

# SCOTT M. PETERSEN

Attorney / Partner | Salt Lake City

Licensure: UT

## Biography

Scott Petersen focuses on ERISA and non-ERISA litigation of life, health, and disability claims. He represents management, employers, insurers, plans, third-party administrators, and fiduciaries in claims for benefits, penalties, breach of fiduciary duty, and statutory violations. Scott has extensive experience with cases asserting violations of the federal Mental Health Parity and Addiction Equity Act ("MHPAEA"), the Affordable Care Act ("ACA"), and the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

Scott also has extensive experience in employment law, assisting employers with issues relating to employee hiring, discipline, discrimination and termination. He helps employers draft employee handbooks, policies, procedures, applications and employment and independent contractor agreements. He advises employers on both state and federal wage and hour laws, leave and disability compliance, and non-compete, non-solicitation, and trade secret agreements and enforcement. Scott regularly conducts employee and management trainings on discrimination, harassment, and proper workplace conduct for client companies with the goal of helping them prevent future problems.

For over 25 years, Scott has successfully argued hundreds of life, health, disability, and employment cases before state and federal agencies, state and federal district courts in Utah and many other states across the country, argued several appeals before the Utah Supreme Court, the Utah Court of Appeals, and the United States Court of Appeals for the Tenth Circuit, and has filed responses to petitions for writs of certiorari to the United States Supreme Court. Scott's experience involves not just individual cases, but collective and class actions.

Since 2008, Scott has co-authored the Tenth Circuit chapter of the American Bar Association publication: "ERISA Survey of Federal Circuits," which just issued its 2022 edition. He has also co-authored the Utah chapter of the American Bar Association's publication: "Misrepresentation in the Life, Health, and Disability Insurance Application Process: A National Survey" which just released its Third Edition in 2022. Scott regularly participates in and gives legal seminars to both lawyers, human resource personnel, and employer clients on employment, employee benefit, and the myriad related topics employers and their benefits partners face every day.

Scott uses his knowledge and experience as part of the team Fabian VanCott assembles for complex litigation by drawing attorneys together



## FABIAN VANCOTT

### CONTACT

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## Education

J.D., 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

## Biography (con't)

from a variety of practice groups in the firm. Scott holds a master's degree in political science from Arizona State University, and a law degree from Brigham Young University.

## Practice Areas

### EMPLOYMENT LITIGATION

EMPLOYEE POLICIES  
& PROCEDURES

EMPLOYMENT &  
TERMINATION AGREEMENTS

ERISA & EMPLOYEE BENEFITS

INVESTIGATIONS  
& TRAININGS

LOCAL DISTRICTS, SPECIAL  
DISTRICTS & SPECIAL  
SERVICE DISTRICTS

### REGULATORY COMPLIANCE

ADMINISTRATIVE  
PROCEEDINGS & LITIGATION

INTELLECTUAL PROPERTY  
LITIGATION

COMMERCIAL LITIGATION

INSURANCE DEFENSE

TRIALS & APPEALS

## Professional History

- Attorney and Shareholder, Fabian VanCott, 2000 - present
- Director, Fabian VanCott Board of Directors, 2004 - 2006, 2008 - 2009, 2012 - 2020
- Member, American Bar Association
- Member, Utah State Bar
- Member, Salt Lake County Bar Association
- Chair: Utah Appellate Nominating Commission, 2022 - 2026
- Admitted to the Utah State Bar, the United States District Court for the Districts of Utah and Colorado, the Tenth and Federal Circuit Courts of Appeals, and the United States Supreme Court

## 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, penalties under 29 U.S.C. § 1132, and statutory violations of ERISA, MHPAEA, COBRA and the ACA. He has advised such clients in proper claims administration and fiduciary functions.

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, appropriate legal and equitable relief, and restricting discovery. More recently, Scott has devoted much of his ERISA practice defending ERISA clients against dozens of alleged violations of MHPAEA involving non-quantitative treatment limitations in both the "as-written" and "as-applied" contexts.

### 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.

Scott's successes include defense of several class and collective actions, both state and nationwide, appeals to the Tenth Circuit Court of Appeals, responses to petitions for a writ of certiorari to the United States Supreme Court.

Scott has successfully defended a broad range of clients including a national hotel company, international linen company, regional airline, utility companies, mining companies, regional and national construction companies, film and entertainment companies, assisted living centers, insurers, and local food producers and 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, severance agreements and executive contracts.

Scott regularly conducts anti-harassment, discrimination, and workplace conduct training of owners, managers, supervisors and other employees on behalf of local and regional clients and advises these clients in employee hiring, discipline, 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 Fair Labor Standards Act and state wage and hour laws.

## Publications & Presentations

- Co-author, "ERISA Survey of Federal Circuits," American Bar Association, Chapter 10, Tenth Circuit, 2008, 2010, 2012, 2014, 2016, 2018, 2020, 2022 Edition.
- Co-author, "Misrepresentation in Life and Health Disability Insurance," American Bar Association, Utah Chapter, First (2008), Second (2016), & Third (2022) Edition
- 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 Hassles of ERISA, Medicare and Medicaid: Liens, Denial of Benefits and Subrogation," Utah County Bar CLE, September 30, 2022
- Speaker, "ERISA Basics: Employee and Employer Perspectives," Utah State Bar CLE, July 19, 2022
- Speaker, "The Who & What of Basic ERISA Litigation," Utah State Bar 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

## Peer Recognition

- Recognized by Best Lawyers in America in the field of Employee Benefits (ERISA) Law and Employment Law
- 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
- Consistently recognized as a "Legal Elite" in the field of Employment Law, Utah Business Magazine