Mary E. Funk

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DES MOINES OFFICE

Working exclusively with labor and employment issues, Mary Funk focuses on client preparation. In a word, Mary's approach is proactive. "I work with clients to make smart personnel decisions that will reduce their exposure to liability," she says.

Mary regularly works with human resources professionals, counseling them on employment policies, hiring and firing, harassment and discrimination investigations, drug testing policies, noncompete agreements, and employee leave issues. She reviews and drafts corporate documents and employee handbooks and conducts employer training sessions to educate clients about changing and ongoing employment issues.

To Mary, helping employers make the right decisions up-front is paramount. "Being proactive typically results in a better and more productive workplace, which, in the end, is good for business," she says.

When cases do go to court, Mary defends employers in matters concerning the Family and Medical Leave Act, Americans with Disabilities Act, Title VII and any other employment statute or common law.

Clients view Mary as responsive, responsible, and practical. "My job isn't to make decisions for my clients, but rather to give them the information they need to make business decisions without being fearful of litigation."

Mary, who grew up on a farm in Mount Pleasant, Iowa, believes her small-town values translate into how she views the world now. After high school, she remained in the Hawkeye State, graduating with distinction from both Drake University and the University of Iowa College of Law.

Mary is active in the P.E.O. Sisterhood, which provides educational opportunities and support to women in the United States and around the world. Mary served as a member of the P.E.O. Sisterhood's International convention planning committee. The international convention was held in Des Moines in 2019 to celebrate the Sisterhood's 150th anniversary.

PROFESSIONAL & COMMUNITY AFFILIATIONS

Iowa Bar Association
Employment Section

Polk County Bar Association

Iowa Defense Counsel

Illinois Bar Association

Central Iowa Chapter, SHRM

National Society of Human Resource Management



PRACTICE AREAS

- Labor & Employment
- Collective Bargaining, Contract Administration & Labor Arbitration
- Employment Counseling & Risk Avoidance
- Employment Litigation
- Higher Education & Title IX Law
- Trade Secret & Noncompete Litigation
- Union Avoidance, Organizational Campaigns & Unfair Labor Practice/NLRB Proceedings
- Workplace Investigations
- Litigation
- Administrative Hearings, Arbitrations & Alternative Dispute Resolution
- Employment, Labor & Discrimination
- Higher Education & Title IX Law

EDUCATION

- Drake University (B.A., magna cum laude)
- University of Iowa (J.D., with distinction)

BAR ADMISSIONS

- Illinois
- Iowa
- Admitted to practice in all state and federal courts in Iowa
- Central District of Illinois
- Northern District of Illinois

Faith Lutheran Church
Clive, Iowa, Personnel Committee, Co-chairman

P.E.O., Chapter OQ
Officer and Executive Committee for International P.E.O. Convention, 2019

RECOGNITION

Martindale-Hubbell
AV Preeminent, peer rated for highest level of professional excellence

The Best Lawyers in America®
- Litigation—Labor & Employment, 2018–2027
- Employment Law—Management, 2018–2027

Chambers USA
Top ranked, 2006–2026

Great Plains Super Lawyers
Employment & Labor Law, 2009–2026

Benchmark Litigation
Labor & Employment Star

Iowa Law Review
Note and Comment Editor, 1994–1995

SIGNIFICANT CASES

***Hawkins v Grinnell Regional Medical Center, et al.,* Case No. 17-1892 (Iowa Supreme Court, June 7, 2019).** Court unanimously reversed and remanded for a new trial an age and disability discrimination case after finding prejudicial evidentiary errors resulted in an unfair trial for the employer. At defendants' urging on appeal, the Court also adopted a same-decision jury instruction in employment cases, allowing employers to avoid liability if they can prove they would have made the same decision even if the discriminatory reason offered by the plaintiff was a motivating factor in the termination.

***Des Moines Electrical Apprenticeship Education and Training Trust vs. Martin Petersen,* AAA Case No. 01-19-0000-0489 (May 21, 2019).** Arbitrator ruled in favor of training trust and against electrical apprentice in the enforcement of a breach of apprenticeship contract action.

***Des Moines Electrical Apprenticeship Education and Training Trust vs. Blake Lossner,* AAA Case No. 01-19-0000-0471 (August 13, 2019).** Arbitrator ruled in favor of training trust and against electrical apprentice in the enforcement of a breach of apprenticeship contract action.

***Des Moines Electrical Apprenticeship Education and Training Trust vs. James McLaughlin,* AAA No. 01-19-0001-2436 (September 4, 2019).** Arbitrator ruled in favor of training trust and against electrical apprentice in the enforcement of a breach of apprenticeship contract action.

***Rossley v. Drake University, et al.,* Case. No. 4:17-cv-00058 (S.D. Iowa 2018).** Court granted Defendants' motion for summary judgment on retaliation under the ADAAA,

Rehabilitation Act, and Iowa Civil Rights Act, and a breach of contract claim. Other claims initially brought by the plaintiff were previously dismissed on various motions to dismiss.

***Rossley v. Drake University, et al.,* Case. No. 4:16-cv-00623 (S.D. Iowa 2018).** Court granted the majority of Defendants' motion for summary judgment on two theories under Title IX, the ADA, and various common law claims. The remaining claims for trial were dismissed by Plaintiff to enable Plaintiff to appeal to the Eighth Circuit Court of Appeals.

***In the Arbitration of Des Moines Electrical Apprenticeship Training and Trust Fund v. Dessauer*, AAA Case. No. 01-16-0003-0977 (December 7, 2016).** Arbitrator ruled in favor of employer of electrical apprentice in the enforcement of a breach of contract action.

***Rodriguez v. Wellmark, Inc., et al.,* Case No. 4:15-cv-126 (S.D. Iowa 2016).** Court granted Defendants' motion for summary judgment on counts alleging race and disability harassment and discrimination under the Iowa Civil Rights Act, and retaliation under the Family & Medical Leave Act.

***Massey-Diez v. University of Iowa Community Medical Services, Inc.*, Case No. 15-2924 (8th Cir. 2016).** The Eighth Circuit Court of Appeals affirmed summary judgment for the employer on the plaintiff's FMLA entitlement and discrimination/retaliation claims.

***Bell v. Wellmark Blue Cross Blue Shield of Iowa,* Case No. 4:14-cv-00487-HCA (S.D. Iowa 2015).** Court granted Defendant's motion for summary judgment on counts alleging age and race discrimination under both state and federal statutes.

***Massey-Diez v. University of Iowa Community Medical Services, Inc.*, Case No. 3:14-cv-00049 (S.D. Iowa 2015).** Court granted Defendant's motion for summary judgment on two counts alleging Family and Medical Leave Act violations (interference and discrimination) and one count alleging a failure to pay wages pursuant to the Fair Labor Standards Act.

***In the Arbitration of Iowa Electrical Apprenticeship Training and Trust Fund v. Rob Hugen,* AAA Case. No. 58 170 E 128 13 (August 29, 2013).** Arbitrator ruled in favor of employer of electrical apprentice in the enforcement of a breach of contract action.

***In the Arbitration of Iowa Electrical Apprenticeship Training and Trust Fund v. Tom Holden,* AAA Case. No. 58 170 E 00170 12 (January 25, 2013).** Arbitrator ruled in favor of employer of electrical apprentice in the enforcement of a breach of contract action.

***Vails v. United Community Health Center, et al.,* C11-4048-LTS (N.D. Iowa 2012).** Court granted Defendants' motion for partial summary judgment on four of five counts (wrongful termination in violation of public policy, tortuous interference with employment contract, fraud and promissory estoppel), leaving only one count of breach of the employment contract for trial.

***In the Arbitration of Iowa Electrical Apprenticeship Training and Trust Fund v. Kori Kaiser,* AAA Case No. 58 170 E 00081 12 (August 28, 2012).** Arbitrator ruled in favor of employer of electrical apprentice in the enforcement of a breach of contract action.

***UFCW, Local 271, on behalf of Larry Wells v. Plumrose U.S.A., Inc.,* FMCS No. 10-03229-8 (2010).** Arbitrator decided in favor of the employer in a discharge

arbitration for fighting in the workplace; claimed defenses of provocation from alleged harasser and retaliation for reporting harassment without merit.

***UFCW, Local 271, on behalf of Raul Guerrero v. Plumrose U.S.A., Inc.,* FMCS No. 10-01135-8 (2010).** Arbitrator decided in favor of the employer in a suspension arbitration for violation of the company's safety policies and procedures.

***UFCW, Local 271, on behalf of Ryan Hammitt v. Plumrose U.S.A., Inc.,* FMCS No. 09-03078 (2010).** Arbitrator decided in favor of the employer in a discharge arbitration for violation of the company's attendance policy.

***UFCW, Local 271, on behalf of Richard Gomez v. Plumrose U.S.A., Inc.,* FMCS No. 070424-02715-8 (2008).** Received an employer/defense verdict in a contract interpretation and discharge arbitration.

***Antunez v. The HON Co.,* No. 3:06-cv-00010-CRW (S.D.Iowa 2007).** Defense verdict in jury trial on claim of race and national origin discrimination and retaliation (Iowa Civil Rights Act, Title VII and Section 1981).

***Hildebrant v. Lear Corp.,* No. 3:03-cv-80099 (S.D.Iowa 2006).** Filed for summary judgment on claims of sexual harassment and retaliation. Plaintiff did not resist the motion and, instead, voluntarily dismissed her case with prejudice.

***Lorance v. HON Indus.,* No. 3-04-cv-90002 (S.D.Iowa 2005).** Plaintiff decided not to pursue her claim and dismissed her case with prejudice.

***Wigans v. HON Indus.,* No. 3:04-cv-70084 (S.D.Iowa 2005).** Plaintiff dismissed his case with prejudice.

***Hornung v. Burke Mktg. Corp., Inc.,* No. 4:03-CV-10604 (S.D.Iowa 2005).** Summary judgment granted in favor of the defendant on sexual harassment and retaliation claims.

***Sereda v. Burlington N. Santa Fe R.R. Co.,* No. 4:03-cv-10431 (S.D.Iowa 2005).** Summary judgment granted in favor of defendant on wrongful termination of employment claim.

***Cline v. The Hon Co.,* No. LACV014615 (Iowa Dist. Ct. 2004).** Defense verdict in jury trial on claim of retaliation for participation in sexual harassment investigation and breach of handbook.

SPEECHES & PUBLICATIONS

Mary speaks on HR-related topics to a wide variety of groups, such as:

- Central Iowa SHRM
- Iowa Employment Conference
- Iowa Institute for Cooperatives
- Iowa Bankers Association
- Iowa League of Cities

Mary also provides training sessions for clients' employees and management teams. Sample presentations include:

"#METOO. Epidemic or Wake-up Call? Where Do We Go from Here?"
January–April 2018

"Drug & Alcohol Testing Training"
As required by Iowa Code 730.3, both initial two-hour training and one-hour annual

training, February–March 2018

“Train the Trainer Series: Me Too or NOT Me? Stopping Harassment at Work”
February 2018

“Stopping Harassment by Third Parties”
January 2018

“When Employees Can’t Return to Work—The Intersection of the FMLA and ADA”
October 2017

“Leave Me Alone: Handling Intermittent Abuse and Post-FMLA Accommodation”
September 2017

“It’s A Matter of Respect—Diversity in the Workplace”
February–March 2017

“How to Handle Growing Workplace Violence Concerns”
March 2017

“Getting Your House in Order: Conducting an HR Audit”
March 2017

“Ready or Not, Here They Come: The New Standards for White Collar Exemptions”
July 2016

“Employment Law: Dealing with Common FMLA Problems”
June 2016

“Evaluating, Disciplining & Firing Employees”
April and July 2016

“Elections, Profanity, and Threats, Oh My! An NLRB Update”
January and March 2016

“Bringing Up Baby: An Increase in Pregnancy Issues at Work”
February 2016

“From Applications to Interviews: What Managers Need to Know about Hiring”
December 2015

“PERB and the Public Employee/Employer Relationship”
December 2015

“Unlocking the Mysteries of Workplace Investigations”
August 2014

“Staying Union Free and Why It Matters”
June 2013