

Bret A. Cohen

Partner

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Bret Cohen chairs the Labor and Employment Practice. His practice covers a range of industries in the drafting and enforcement of non-compete, confidentiality, and other employment-related agreements throughout the United States. He has also represented individual employees, typically high level executives, in such matters on behalf of the companies who seek to hire them. Mr. Cohen's practice has also regularly involved advising public company executives on terminations and employment issues and providing advice on a range of matters involving employment agreements, termination of high level executives, worker classification, deal diligence, and hiring oversight and best practices. His practice covers both the negotiation and drafting of relevant agreements and the regular enforcement in litigation of the claims of employers seeking to enforce those agreements.

Mr. Cohen writes and presents on employment law issues and has authored a range of articles relating to the Defend Trade Secrets Act. He frequently lectures on practice before the Massachusetts Commission Against Discrimination and on practice before state and federal courts. Mr. Cohen has served as a contributing author for the Employment Litigation chapter of the Annual Review of Developments in Business and Corporate Litigation, American Bar Association, for a number of years.

Experience

Following is a selected sampling of matters and is provided for informational purposes only. Past success does not indicate the likelihood of success in any future matter.

Experience

Education

Saint Louis University School of Law, JD
University of Illinois, BA

Admissions

District of Columbia
Illinois
Massachusetts
Missouri
New Hampshire
New York
U.S. Court of Appeals for the First Circuit
U.S. Court of Appeals for the Sixth Circuit
U.S. District Court for the Northern District of Illinois
U.S. District Court for the Southern District of Illinois
U.S. District Court for the Central District of Illinois
U.S. District Court for the District of Massachusetts
U.S. District Court for the Eastern District of Missouri

The following list provides some examples of work in which Mr. Cohen has successfully represented his clients

- *McCusker v. hibu, Inc.*
In an action filed in the Eastern District of New York, represented a global digital advertising and internet services company in a suit by a former executive who sued the client after his termination in late 2014, asserting claims for breach of contract, defamation, and for violations of the Pennsylvania Wage Payment and Collection Law. As the lead counsel, Bret and his team guided the client through pre-trial proceedings and achieved a favorable settlement.
- *Panera, LLC v. Nettles and Papa John's*
In an action filed in the Eastern District of Missouri, represented an international fast-casual restaurant chain in a case involving the violation of a former employee's non-competition agreement, and the theft of trade secrets and confidential information. The team led by Bret won a temporary restraining order that prevented the former employee from immediately joining a competing restaurant chain.
- *Plymouth County District Attorney – Bradley v. Cruz*
In the U.S. District Court of Massachusetts, represented the District Attorney for a large Massachusetts county in a case against a former Assistant District Attorney who was fired for cause. The plaintiff alleges that his employment was terminated because he refused to support the client's re-election campaign and because he was a whistle-blower regarding unethical legal practices condoned by the client. Bret was appointed a Special Attorney General for the Commonwealth of Massachusetts specifically for the purpose of representing the client in this matter. He has led the defense efforts through pre-trial motions, litigation surrounding the potential leaking of confidential documents, and trial preparation.
- *Cynosure, Inc. v. Spencer Detter, John Featherstone, Kipp Davit, Larry Laber, and Cutera, Inc.*
In Middlesex Superior Court, represented a medical device company facing a motion for a preliminary injunction seeking to bar two of its new hires from working for the company. Bret won a denial of the motion, with the court ruling that the plaintiff had not proven that its former employees had violated their non-competition agreements, improperly kept confidential information, or would cause the plaintiff to suffer irreparable harm.
- *Tibco Software, Inc. v. Zephyr Health, Inc. and Kevin Willoe*
In Suffolk Superior Court, represented a data analytics company facing a non-compete case involving an arbitration clause. The client was sued by the former employer of a new employee, with the former employer

U.S. District Court for the Eastern District of New York

U.S. District Court for the Western District of Michigan

District of Columbia Court of Appeals

Practice Areas

[Employment & Labor](#)

[Intellectual Property Litigation](#)

[Appellate Practice & Legal Strategies](#)

[Trade Secrets & Employee Mobility](#)

[Litigation](#)

Industries

[Banking & Financial Services](#)

[Consumer Products & Retail](#)

[Education](#)

[Pharmaceuticals & Medical Devices](#)

[Sports](#)

[Technology](#)

claiming the employee was violating his employment agreement's non-compete clause. The former employer brought motions for emergency discovery and relief. Bret succeeded in compelling arbitration, with the court agreeing that the employment agreement's arbitration clause could compel the former employer to arbitrate.

- *Cosi v. Kelleher and Panera*

In the Supreme Court of the state of New York, Orange County, represented a large fast-casual restaurant chain in a suit brought by the former employer of a new high-level employee, claiming the employee violated his non-compete by taking a job at a competitor before his 18-month waiting period expired. Bret won a court order allowing the employee to continue his four month training period with his new company, as the court decided that the 18-month waiting period could hinder the employee from earning a living.

- *Sentient Jet, INC. v. Brian Higgins, Michael Payne, and Private Flight Advisors*

In Norfolk Superior Court, represented a private charter jet aircraft service in a complaint against two former employees for violating their confidentiality, noncompetition, and non-solicitation agreements. Both had worked for the client as sales directors. After resigning their positions, the defendants left to begin their own private charter jet company that would be operating in direct competition with the client. They were suspected of stealing confidential information with the intent of soliciting the client's customers. Bret won a court order telling the former employees to refrain from violating their contracts, soliciting the client's customers, and working with or for their new company for a period of five years. They also had to return all stolen confidential materials.

- *DiPietro v. Sipex Corporation*

In Middlesex Superior Court, represented an electronics company in an action brought by a former employee seeking \$800,000 in service benefits. The client counterclaimed for \$150,000 which it was owed under a promissory note signed by the plaintiff. The client filed two claims for summary judgment, one for the former employee's claims and another for its own counterclaims. Both motions for summary judgment were granted, and soon after the former employee filed a notice of appeal. The client then filed for costs and pre-judgment interests, getting the former employee to pay for deposition costs. The Massachusetts Appeals Court reversed the Middlesex Court's decision and remanded the case for further proceedings. The case was then moved back to the Middlesex Superior Court for a final decision. Bret guided

the parties to a final settlement agreement, and they filed a joint stipulation of dismissal the Middlesex Superior Court.

- *Wordwave, Inc. d/b/a LegaLink v. Dalia Owens and Jones Reporting Company, Inc.*
In Suffolk Superior Court, represented a company in the business of hiring independent contractors to cover shorthand reporting, court reporting, and transcription services for both small and large law firms and businesses. The client brought suit against a former employee for violating her non-compete and confidentiality agreement. The former employee had resigned and transferred to a direct competitor, and had been soliciting the client's employees and customers both during and after her employment with the client. Bret achieved a favorable settlement.
- *Kevin McGorry v. Brightcove, Inc., and Adam Berrey*
Before the Massachusetts Commission against Discrimination, represented a software company and its marketing supervisor in a complaint brought by a former employee alleging discrimination due to disability. The complainant stated that at the time he was hired he informed his supervisor that he suffered from partially disabling medical conditions, and alleged that his employment was terminated because of the company's discrimination against his disabilities and refusal to accommodate him. The client responded that the complainant failed to inform them of his disabilities until a few months earlier. Shortly after receiving this information, the complainant's employment was terminated due to his sub-par performance and inability to cooperate with fellow employees. Prior to this, he had received several warnings from his supervisor. The Commission decided that there was a lack of probable cause against the client, and that the complainant failed to present a finding of reasonable fact to make the marketing supervisor individually liable.
- *John Kinchla v. Science Applications International Corp.*
Before the EEOC, represented a large software company facing a charge brought by an employee alleging gender discrimination and retaliation. The EEOC informed the employee that it was unable to conclude that the information provided established violations of the statute. The company terminated the employee's employment as a result of his continued inappropriate and threatening behavior in the workplace. He then filed a complaint against the client in the U.S. District Court for the District of Massachusetts, alleging claims for sexual harassment and retaliation. In response, the client initiated an internal investigation involving interviews with 25 employees with knowledge of the facts at issue. SAIC filed a motion to dismiss the plaintiff's claims in favor of arbitration, which the

court granted. The arbitrator ultimately granted summary judgment.

- Represented co-founder and CEO Henry Helgeson in payment technology company Cayan's acquisition by TSYS, a global payments solutions provider, a transaction valued at \$1.05 billion

Previous Professional Experience

- Former Member and Co-Chair, Employee Mobility, Non-Competes & Trade Secrets Practice, Mintz Levin

Recognitions

The bar rules of some states require that the standards for an attorney's inclusion in certain public accolades or recognitions be provided. When such accolades or recognitions are listed, a hyperlink is provided that leads to a description of the respective selection methodology.

- [AV® Preeminent™ peer review rating from the Martindale-Hubbell® Peer Review Ratings](#) - selected as one of New England's Top Rated Lawyers (2010-present)
- [Chambers USA: America's Leading Lawyers for Business](#), recognized as a leader in Labor and Employment in Massachusetts (2004-2019)
- Louis D. Brandeis Life Fellow of the Massachusetts Bar Foundation
- Massachusetts Lawyers Weekly, "Top Five Up-and-Coming Lawyers in the Commonwealth" (2000)
- [Massachusetts Super Lawyers: Employment & Labor](#) (2007-2017)
- American Jurisprudence Award
- Everett E. Hullverson Award

Community

- Former chair, Joint Bar Committee for Judicial Appointments
- Chair, American Bar Association Subcommittee on Employment Litigation (2003-2009)
- Former president, Board of Directors of the Natick Montessori School
- Advisory Board, Concussion Legacy Foundation

Articles & Speeches

Insights

- [Pay Data Pitfalls: What We Can Learn From Facebook's Discrimination Case](#), *New York Law Journal* - Author (November 1, 2019)
- [Law and Practice, Chambers & Partners' 2019 Regional Employment Global Practice Guide](#) - Co-Author (December 2018)
- [Big Data Analytics May Haunt Employers](#), *New York Law Journal* - Author (November 5, 2018)
- [New Mass. Law Would Make Enforcing Noncompetes Harder](#), *Law360* - Co-Author (August 9, 2018)
- [Defend Trade Secrets Act \(DTSA\) and Other Legal Claims and Recourse to Protect Employers' Confidential Information and Trade Secrets](#), *The Lexis Practice Advisor Journal* - Author (June 25, 2018)
- [Recourse for Trade Secret Misappropriation under the Federal Defend Trade Secrets Act](#), *The Lexis Practice Advisor Journal* - Co-Author (May 1, 2018)
- [The Defend Trade Secrets Act: A Powerful New Tool for Employers](#), *Bloomberg BNA Daily Labor Report* (October 25, 2016)
- [The Defend Trade Secrets Act: Examining the DTSA's Language, Use, and Future](#), *Boston Patent Law Association* (October 25, 2016)
- [Explaining the Defend Trade Secrets Act](#), *Intellectual Property/Employment Labor & Benefits Advisory* - Co-Author (October 3, 2016)
- [Explaining the Defend Trade Secrets Act](#), *American Bar Association's Business Law Today* (September 28, 2016)
- [Protections of the Newly Enacted Defend Trade Secrets Act](#), *Intellectual Property Alert* - Co-Author (May 12, 2016)
- [Explaining the Provisions of the Defend Trade Secrets Act](#), *Intellectual Property Alert* - Co-Author (May 5, 2016)
- [The HR-Legal Partnership](#), *Human Resource Executive* - Author (September 2, 2011)
- [Annual Review of Developments in Business and Corporate Litigation](#), *American Bar Association* - Editor (2011)

Events/Speaking Engagements

- [Advanced Restrictive Covenant Issues and Update](#), *The American Employment Law Council 2019 Conference* - Speaker (October 24, 2019)
- [Partner Bret Cohen to Speak at Boston Bar Association Event on the State's Noncompete Legislative Overhaul](#) - Speaker (October 22, 2018)
- [Employment Law in 2018 – Understanding Current Issues and Changes at the State and Federal Levels](#) - Speaker (May 10, 2018)
- [Traps for the Unwary: Avoiding Ethical Traps in Cross-Border Transactions and Litigation](#) - Speaker (April 13, 2018)
- [Nelson Mullins Partner Bret Cohen to Discuss Strategies in Non-Compete Litigation](#) - Speaker (February 8, 2018)
- [The Defend Trade Secrets Act: 2017 Litigation Trends, Updates and Developments](#) - Presenter (October 23, 2017)
- [Inevitable Disclosure, the DTSA, and Avoiding Contamination](#), *Intellectual Property Owners Association IP Chat Channel webinar* - Speaker (July 27, 2017)
- [The Defend Trade Secrets Act, The Defend Trade Secrets Act: Securing Your Trade Secrets in 2017](#), *The Knowledge Group, Webinar* - Speaker (March 31, 2017)
- [Recent Amendments to the Federal Rules of Civil Procedure](#), *ABA Business Law Section Spring Meeting, American Bar Association* - Speaker (April 8, 2016)
- [Creating Order Out of Chaos: Framing and Taming Data Discovery Challenges in Expedited Matters](#), *2015 East Coast eDiscovery & IG Retreat* - Panelist (November 8, 2015)

The State of Noncompetes, *Massachusetts Employment Law Summit* - Speaker (May 13, 2015)
2015 Recent Developments in Business and Corporate Litigation, *American Bar Association 2015 Business Law Section Spring Meeting* - Program Chair (April 16, 2015)
Post-Employment Solicitation of Customers & Employees in the Social Media Age - Panelist (November 13, 2014)
The 2014 Annual Review of Developments in Business and Corporate Litigation, *2014 Business Law Section Spring Meeting, American Bar Association, Los Angeles* - Moderator (July 10, 2014)
How to Draft Effective Restrictive Covenants, Do's and Don'ts: How to Draft Effective Restrictive Covenants & Avoid Traps for the Unwary - Panelist (May 28, 2014)
Winning Post-Employment Covenant Claims Before the Lawsuit: A Proactive Approach to Noncompetes - Speaker (September 17, 2013)
Perspectives from the Bench: Protecting Trade Secrets and Proprietary Information of Companies with Multi-State Operations Amidst Onboarding and Exiting of Employees, *ABA Annual Meeting, American Bar Association, San Francisco* - Panelist (August 9, 2013)
2013 Annual Review of Developments in Business and Corporate Litigation, *American Bar Association, Chicago* - Speaker (May 16, 2013)
Traps for the Unwary: Drafting Non-Competes and Other Post-Employment Restrictions, *Boston Bar Association, Boston* - Program Co-chair (March 21, 2013)
The 2012 Annual Review of Developments in Business and Corporate Litigation, *ABA Business Law Spring Meeting, American Bar Association, Las Vegas* - Moderator (March 22, 2012)
US Visa and Green Card Options for Dentists, *Yankee Dental Congress 2012, Boston* - Speaker (January 26, 2012)