

## Counseling, Compliance, Training, & Employee Benefits

We train and guide management on handling customary and statutory requirements, such as privacy, leaves of absence, background checks, and workers' compensation from a preventive angle. These training programs guide clients through a broad range of employment issues, including:

- **Policy planning**, including best practices for selection decisions, pre-employment screening and testing, handbook development, counseling, performance reviews and evaluations, and terminations, as well as compliance with statutes surrounding privacy and confidentiality.
- **Employment agreements** such as executive benefits, noncompetition and nonsolicitation agreements, and compensation agreements that help companies retain top talent and strengthen workforces.
- **Fair Credit Reporting Act (FCRA)** issues such as disclosure, certification, pre- and post-decision notices, and application consent requirements; liability assessments; and credit, criminal, and background checks on prospective and current employees.
- **Leaves of absence** in relation to the Family Medical Leave Act (FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA), Americans with Disabilities Act (ADA), and other laws relating to employee leave, including protected and unprotected absences, indefinite leave, statutory compliance, medical certification, and employer monitoring of these occurrences.
- **Workers' compensation nonsubscription counsel** in states such as Texas that allow for nonsubscription to state workers' compensation systems. We guide clients on structuring and operating occupational injury benefits programs, often an economical alternative for small businesses and low-incident organizations. We also defend nonsubscribers' interests in nonbarred claims.
- **Contingent workers and employee classification advice** in a climate where courts continue to rule on misclassification, numerosity, benefits, and tax issues. Our approach includes minimizing risk exposure, guiding clients on the management of nontraditional workforces, identifying strategies for third-party payroll agreements, compliance, defending claims in court, and addressing non-litigation taxation issues.
- **Regulatory compliance and audit support** relating to Title VII, ADA, Fair Labor Standards Act (FLSA), FMLA, Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), Internal Revenue Service (IRS), U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), and the National Labor Relations Act (NLRA), among others.
- **Traditional labor issues** relating to all aspects of union management, such as picketing drives and strikes, organizing drives and elections, allegations of unfair labor practices, and labor relations in unionized work environments.
- **Training**, including guidance, recommendations, and training seminars for all levels of employees or management to positively manage the intricacies of labor and employment law.

With respect to employee benefits, our attorneys offer experienced insight to assist employers in the strategic use of benefits packages. Part of our counsel focuses on the myriad regulatory requirements and statutory enforcement. All our advice considers cost savings for our clients' companies.

We advise in the sound development, administration and, when necessary, termination of welfare, retirement, and health benefits plans. We are well-versed in:

- Qualified and non-qualified plans
- Profit sharing and stock bonus plans
- Corporate reorganization and workforce reductions
- Outsourced benefits programs
- Executive compensation plans
- Severance benefit programs
- Early retirement incentive programs
- Retiree benefit plans
- Multi-employer plans
- Occupational injury plans
- COBRA issues
- Payroll tax audits

Under the umbrella of employee benefits, our team has substantial experience with:

- **Benefits litigation**, including class action claims, for issues ranging from simple benefits claims to complex fiduciary matters. We defend employers before commission inquiries, during audits, and before federal and state authorities including the IRS, DOL, and

### Areas of Focus

Administrative Hearings and Investigations

Employment Litigation and Arbitration

### Related Services

Counseling, Compliance, Training, & Employee Benefits

Employment Litigation and Arbitration

Labor and Employment

Pension Benefit Guaranty Corporation.

- **Employee Retirement Income Security Act (ERISA)**, including advising on pension and nonpension benefit plans. We assist with structuring retiree health plans; negotiating service agreements; counseling on plan redesign or termination for cost savings; offering opinions on related DOL exemptions; and Consolidated Omnibus Budget Reconciliation Act (COBRA), Health Insurance Portability and Accountability Act (HIPAA), and IRS matters. We have specific experience relating to 404c plans; asset investment; executive compensation, including split dollar and other insurance-related compensation tools; supplemental executive retirement plans; rabbi trusts; and reporting and disclosure compliance.
- **ERISA litigation and tax issues** including class action and individual claims related to pension, health, and welfare funds and benefits. We address these claims through a cross-disciplinary team of trial, labor and employment, and tax attorneys, and have achieved numerous successful resolutions involving charges of breach of fiduciary responsibility, prohibited transactions, fund underpayment, claim denials, and failure to provide information required by ERISA. We also defend third-party administrators and service providers.

## Professionals



**Stephen P. Beiser**  
Member  
sbeiser@mcglinchey.com

**New Orleans**  
T: (504) 596-2756



**Magdalen Blessey Bickford**  
Member  
mbickford@mcglinchey.com

**New Orleans**  
T: (504) 596-2726



**Katherine Conklin**  
Member  
kconklin@mcglinchey.com

**New Orleans**  
T: (504) 596-2876



**Kyle A. Ferachi**  
Member  
kferachi@mcglinchey.com

**Houston \***  
**Baton Rouge**  
T: (225) 382-3632 - Baton Rouge  
T: (713) 335-2111 - Houston



**Brian M. LeCompte**  
Member  
blecompte@mcglinchey.com

**New Orleans**  
T: (504) 596-2832



**Amanda S. Stout**  
Of Counsel  
astout@mcglinchey.com

**Baton Rouge**  
T: (225) 382-3693

## Recent Publications

June 5, 2019

### [Employer Beware: The U.S. Supreme Court Allows a Plaintiff to Bypass the EEOC](#)

On June 3, 2019, in Fort Bend County, Texas v. Davis, the Supreme Court unanimously held that federal courts can exercise jurisdiction over discrimination claims that were never brought before the Equal Employment Opportunity Commission.

McGlinchey Labor & Employment Alert

February 4, 2019

### [Deadline Extension for EEOC Survey Announced Due to Shutdown](#)

On February 1, 2019, the Equal Employment Opportunity Commission (EEOC) announced that, due to the partial lapse in appropriations, the opening of the EEO-1 has been postponed until early

March 2019. The deadline to submit EEO-1 data is extended until May 31, 2019.

McGlinchey Labor & Employment Alert

- November 30, 2018 [We Are Not Out of the Woods: Some 401\(k\) Plan Amendments May Be Needed in 2018](#)  
Although the IRS announced on November 28, 2018 that no plan amendments are required in 2018 to 401(k) plan documents in order to maintain their tax-qualified status, this announcement is not the whole story if a plan allows hardship distributions, or a plan sponsor wants to apply forfeitures against qualified non-elective (QNEC) or qualified matching contributions (QMAC).  
McGlinchey Labor & Employment Alert
- May 29, 2018 [U.S. Supreme Court Rules That Employers Can Require Employees to Sign Collective and Class Action Waivers in Arbitration Agreements](#)  
The Supreme Court in *Epic Systems v. Lewis* recently upheld the rights of employers to require employees to sign mandatory arbitration agreements in which employees must waive their rights to bring a class or collective action against their employers.  
McGlinchey Labor & Employment Alert
- April 5, 2018 [Revised Law Says Employers Cannot Pocket Tips, Even if Not Using the Tip Credit](#)  
A specific provision was included in the congressional spending bill approved on March 23, 2018, to amend the tip credit provisions of the Federal Labor Standards Act (FLSA) to expressly provide that employers cannot keep any portion of the tips earned by their workers, regardless of whether the employer utilizes the tip credit.  
McGlinchey Labor & Employment Alert
- January 19, 2018 [Is the New FMLA Tax Credit Worth It?](#)  
Employers who pay employees while they are on Family and Medical Leave Act (FMLA) leave can receive a new tax credit under new Internal Revenue Code Section 43S, but the limitations on the applicability of the credit may make this tax deal more trouble than it is worth.  
McGlinchey Labor & Employment Alert
- January 12, 2018 [Employers Beware: "Weinstein Tax" Denies Income Tax Deduction for Sexual Harassment Settlements](#)  
Beware of including nondisclosure agreements when settling sexual harassment claims, because neither the settlement payment nor the attorneys' fees related to that settlement will be deductible under new Internal Revenue Code Section 162(q).  
McGlinchey Labor & Employment Alert
- December 6, 2017 [Employer Update: Controversial DOL Regulation Regarding Tip-Pooling Headed to Repeal](#)  
Employers in service industries may soon be able to require their tipped employees to share their tips with "back of the house" employees. The catch: the tipped employees must be paid at least minimum wage with no use of the tip credit.  
McGlinchey Labor & Employment Alert
- October 31, 2017 [Employer Update: Title VII Protection for Transgender Status Up in the Air](#)  
Federal government agencies are in conflict among themselves as to whether Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation, including transgender status. Likewise, federal courts have reached differing conclusions.  
McGlinchey Labor & Employment Alert
- October 24, 2017 [Evaluate Your Sexual Harassment Policies and Procedures Now—Don't Wait for the Consequences](#)  
McGlinchey Labor & Employment Alert

---

## Events

August 22, 2019 [Ethics after #MeToo](#)  
Cutting Edge Entertainment Law Seminar  
New Orleans, LA

---

## Recent News

April 25, 2019 [McGlinchey Stafford Receives Nationwide, State, and Individual Honors in Chambers USA 2019](#)  
McGlinchey News Release

March 21, 2019 [Emphasizing 'entrepreneurial opportunity,' NLRB upends Obama-era independent contractor standard](#)  
New Orleans CityBusiness

May 7, 2018 [McGlinchey Stafford Receives Nationwide, State, and Individual Honors in Chambers USA 2018](#)  
McGlinchey News Release

February 9, 2018 [Trump's pro-employer picks to reorient EEOC's priorities](#)  
New Orleans CityBusiness

January 19, 2018 [A Q&A with Magdalen Blessey Bickford](#)  
New Orleans CityBusiness

November 1, 2017 [McGlinchey Stafford's Practices Ranked Among Top in Nation in U.S. News/Best Lawyers' "Best Law Firms" 2018](#)  
McGlinchey News Release