Thomas M. Cunningham

515-283-8176
TMCUNNINGHAM@NYEMASTER.COM
DES MOINES OFFICE

Tom Cunningham understood the important role of lawyers from an early age by watching and learning from family. His grandfather was a civil defense lawyer for 45 years, and a great-uncle served as a law school dean and counsel at a war crimes tribunal. Their success and passion in helping clients inspired Tom to pursue his own legal career.

Tom practices exclusively in labor and employment law, where he provides counseling on employment issues and tries employment cases. Tom was attracted to this area because workplace issues and the employment relationship are central to people's lives. "A reliable, skilled workforce is critical to a company's success. Helping employers address issues and solve problems concerning their most important asset—their employees—is what I do. It's important work," he observes.

Tom characterizes the scope of his practice as "across the board." The matters are as varied as discrimination and wrongful termination litigation, advising employers on employment policies and personnel issues, helping management address union campaigns, representing management in labor arbitrations, NLRB proceedings, OSHA enforcement proceedings, affirmative action compliance, noncompetition actions, and wage-hour disputes.

Tom also has experience representing institutions of higher education in cases involving Title IX, Title VII, the Iowa Civil Rights Act, employment contracts, and personnel issues. He regularly advises colleges and universities on FERPA issues, NCAA matters, student disciplinary procedures, and faculty tenure issues.

Tom's intelligent, tenacious, and strategic approach and record of success have proved invaluable to his clients. "Employers look to their labor counsel not only for legal answers and effective courtroom defense, but also proactive guidance and strategic planning—all of which is the 'value added' I bring to my clients," Tom says.

At the same time, Tom's philosophy is that being prepared, unafraid, and experienced at trial are necessary to obtain favorable results for clients named as defendants in employment lawsuits. "I help management determine when litigation is their best option—and then execute that decision to achieve the best result. The objective always is that the company achieves its goals and prospers."

RECOGNITION

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

The Best Lawyers in America®
2010–2027
- Employment Law—Management
- Labor Law—Management
- Litigation—Labor and Employment

PRACTICE AREAS

- Labor & Employment
- Affirmative Action Compliance & Enforcement
- Collective Bargaining, Contract Administration & Labor Arbitration
- Employment Counseling & Risk Avoidance
- Employment Litigation
- Higher Education & Title IX Law
- OSHA Compliance & Enforcement
- Trade Secret & Noncompete Litigation
- Union Avoidance, Organizational Campaigns & Unfair Labor Practice/NLRB Proceedings
- Litigation
- Administrative Hearings, Arbitrations & Alternative Dispute Resolution
- Appellate Practice
- Business & Commercial Litigation
- Class Actions
- Employment, Labor & Discrimination
- Higher Education & Title IX Law

EDUCATION

- University of Iowa (B.A. with distinction, J.D. with distinction)

BAR ADMISSIONS

- Iowa
- Missouri
- Nebraska
- U.S. District Court, Northern District of Iowa
- U.S. District Court, Southern District

The Best Lawyers in America®
- Lawyer of the Year, Employment Law—Management, Des Moines, 2016
- Lawyer of the Year, Labor Law—Management, Des Moines, 2022

Chambers USA, Leading Lawyer for Business in Labor & Employment Law
2004–2026

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

Benchmark Litigation
Labor & Employment Star

BTI Client Choice—USA & Canada, Labor & Employment in Iowa
2014

Iowa Law Review
Note and Comment, Editor, 1983–1984

Law Faculty Recruiting Committee
Student Member, 1983–1984

PROFESSIONAL & COMMUNITY AFFILIATIONS

American Bar Association
- Labor Section, 1994–present
- Litigation Section, 1986–present

Iowa State Bar Association
- Federal Practice Committee, 2003–2016
- Chair 2004–2006

Missouri Bar Association
1984–present

Nebraska State Bar Association
2023–present

Polk County Bar Association

Defense Research Institute
1986–present

Iowa Defense Counsel Association
2002–present

C. Edwin Moore American Inn of Court (Master)
- 2003–present
- Executive Committee, 2019–2023
- President, 2021–2022

Special Olympics Iowa, Inc.
- Board of Directors, 2020–present
- Chair, 2022–present

Dowling Catholic High School
- Board of Education, Member, 2003–2008
- Board of Education, President, 2005–2006

of Iowa
- U.S. District Court, Western District of Missouri
- U.S. District Court, District of Nebraska
- U.S. District Court, Central District of Illinois
- U.S. District Court, Western District of Michigan
- U.S. District Court, District of Colorado
- U.S. Courts of Appeals for the Seventh and Eighth Circuits
- U.S. Supreme Court

West Des Moines Chamber of Commerce

- 1989–2003
- President, 1996;
- Vice President, 1995;
- Board of Directors, 1993–1997

City of West Des Moines

- Board of Adjustment, Member, 2013–present; Chair, 2018–2019;
- Citizens' Advisory Committee on Capital Improvements Projects, Chair, 1996–2006

SIGNIFICANT CASES

***Garcia v. Primary Health Care, Inc.*, 604 F. Supp. 3d 765 (S.D. Iowa 2022).** Summary judgment for employer in alleged discriminatory failure to hire and defamation case.

***Barilla America, Inc.*, NLRB Gen. Coun. Advice Memo., Case No. 18-CA-259469 (July 30, 2020, released 9/15/2021).** Termination of worker based on reasonable belief that the worker has falsely told co-workers a colleague had COVID-19 not violative of Section 7 rights.

***Barr v. HGI Lakeside, LLC, et al.*, No. LACV 012701 (Iowa Dist. Ct. for Clarke Cnty., July 20, 2021).** Granting summary judgment to employer on claims of sex and disability harassment as barred by doctrine of election of remedies due to employee's prior settlement of litigated worker's comp claim based on same conduct).

***Montgomery v. General Atomics International Services. Corp.*, 2019 WL 6771753 (S.D. Iowa 2019).** Summary judgment for employer on former employee's age discrimination claim.

***Dickey v. Turner Construction Company*, 421 F. Supp.3d 645 (S.D. Iowa 2019).** Court dismissed common law wrongful termination claim as preempted by exclusive remedy of Iowa Drug Testing Statute.

***Deters v. American Eagle Protective Services Corp.*, 2017 WL 6460251 (S.D. Iowa 2017).** Order compelling terminated union members to arbitrate age discrimination claims under collective bargaining agreement.

***Coleman v. Select Specialty Hospital – Des Moines, Inc.*, No. LACL134824 (Iowa Dist. Ct. for Polk Cnty. July 5, 2017).** Judgment for employer following bench trial in action alleging violation of Iowa Drug Testing Act.

***Arbitration between Gelita USA, Inc. and United Food and Commercial Workers*, Local 222, FMCS Case No. 160718-56532-8 (March 31, 2017) (Befort, Arb.).** Denial of grievance following arbitration of discharge of union member under CBA point-based attendance and disciplinary system.

***Smock v. Muscatine Center for Social Action*, No. LACV023354 (Iowa Dist. Ct. for Muscatine Cnty. February 10, 2017).** Co-counsel for employer who obtained summary judgment on claims of retaliatory wrongful discharge in violation of public policy.

***Lansdowne v. Lakes Regional Healthcare*, No. LACV 025396 (Iowa Dist. Ct. for Dickinson Cnty. June 25, 2014).** Obtained summary judgment on behalf of employer on claims of wrongful termination, negligent and intentional infliction of emotional distress, and defamation.

***REG Seneca, LLC v. Harden*, 938 F.Supp.2d 852 (S.D. Iowa 2013).** Obtained preliminary injunction against former employee for anticipated breach of non-compete agreement and potential disclosure /use of trade secrets.

***Cort v. Kum & Go, L.C.*, 923 F.Supp.2d 1173 (W.D. Mo. 2013).** Summary judgment granted for defendant for alleged Fair Labor Standards Act violation, finding as a matter of law that convenience store managers are properly classified as exempt executive employees.

***Plumrose USA, Inc.*, Case No. 17 RD-1803, National Labor Relations Board (2010).** Co-counsel for management in successful union decertification election.

***Shannon v. Barilla America, Inc.*, 2008 WL 793511 (S.D. Iowa 2008), aff'd, 300 F. App'x. 437, 105 F.E.P. Cas. (BNA) 49 (8th Cir. 2008).** Summary judgment granted for defendant in age discrimination case affirmed on appeal.

***Gries v. Akal Security, Inc.*, 2007 WL 2710034 (N.D. Iowa 2007).** Summary judgment on Plaintiff's claims of wrongful termination in violation of public policy, retaliation under the FLSA and defamation.

***Amar v. Vaad Hakashrus of Crown Heights, Inc.*, No. LACV024225 (Iowa Dist. Ct. Allamakee County 2006).** Summary judgment on Plaintiff's claims for wrongful termination and tortious infliction of emotional distress. Decision for defense upon bench trial on Plaintiff's Petition to Enforce Arbitration Award granting reinstatement.

***Vitera v. Jeld-Wen, Inc.*, No. 4:02-cv-60101 (S.D.Iowa 2003).** Partial summary judgment to employer on Plaintiff's claim of constructive retaliatory discharge under FMLA.

***Engstrand v. Pioneer Hi-Bred Int'l, Inc.*, 946 F. Supp. 1390 (S.D.Iowa 1996), aff'd per curium without opinion, 112 F.3d 513 (8th Cir. 1997).** Affirming summary judgment in favor of employer in gender and age discrimination action.

***Westendorf v. Target Stores*, No. 72725 (Iowa Dist. Ct. Black Hawk County 1994).** Wrongful termination of at-will employee. Judgment for defendant-employer at close of Plaintiff's evidence.

***Diversified Fastening Sys. V. Rogge*, 786 F. Supp. 1486 (N.D.Iowa 1991).** Order granting preliminary injunction in favor of employer and against former corporate officer in case alleging misappropriation of trade secrets and breach of fiduciary duty.

***Boge v. Ringland-Johnson-Crowley Co.*, 976 F.2d 448 (8th Cir. 1992).** Determining standards for legal sufficiency of charge of discrimination, affirming summary judgment in favor of employer.

SPEECHES & PUBLICATIONS

"Law and the Workplace: Seven Changes to Labor and Employment Legal Standards We Saw in 2023"
Nyemaster Goode Labor & Employment Client Webinar, January 18, 2024

"Recent NLRB Decisions and the Impact on Employee Handbooks and Severance Agreements"
Iowa State Bar Association Corporate Counsel Institute, November 2, 2023

"The Stericycle Standard: A New Test for Workplace Rules"

(with L. Eliasen), Nyemaster News & Insights, August 14, 2023

"Exploring Iowa's New Child Labor Laws"
(with F. Haas), Iowa Grocery Industry Association, June 29, 2023

"Accommodations Under the ADA: What is Reasonable and What is Not?"
Iowa Employment Conference Annual Meeting, April 6, 2023;
North Iowa Society of Human Resource Managers Annual Meeting, November 8, 2022.

"The NLRB Joins the Assault on Confidentiality and Non-Disparagement Provisions in Severance Agreements"
Nyemaster News & Insignts, March 1, 2023

"Law and the Workplace: The Year in Review and the Year Ahead"
Nyemaster Goode Labor & Employment Client Webinar, January 5, 2023.

"Eighth Circuit: Remote Work Can be a Permanent Reasonable Accommodation"
Nyemaster News and Insights, November 28, 2022.

"A Sea Change at Iowa OSHA: What to Know Before the Inspector Arrives at Your Door"
(with L. Eliasen), Nyemaster Goode Labor & Employment Client Seminar, June 2, 2022 (Cedar Rapids, IA) and August 11, 2022 (Des Moines, IA).

"Federal Vaccination and Testing Mandate Issued, Setting January 5 Compliance Deadline"
Nyemaster News and Insights, November 4, 2021.

"Potential Employment Law Priorities of the Biden Administration"
Nyemaster Goode Labor & Employment Client Webinar, January 19, 2021.

"New COVID Stimulus Bill Extends FFCRA Credits, But Not the FFCRA Mandate"
Nyemaster News and Insights, December 22, 2020.

"OSHA Issues COVID-19 Return to Work Guidance"
Nyemaster News and Insights, July 2, 2020.

"OSHA Announces its COVID-19 Enforcement Priority Initiative: Are You Ready?"
Nyemaster News and Insights, April 17, 2020.

"Labor Law for the Non-Unionized Employer"
Iowa Employment Conference, April 6, 2020.

"New COVID-19 Families First Coronavirus Response Act: Expanding the FMLA and Requiring Paid Sick Leave" Nyemaster News and Insights, March 19, 2020, and Nyemaster Goode Labor & Employment Client Webinar, March 20, 2020.

"The Trump NLRB at 18 Months: Future Impact on Unionized and Non-unionized Employers"
Nyemaster Law Firm Labor & Employment Law Client Seminar, July 11 and August 2, 2018, Des Moines, and June 14, 2018, Cedar Rapids (author and presenter)

"Affirmative Action in Admissions: Status of the DOJ Probe and Future Challenges"
Nyemaster Law Firm Higher Education Law Client Seminar, June 6, 2018, Grinnell, Iowa (author and presenter)