

Q&A With Loeb & Loeb's Michelle La Mar

Law360, New York (June 06, 2013, 3:24 PM ET) -- At Loeb & Loeb LLP, Michelle La Mar's practice encompasses all aspects of employment law, including both counseling and litigation. She routinely advises employers with respect to wage and hour compliance, right sizing (including the Worker Adjustment and Retraining Notification Act), terminations, discrimination and harassment issues and investigations, mandated leaves of absence, employee privacy rights, background checks, social networking, blogging, the protection of trade secrets and confidential information, disability accommodations and unfair competition issues. La Mar's litigation experience includes administrative proceedings, jury and bench trials, as well as appellate work in the state and federal court systems.

Q: What is the most challenging case you have worked on and what made it challenging?

A: I find the most challenging cases to be the ones in which there is no case law or administrative precedent, and the statutory language is poorly worded. These are perhaps the most interesting for the lawyers involved. However, I have found judges are reluctant to make dispositive legal rulings on such matters due to the likelihood of an appeal.

Last year, we had just such a matter involving the faltering company exception to California's WARN Act. Although we were able to secure the first published opinion from the director of the Industrial Welfare Commission excusing our client from Cal-WARN's notice provisions, the court allowed a class action to proceed on a failure-to-provide-notice claim despite what we thought was a purely legal question regarding statutory interpretation.

As the case continued, each term set forth in the statute was challenged as to its meaning, without legal resolution. Trial ultimately commenced with stipulated facts. Faced with only the remaining statutory interpretations and my client's commitment to an appeal if we did not prevail, we were able to reach a very favorable settlement for the client on the first day of trial.

Q: What aspects of your practice area are in need of reform and why?

A: California needs to invest in modifying and clarifying its labor code so that employers have clear and specific directives as to how to run their businesses. Such modifications and clarifications need to be made on a prospective basis so that employers are not "caught" in the new interpretation. Most, if not all, of the wage and hour class actions are based on an employer's mistaken view of the statutory language — or worse — language which is so vague or outdated that it is subject to multiple interpretations.

California needs to tell employers what to do in an understandable, practical format. The guesswork in this area needs to be eliminated.

Q: What is an important issue or case relevant to your practice area and why?

A: The most interesting issue right now in employment law is how far the courts will expand an employee's obligation to pay a defendant's attorneys' fees in ill-fated wage-and-hour claims. It has been a one-way street for a very long period of time, with the award of attorneys' fees traditionally being made to employees only. This fact alone has been a driving force for employers in many settlements.

If plaintiffs are faced with "loser pays" obligations under Labor Code § 218.5, as the California courts now suggest will occur under certain labor code provisions, we may see a reduction in unfocused wage-and-hour class actions, which are so costly for employers to defend.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: There are actually two lawyers from a prior firm who[m] I admire for the lessons they taught me as a young lawyer. Paul Bressan, who is now at Buchalter Nemer, taught me to ask every possible question and analyze every possible path before deciding on the appropriate course of action in a matter. Ken Kirschner, who is now at Hogan Lovells, taught me to listen to the client's needs and to approach cases from the client's perspective. He also taught me how to lead and to support my colleagues and staff.

I cannot thank both of them enough. Both were at Kelley Drye & Warren with me.

Q: What is a mistake you made early in your career and what did you learn from it?

A: The hardest lesson to learn was balancing the advocacy of my client's position with appropriately questioning the practicality of the client's view of the facts and events. As a young attorney, I had a matter in which I did my client a disservice by believing too strongly in the story I was told, as opposed to objectively reviewing the facts. I learned that practically questioning and confronting a client in the prelitigation phase, even if it makes the client uncomfortable, is the best service a lawyer can provide to his or her client.

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