

## Rachel Powitzky Steely

### Partner

[rsteely@foley.com](mailto:rsteely@foley.com)

Houston

713.276.5605



Rachel Powitzky Steely is a skilled trial lawyer who helps companies protect their technology, confidential information and workforces, and assists executives during career transitions that may lead to litigation.

Rachel has been recognized as one of the top 50 female lawyers in Texas, selected as a Houston elite 100 lawyer, and was named a top 20 female trial lawyer by *Texas Lawyer Magazine*, the only trade secret/employment attorney to receive the honor. Rachel's trial experience includes employment, commercial, corporate, and insurance matters. She has won multimillion-dollar verdicts and defended companies against claims exceeding US\$100 million.

Rachel is regularly recognized by *Best Lawyers* and *Chambers* and has been a *Texas Super Lawyer* for more than 20 years. She was named *Houston Business Journal's* Outstanding Business Leader in Professional Services and selected for Who's Who in Energy. She is a former student investigator for the Wage and Hour Division of the U.S. Department of Labor and is Board Certified, Labor & Employment Law, by the Texas Board of Legal Specialization. She serves as vice chair of the firm's Labor & Employment Practice, of which the firm's national and Houston office groups have been recognized by *Best Lawyers* as Tier 1 practices.

Rachel is highly skilled in the field of unfair competition litigation, and has extensive experience representing clients in prosecuting and defending expedited proceedings seeking emergency injunctive relief related to noncompetes, trade secret theft and embezzlement, which allows her to provide quick, strategic and efficient representation for companies and executives.

Rachel also has particular proficiency in wage and hour litigation and a wide variety of employment matters, including disability laws; discrimination, retaliation and harassment; executive agreements; OSHA and safety; terminations, hiring and layoffs, and severance agreements. She maintains an active trial docket while also providing the necessary preventative counseling to help clients avoid costly litigation.

### Representative Experience

## **Unfair Competition/Trade Secrets/Restrictive Covenants**

- Prosecuted or defended more than 30 temporary restraining order or temporary injunction proceedings in state and federal court, primarily focusing on unfair competition, trade secret misappropriation and non-solicitation and non-competition agreements.
- Served as lead trial attorney for an innovative plastics solutions company in a suit filed against former employees where a jury returned a multimillion-dollar verdict establishing the trade secret nature of the technology and the misappropriation by the defendants.
  - Served as lead trial lawyer in a successful three-month, US\$42m trade secret expedited trial, representing 12 defendants starting new division of a competitor.
  - Served as lead trial lawyer in defeating injunction that would have prevented eight executives and salespeople from working for newly formed competitor brought by former employer as a result of alleged trade secret theft.
- Provided proactive defense in multimillion-dollar trade secret and noncompete litigation against plastics company and executives resulting in quick and efficient resolution in favor of our client.
- Served as lead trial lawyer in successful prosecution of multistate trade secret, non-solicitation, and partnership litigation involving expedited and Anti-SLAPP proceedings for companies in the amusement park industry.
- Defeated efforts by competitor to shut down construction of facility based on noncompete, trade secret, and breach of fiduciary duties obligations.
- Successfully defended multinational company against anti-competitive allegations of employee raiding and theft of trade secrets, resulting in the opponent paying three times more in attorney's fees for a mere dismissal of claims.
- Represented several groups of departing executives and managers of international insurance brokerage company against former employer for claims of breach of partnership agreement, stock option, noncompetition, non-solicitation, and confidentiality agreements.
- Assisted with developing staffing company restrictive covenants.
- Prevailed with an injunction to stop competing energy technology company from building similar downhole tools in competition with client.
- Represented new insurance brokerage firm in lawsuit by former employer of executives for claims of tortious interference breach of noncompetition, non-solicitation and confidentiality agreements. Represented financial services firm after key sales employees joined a competitor and attempted to take key clients to the new firm.
- Represented fire and security company in several cases against employees for misappropriation of confidential information, breach of fiduciary duties, and breach of non-solicitation agreements. Served as lead trial counsel against managers refusing to return incentive stock awards and payments as a result of violations of restrictive covenants.
- Served as lead counsel for multinational supply chain technology company against employees leaving en masse to new competitor.

## **Discrimination, Harassment, and Retaliation**

- Successfully defended claims in multi-plaintiff race discrimination case in federal court whereby the defense successfully excluded tape recordings and other evidence resulting in resolution of matter on the first day of trial
- Prevailed on summary judgment in the defense of race and gender discrimination laws for homebuilder.
- Defended numerous discrimination lawsuits for construction clients.
- Provided OSHA representation for construction, agricultural, and oil and gas clients involving fatalities, injuries, and environmental issues.
- Advised clients regarding an investigation of top executives for foreign companies after allegations of race and sex harassment, retaliation, and discrimination.
- Represented numerous companies in many instances of litigation and EEOC charges filed by former employees alleging race, disability, FMLA, age, religion, sex and national origin discrimination, harassment, and retaliation.
- Represented numerous energy companies in many instances of litigation and charges filed by former employees alleging race, age, sex, and national origin discrimination.
- Prevailed on summary judgment, and affirmed per curiam by the 5th Circuit Court of Appeals, for chemical company on discrimination, harassment, and retaliation claims.
- Represented a chemical manufacturer in defending claims regarding disability and age discrimination.
- Represented multiple companies in defense of claims of worker's injury and retaliation. Represented multiple companies, including an oil and gas services company, in claims of same-sex harassment and sex discrimination.
- Represented title insurance company in race discrimination lawsuit associated with a mass layoff. Advised and defended clients from whistleblower claims under Section 806 of the Sarbanes-Oxley Act of 2002, which has involved advising board of directors and officers with respect to employee investigations and appropriate actions.
- Represented employer in workers' compensation retaliation litigation from trial to the Supreme Court of Texas.
- Defended companies and others against DOL solicitor for OSHA willful and serious citations, working cooperatively with the defense attorneys in accompanying personal injury actions. Represented oil and gas services company against harassment and discrimination lawsuit filed by the Equal Employment Opportunity Commission in federal court.
- Represented accounting and consulting firm in action by former employee for job misclassification and Family and Medical Leave Act (FMLA) retaliation.

### **Wage and Hour Collective Actions/Fair Labor Standards Act (FLSA)/Pay Disputes**

- Represented numerous oilfield companies in collective action lawsuits seeking overtime under the FLSA in issues such as bonus payments, waiting periods, fluctuating workweek, day rates, overtime, travel time, donning and doffing, and independent contractor status.
- Served as lead counsel for dismissal of case at class certification stage for energy company.

- Served as lead counsel in wage and hour collective action for multinational technology company based on comp time, improper bonus scheme, and overtime allegations.
- Audited companies to determine wage and hour/pay classifications and appropriate payment of overtime under FLSA requirements.
- Served as lead counsel for E&P company against misclassification allegations under the FLSA for wellsite supervisors and other positions.
- Represented and advised energy companies in litigation, DOL investigations and self-audits regarding payment of employees, including independent contractor status, overtime payments, and FLSA exemptions.
- Assisted employers in classification of employees as exempt or nonexempt and provide advice with regard to competitive pay strategies.
- Represented distributors, construction companies, retailers, and restaurants in wage and hour disputes under the FLSA for improper payment or classification of workers, including collective actions.

### **Executive and Employment Related Trial Experience**

- Assisted several multinational companies with employee embezzlement investigations and claims, including coordination with the FBI and state and local offices.
- Assisted federal and state prosecutors with mail and wire fraud charges.
- Served as a summary witness for federal prosecutors in embezzlement case against former manager after conducting lengthy investigation into the background of the claims.
- Negotiated and drafted executive and employee employment agreements containing stock option, noncompetition, commission, 409A, and intellectual property rights provisions.
- Represented pension plan fiduciaries in dispute over appropriate investment choices. Represented construction companies in OFCCP and FLSA investigations and litigation. Represented employer in litigation of OSHA safety violations in the 5th U.S. Circuit Court of Appeals.
- Represented employer in threatened union concerted activity under the National Labor Relations Act. Represented companies against executives claiming amounts owed pursuant to “change of control” and “good reason” termination provisions in executive agreements.
- Represented homebuilder in claims by executive of unpaid bonuses and commissions. Represented chief risk officer in an employment dispute and investigation by SEC. Represented partners on several occasions in partnership dissolution litigation involving theft of inventory, breach of fiduciary duties, and winding down.
- Represented large insurance underwriter in action by former employee for amounts due under executive contract.
- Assisted employers in the documentation and initiation of terminations and mass layoffs in conjunction with federal and state laws, including the Age Discrimination in Employment Act, FMLA, ARRA, and WARN.
- Represented several corporate officers upon termination of employment regarding cause issues and the negotiation of severance agreements.
- Investigated employee and shareholder whistleblower, discrimination, safety, and theft complaints.

## **Strategic Consultations for Boards and Managers on Trial and Employment Related Issues**

- Assisted employer in monitoring and training managers to enhance employee performance through toolbox series and effective performance management and evaluation.
- Teamed with companies and boards with a focus on preventative measures to reduce litigation and whistleblower and safety complaints including development of operational strategies to incentivize employees toward maximizing output and safety, training managers regarding strategies to avoid litigation and governmental investigations, coordinating programs to ensure compliance with different federal and state laws, and advice regarding policies and procedures and guidelines to help companies comply with federal and state laws.
- Conducted many confidential company investigations reporting directly to the board of directors, with matters including harassment, retaliation, embezzlement, discrimination, and theft.
- Advised clients regarding new laws and decisions affecting their workforces, policies, and benefits.
- Consulted with American companies on employment agreements and issues for overseas workers.
- Provided monthly and quarterly lunch seminars on important employment topics and strategies.

## **Commercial and Corporate Litigation**

- Represented landowner in pipeline condemnation dispute.
- Served as lead counsel in multistate distribution agreement dispute for agricultural client.
- Represented amusement park in customer personal injury claims.
- Represented large refinery in claims against service provider for breach of contract.
- Served as lead counsel in physician office dispute between doctors involving Stark Law and numerous Medicare issues.
- On many occasions, have represented partners in partnership disputes, including trial victories resulting in the reimbursements of attorney's fees.

## **Awards and Recognition**

- LawDragon 500 Leading United States Corporate Employment Lawyers
  - Labor and Employment – Litigation (2021-2023)
- *The Best Lawyers in America*® – Employment Law – Management (2016-2023)
- *Texas Super Lawyers*® – Top 50 Women Lawyers in Texas (2019-2022)
- *Texas Super Lawyers*® – Top 100 Houston Lawyers in Texas (2019-2023)
- *Chambers USA: America's Leading Lawyers for Business* – Labor & Employment (2016-2022)
- *Texas Super Lawyers*®- Employment Litigation: Defense (2003-2022)
- *Houston Chronicle's* Best Lawyers in Texas (2018)
- *Houstonia Magazine's* Houstonia's Top Lawyers (2017)
- *Houston Business Journal's* Women Who Mean Business – Professional Services Distinction (2017)
- *Houston Business Journal's* Who's Who in Energy (2016)
- *Texas Lawyer's* Winning Women – Top 20 Female Litigator in Texas (2014)
- *H-Texas Magazine's* Houston's Top Lawyers – Labor and Employment (2004, 2011, 2012)

- *H-Texas Magazine's Professional on the Fast Track* (2005, 2008, 2009)
- *Super Lawyers® – Texas Rising Stars* (2005)

## Affiliations

- Board Certified, Labor & Employment Law, Texas Board of Legal Specialization
- Fellow, American Bar Foundation
- Fellow, Texas Bar Foundation
- Member, Houston Bar Association
  - Former chair, Lawyers in Public Schools
  - Former chair, Adopt an Angel Program Committee AIPLA – American Intellectual Property Law Association – Trade Secrets
- Former member, Texas Young Lawyers Association
- Former vice chair, Crossing the Line and Borders & Boundaries Program Former board member, Houston Young Lawyers Association

## Community Involvement

- Executive Women's Partnership, Greater Houston Partnership
- Houston Women's Chamber of Commerce
- Texas A&M University 12th Man Foundation
  - Member, Legal and Governance Committee
- Member, Women's Energy Network, Houston
- Corporate Guild board member, Dress for Success Houston
  - Chair, "A Night Out" (annual fundraiser) (2011-2015)
- Coach, West University Girls Softball Association (2008-2018)
  - Coach, WUSA Summer All-Stars
  - Coach, WUSA Spring and Fall Ball
  - Auxiliary in support of WUSA
- Volunteer, St. Vincent De Paul Catholic Church
  - Member, Capital Campaign Committee
  - Volunteer, Lord's Day Program, Fall Festival
- St. Vincent De Paul Catholic School
  - School board member
  - Co-chair, Annual Fund
  - Member, Parent Teacher Organization, Gala Committee and Breakfast with Santa
- Former board member, Friends of the Ronald McDonald House
- Former president and board member, Young Friends of the Ronald McDonald House
- "Cookie Mom," San Jacinto Girl Scouts, Troops 25272 and 25199

## Sectors

- [Energy](#)



FOLEY & LARDNER LLP

- [Health Care & Life Sciences](#)
- [Racial Justice & Equity](#)

## Practice Areas

- [Energy Litigation](#)
- [Labor & Employment](#)
- [Litigation](#)
- [Trade Secret Noncompete Litigation](#)

## Education

- South Texas College of Law (J.D.)
  - Member, National Order of Barristers
  - Order of the Lytae
  - Finalist, ABA Appellate Advocacy Competition
  - Finalist, American Trial Lawyers Association Mock Trial Competition
- Texas A&M University (B.S.)
  - Economics

## Admissions

- Texas
- Supreme Court of Texas
- Numerous U.S. District Courts, including for the Eastern, Southern, Northern and Western Districts of Texas
- U.S. Court of Appeals
  - 3rd Circuit
  - 5th Circuit
  - 9th Circuit