court of Appeals, including the notable case of *Adamson v. Unum* in 2006, in which Scott obtained summary judgment on behalf of Unum and then had the case upheld at the appellate level. He has also opposed two petitions for writ of certiorari to the U.S. Supreme Court. Scott was co-author of the Tenth Circuit chapter in the American Bar Association publication, *ERISA Survey of Federal Courts*, for 2012 and 2010. Scott also has extensive experience in employment law, assisting employers with issues relating to hiring, discrimination and termination, as well as drafting employee handbooks, policies, applications and agreements. He regularly conducts management trainings on discrimination and harassment for client companies with the goal of helping them prevent future problems. Scott regularly uses his knowledge of ERISA and employment law as part of the team Fabian VanCott is able to assemble for complex litigation by drawing attorneys together from a variety of practice groups in the firm. Scott holds a masters degree in political science from Arizona State University, and a law degree from Brigham Young University.

Professional

Attorney and Shareholder, Fabian VanCott, 2000 - present

Director, Fabian Board of Directors, 2004 - 2006, 2008 - 2009, 2012 - present

Member, American Bar Association

Member, Utah State Bar

Member, Salt Lake County Bar Association

Recognized as a tier one attorney in ERISA Law by Chambers U.S.A.

Consistently recognized in Super Lawyers as one of the top five percent of lawyers in Nevada, Utah, Montana, Idaho and Wyoming for Employment and Labor Law

Recognized as a "Legal Elite" in the field of Employment Law, Utah Business Magazine

Admitted to the Utah State Bar, 1996, the Tenth Circuit Court of Appeals, 1998, the U.S. Supreme Court, 2000, and the Federal Circuit Court of Appeals

Representative Projects

ERISA LAW: Scott has successfully defended medium and large employers, plans, fiduciaries, insurers and administrators against claims for wrongful denial of benefits, breach of fiduciary duty, and penalties under 29 U.S. Code 1132.

Most ERISA litigation is resolved on the administrative record through summary judgment, and Scott has been very successful in prevailing in such cases, including litigation about discretionary authority to plan fiduciaries, the appropriate standard of review, and restricting discovery.

Scott successfully defended a national insurer in a purported class action lawsuit brought under ERISA challenging state mental health parity laws.

Scott has argued several cases before the Tenth Circuit Court of Appeals with great success.

NON-ERISA LIFE, HEALTH, AND DISABILITY: Scott represents regional and national insurance companies in claims for breach of contract, misrepresentation, and breach of the covenant of good faith and fair dealing.

He has been very successful in limiting broad discovery and the use of "bad faith" experts in such cases.

Scott has successfully pursued rescission claims on behalf of insurers who learn of material misrepresentation by claimants in their insurance applications.

Scott is a proponent of mediation and settlement when appropriate and has successfully positioned cases toward favorable resolution with the help of alternate dispute resolution.

EMPLOYMENT LAW - Scott has successfully defended small, medium and large employers in all aspects of employment claims from responding to charges of discrimination in state agencies and the EEOC to defending discrimination and harassment claims in state and federal court.

Some of Scott's successes include defense of several appeals to the Tenth Circuit Court of Appeals and two petitions for a writ of certiorari to the U.S. Supreme Court.

Scott has successfully defended a broad range of clients including a national hotel company, regional airline, utility companies, mining companies, regional and national construction companies, a popular film company, assisted living centers, insurers, and local restaurants.

Scott pursues trade secret violations and breaches of non-competition and non-solicitation agreements on behalf of his employer clients and helps his clients draft and negotiate employment agreements, handbooks, policies, procedures, and severance agreements.

Scott regularly conducts anti-harassment and discrimination training of owners, managers, supervisors and other employees on behalf of local and regional clients and advises these clients in employee hiring and termination decisions and strategies.

He has successfully defended employers in wage and hour litigation both in federal court and with the Department of Labor. He provides compliance advice to employers seeking help with the FLSA and state wage and hour laws.

Education

J.D., Top ten percent, J. Reuben Clark Law School, Brigham Young University, 1996, Order of the Coif, Law Review, 1995 -1996, National Moot Court Team, 1994 - 1995

M.A., Political Science, Arizona State University, 1992, Thesis Title: "Continuity or Change? Justice O'Connor Eleven Terms Later"

B.A., Political Science, Brigham Young University, 1991, Minor in Spanish, Cum Laude

Publications & Presentations

Co-author, "ERISA Survey of Federal Circuits," 2010 Ed., American Bar Association, Chapter 10, Tenth Circuit, 2010

Co-author, "Misrepresentation in Life and Health Disability Insurance," American Bar Association, Utah Chapter, 2008

Co-author, "ERISA Survey of Federal Circuits," Second Ed., American Bar Association, Chapter 10 (Tenth Circuit), 2007

Author, "Aging Workforce Alert: Considerations Under the ADEA," 6 Utah Labor Letter 6, 2000

Co-author, "Employee Absenteeism Under the ADA - When is Enough, Enough?" 5 Utah Labor Letter 6, 1999

Co-author, "Supreme Court Voting behavior: 1994 Term," 23 Hastings Const. L.Q. 1, 1996 Co-author, "Supreme Court Voting Behavior: 1993 Term," 22 Hastings Const. L.Q. 269, 1995

Speaker, "The Who & What of Basic ERISA Litigation," Annual Bar Convention, July 2007

Speaker, "ERISA 101," Utah State Bar CLE, February 2007

Speaker, "Employment Discrimination Laws (Title VII, ADA, ADEA)," Utah State Bar CLE, December 2001