



**Rosemary M. Marin**  
Attorney/Shareholder/Director  
Chair-Labor & Employment

### Areas of Concentration

- Education
- Employment Practices Liability
- Labor & Employment
- Litigation

### Education

J.D., Texas Tech University

B.S., University of Texas El Paso

### Admission & Qualifications

State Bar of Texas

State Bar of New Mexico

### Languages

- English
- Spanish

### Contact Information

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Rosemary Marin, a shareholder and a member of the Firm's board of directors, leads the ScottHulse Labor & Employment Section, and participates actively in the Firm's Litigation and Education practices.

Ms. Marin is Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization and licensed to practice law in both Texas and New Mexico.

Ms. Marin has the highest Martindale-Hubbell peer rating of AV Preeminent. An AV Preeminent peer rating reflects an attorney who has reached the heights of professional excellence. It indicates that she has practiced law for many years and is recognized by her peers for the highest levels of skill and integrity. She has also been recognized as a Texas Super Lawyer by Thompson Reuters and as "Best Lawyer" by the board of Best Lawyers.

Ms. Marin and her colleagues handle the full spectrum of labor and employment practice, on behalf of local, regional, and national clientele, both large and small.

Representing management, Ms. Marin handles employment litigation and regulatory issues (Title VII, FLSA, ADEA, ADA, FMLA, OSHA), labor union matters (NLRB, NLRA), and provides legal and practical advice on implementing business strategies that affect executives and other employees. Ms. Marin's focus is on both prevention and strong advocacy. She is experienced in providing training and advice to help businesses take proactive steps to prevent employment disputes, but is also a seasoned litigator who aggressively defends against lawsuits and other claims of discrimination filed with the Equal Employment Opportunity Commission and Texas and New Mexico Commissions on Human Rights, with a success rate of more than 90%. She also has also



successfully defended against thousands of workers' compensation claims, also with a success rate of over 90%.

Ms. Marin is also a highly experienced trial lawyer who has never lost a jury trial on an employment trial in which she was lead counsel. She has also successfully resolved hundreds of lawsuits, as well as claims and administrative charges and investigations arising from those charges. She has defended against discrimination claims based on a variety of topics including, but not limited to, age, race, sex, religion, national origin, harassment, retaliation, disability, family and medical leave rights, veterans' rights, wage and hour protections, and state tort and contract laws.

Other key services provided by Ms. Marin include: preventive advice and training; alternative dispute resolution and arbitration; counsel on personnel and labor matters arising from sales, mergers and acquisitions, plant closings, and reductions in force; traditional labor matters; and, counsel and training regarding restrictive covenants, trade secrets and non-competition agreements and numerous other topics. For additional detail on these services, see Representative Matters, below.

Ms. Marin's commitment to her profession is seen in her long history of being actively involved in a number of professional organizations, including: the American Bar Association; American Inns of Court, Federal Bar Association; Bar Association for Fifth Federal Circuit; State Bar of Texas (Member, Labor and Employment Law, Education, Civil Litigation Sections); State Bar College; State Bar Pro Bono College; Texas Association of Defense Counsel; Texas Women's Bar Association; Christian Trial Lawyers Association; El Paso Bar Association (ex officio, 1996-1998; Chair-Labor Law Committee; Chair-Ethics Committee, Speakers Bureau); Founding Fellow, El Paso Bar Foundation; El Paso Women's Bar Association; Mexican-American Bar Association; El Paso Society for Human Resource Management; Texas Association of School Board Attorneys; National School Boards Association, Council of School Attorneys; Claims Litigation Management Alliance.

Ms. Marin has volunteered her time and legal expertise to a number of community endeavors, including as a present and past board member of the El Paso Bar Foundation, Child Crisis Center of El Paso, YWCA Paso Del Norte Region (Executive Committee, Chair of Policy and HR Committees), United Way of El Paso County (Chair, HR Committee), and the El Paso Club (Chair, Policy and HR Committee). She has also served as a volunteer attorney for the Children's Justice Center for Abused and Neglected Children, and as a volunteer judge for El Paso County Teen Court.

## Representative Matters

### Preventive Advice and Training

Because the best way to handle employment litigation is to avoid it altogether, a substantial portion of Ms. Marin's practice is devoted to helping her clients proactively approach employee issues in ways that minimize legal risks and maximize business effectiveness. Her proactive approach to employee relations focuses on developing legally sound policies and practices which minimize her clients' exposure to potential employee complaints, government agency actions, and union-related problems, and assisting her clients in implementing and enforcing those policies fairly and

consistently. For example, she reviews and/or develops and provides training on clients' employee handbooks and supervisory policy manuals. More importantly, she provides day-to-day advice to clients and reviews disciplinary decisions and documents before they are issued, in order to establish a basis for a strong defense before a claim is filed. Because most lawsuits result from management's poor communication or handling of employee issues, she also provides management training related to a wide range of policy matters (for additional detail, see Labor & Employment practice page).

### **Alternative Dispute Resolution (ADR) Practice, Including Arbitration**

With the potential risks associated with jury trials, particularly in a border region with a history of high employment-related verdicts in favor of plaintiffs, more and more parties are looking to alternative dispute resolution techniques to resolve employment disputes. Ms. Marin is experienced in all forms of ADR and routinely uses arbitration, mediation, and other procedures to obtain favorable results for clients in matters ranging from individual EEOC charges to lawsuits. Ms. Marin advises clients and provides training on the legal and practical issues surrounding pre-dispute arbitration agreements and employer-promulgated ADR programs. She advises clients on the advantages and disadvantages of such programs and, where appropriate, assists in the development and implementation of arbitration agreements and programs tailored to the client's needs.

### **Sales, Mergers and Acquisitions; Plant Closings; Reductions in Force**

Ms. Marin counsels employers on the many labor and personnel issues which arise with respect to both unionized and non-unionized employees in the event of transfers of corporate ownership, plant closings, and reductions in force. This includes compliance with the Worker Adjustment & Retraining Notification Act (W.A.R.N.). She also advises employers on their efforts to re-organize, downsize, and conduct lay-offs in response to the ever-changing economy.

### **Traditional Labor Practice**

Ms. Marin represents employers in the full spectrum of traditional labor law issues. She counsels non-union clients on how to remain union free and compliant with current administrative interpretations of the National Labor Relations Act, as it applies to non-unionized workplaces. She also aggressively defends clients against union organizing campaigns and defends them before the National Labor Relations Board if unfair labor practice charges are filed. She represents clients in collective bargaining, advises clients on contract interpretation and employee grievance issues, and represents clients in arbitration proceedings pursuant to their collective bargaining agreements. She also trains management employees in all aspects of traditional labor issues. She has appeared before the National Labor Relations Board and successfully defended various types of claims in that arena.

### **Restrictive Covenants, Trade Secrets and Non-Competition Agreements**

Ms. Marin regularly prepares agreements to prevent employees and potential employees from revealing confidential, proprietary information or competing with the employer during or after their employment. She also trains management on presenting these agreements to employees with the

least amount of disruption to the business and routinely assists employers in implementing these agreements to ensure their enforceability.

### Representative Cases

Although the Southwest Borderplex area is one of the most litigious areas in the country and employment verdicts are routinely among the highest in the U.S., Ms. Marin and her team have enjoyed great success in the courtroom. The following is a representative list of Ms. Marin's recent courtroom victories, some of which were dismissed without the time and expense of a jury trial. Asterisks indicate published cases.

- ***Moreno v. Mimbela Contractors, Inc. (State Court)***. Trial victory and dismissal of claim for workers' compensation retaliation.
- ***Flores v. El Paso Times (State Court)***. Trial victory and dismissal of claim for workers' compensation retaliation.
- ***Duron v. El Paso Independent School District (State Court)***. Trial victory and dismissal of claims for national origin discrimination, gender discrimination and retaliation.
- ***Corral v. Levi Strauss & Co. (State Court)***. Trial victory and dismissal of claim for workers' compensation retaliation.
- ***Cruz-Ortiz v. Ysleta Independent School District (State Court)***. Trial victory and dismissal of claims for disability discrimination and retaliation.
- ***Maldonado v. El Paso Psychiatric Center (State Court)***. Trial victory and dismissal of claims for workers' compensation retaliation.
- ***Corral v. Levi Strauss & Co (Federal Court)***. Trial victory and dismissal of claims for disability discrimination and retaliation.
- ***Duron v. El Paso Community Action Program/Project Bravo. (State Court)***. Trial Victory and dismissal of claim for retaliation, following partial pretrial dismissal of disability discrimination claim.
- ***Kraft v. Earnhardt Motors, Inc. (State Court)***. Trial Victory and dismissal involving claim for age discrimination, following pre-trial dismissal of discriminatory advertising claim.
- ***Lopez v. AT&T (State Court)***. Trial victory dismissing a workers' compensation claim, including extent of injury.
- ***Rodriguez v. YISD (Federal Court)***. Victory before the trial court and Fifth Circuit Court of Appeals, upholding dismissal of claim for violation of civil rights under First Amendment.
- ***Vicari v. Ysleta Independent School District (Federal court)***. Victory before the trial court and Fifth Circuit Court of Appeals, upholding dismissal of claims for gender and sex discrimination, as well as retaliation.
- ***Talamantes v. YISD***. Victory in administrative trial and appeal before the Texas Education Agency, upholding termination of teacher contract for good cause.
- ***Rodriguez v. YISD***. Victory in administrative trial and appeal before the Texas Education Agency, upholding termination of teacher contract for good cause.

- ***Ochoa v. YISD.*** Victory in administrative trial before the Texas Education Agency, upholding termination of teacher contract for good cause.
- ***Hernandez v. EPISD.*** Victory in administrative trial and appeal before the Texas Education Agency, upholding termination of teacher contract for good cause (on appeal).
- ***Rojas v. Southwestern Bell Telephone, L.P. (State Court).*** Motion for Summary Judgment granted, dismissing workers' compensation retaliation claim. No appeal filed.
- ***Sommers v. City of El Paso, (Federal court).*** Motion for Summary Judgment granted, dismissing gender, age and retaliation claims against the El Paso Police Department. No appeal filed.
- ***Duron v. Project Bravo, Inc. (State Court).*** Motion for Summary Judgment granted, dismissing "disability," "regarded as disabled" and "failure to accommodate" discrimination claims. No appeal filed.
- ***Shane v. Fed Ex Freight (Federal Court).*** Motion for Summary Judgment granted, dismissing national origin & age discrimination claims. No appeal filed.
- ***Medina v. Texas- New Mexico Newspaper Partnership (Federal Court).*** Motion for Summary Judgment granted, dismissing age, national origin & gender discrimination claims. No appeal filed.
- ***Ace Cleaning Services, Inc. and Genesis Total Management, Inc. v. Industrial, Technical & Professional Employees Union, OPEUI Local # 4873, AFL-CIO.*** Launched successful union avoidance campaign and successfully represented janitorial company in union election before the National Labor Relations Board, defeating the union.
- ***Big 8 Food Stores vs. United Food and Commercial Workers.*** Launched successful union avoidance campaign against a large retailer.
- ***ACE, USA v. International Union of Operating Engineers, Local 351.*** Participated in successful union avoidance campaign and successfully represented janitorial company, defeating the union.
- ***LOCAL 351, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.*** Successfully negotiated a Collective Bargaining Agreement for a large government contractor and defended claims of unfair labor practices before the National Labor Relations Board.

### Published Cases:

- ***Fernandez v. YISD.*** Victory in administrative trial and appeal before the Texas Education Agency, upholding termination of teacher contract for good cause.
- ***Ysleta Teachers Association/TSTA/NEW and Teri Sanchez, on behalf of all affected members v. Ysleta ISD.*** Victory before Texas Education Agency regarding teachers' (exempt employees) dispute of District's right to require a 40-hour workweek.
- ***Garcia v. Levi Strauss & Co. (State Court).*** Motion for Summary Judgment granted and upheld, dismissing workers' compensation retaliation claim because employer articulated a legitimate business reason for the action taken and Plaintiff was unable to meet her burden of proving the reason was a pretext for discrimination.

## Presentations & Publications

### Presentations:

- 2017, September. *When Does HR Cross Over Into the Practice of Law?*. Lecture presented at the EPSHRM Employment Law Update in El Paso, Texas.
- *Strategies for Small Businesses After DOL Final Rule 2016*. El Paso Restaurant Association.
- *Key Federal and State Laws and Cases in 2016*. El Paso Society for Human Resource Management.
- *Strategies for Non-profits after DOL Final Rule 2016*. Paso Del Norte Health Foundation, Beyond the Grant Seminar.
- *Update on DOL Final Rule 2016, relating to White Collar Exemptions*. Course Director and Panel Member. ScottHulse DOL Seminar.
- *Trial Strategies for Employment Lawyers*. El Paso Bar Association Labor and Employment Law Seminar.
- *The Matrix Uploaded: Social Media in the Workplace*. ScottHulse Labor and Employment Seminar.
- *Avoiding The Blacklist: Preparing for Governmental Audits before hiring*. ScottHulse Labor and Employment Seminar.
- *The Affordable Care Act vs. The Big Bang Theory: It's Not Astrophysics (because that would be easier to understand.)* ScottHulse Labor and Employment Seminar.
- *Reconnecting America's Workforce: Untangling the Web of Workers' Compensation, FMLA and ADA Compliance*. El Paso Society for Human Resource Management.
- *Overview of State and Federal Wage & Hour Laws*. National Business Institute Seminar: Wage and Hour Laws in Texas.
- *A Brief Look at HIPAA and SARBANES-OXLEY*. El Paso Society for Human Resources Management: Health and Benefits Seminar.
- *The Termination Process and Contingent Employees: Joint Employer Issues with Temporary and Leased Employees Under Various Arrangements*. Sterling Educational Services Seminar: Hiring and Firing in Texas.
- *Steering Clear of Legal Landmines When Disciplining and Terminating Workers' Compensation Claimants*. Council On Education in Management: Workers' Comp. 101 Seminar.
- *HIPAA and Case Management-Benefits and Liabilities*. El Paso Hispanic Chamber of Commerce and Texas Workers' Compensation Commission Seminar: What You Don't Know About Workers' Compensation Can Hurt You.
- *Dealing with Difficult Employees*. El Paso Society for Human Resources Management: Annual Employment Law Seminar.

- *Untangling the Web of Employee Leave Laws*. El Paso Claims Association.
- *Retaliation Cases After Burlington Northern v. White*. El Paso Bar Association: Employment Law Seminar.

### Publications:

- *Arbitration in the Employment Context*. El Paso Bar Association Civil Trial Seminar. Las Vegas, Nevada.
- *ACA Update, 2015*. El Paso Society for Human Resources Management.
- *Ten Hot Topics in Employment Law, Including Covenants Not to Compete*. State Bar of Texas College “Summer School” Seminar; Galveston, Texas.
- *Catch Me if You Can: How to Keep Up in the Changing Landscape of the NLRA*. ScottHulse Labor and Employment Seminar.
- *Cross-Border Labor and Employment Issues*. Federal Bar Association, National Cross-Border Legal Issues Seminar.
- *Employment Law Update*. State Bar of Texas: State Bar College Annual Summer School Seminar; Galveston Texas.
- *Damages In a Commercial Context*. State Bar of Texas. Consumer and Credit Law Course; Houston, Texas.
- *Shooting Straight from the HIPAA: A Detailed Look at an Employer’s Obligations Under the Health Insurance Portability and Accountability Act*. El Paso Society for Human Resources Management.
- *Conducting Thorough and Effective Investigations*. El Paso Society for Human Resource Management Legal Seminar.
- *Arbitration Agreements and Protecting Intellectual Property*. El Paso Bar Association: Civil Trial Seminar. Las Vegas, Nevada.
- *And Lead Us Not Into Temptation: Communicating with a Corporate or Governmental Entity That is Represented by Counsel*. Article, El Paso Bar Association’s Bar Bulletin.
- *The DOL Giveth With One Hand and Taketh With The Other*. El Paso Society of Human Resources Management Exchange Newsletter.
- *Employment Law Update*. El Paso Bar Association: Civil Trial Seminar, Las Vegas, Nevada.
- *Race to Sex and Back Again: Dealing with Trends and Changes in Employment Litigation*. Texas Association of Defense Counsel: Spring Seminar, San Francisco, California.
- *Sexual Harassment Investigations and Documentation*. Texas Association of School Personnel Administrators: Annual Employment Law Conference.
- *U.S. Citizens Working in Mexico and Suing in Mexico and Vice Versa*. State Bar of Texas Seminar: Navigating Cross-Border Issues.

## Organizations

- American Bar Association
- American Inns of Court
- Bar Association for Fifth Federal Circuit
- Child Crisis Center of El Paso (Past Board Member)
- Children’s Justice Center for Abused and Neglected Children
- Claims Litigation Management Alliance
- Christian Trial Lawyers Association
- El Paso Bar Association (ex officio, 1996-1998; Chair-Labor Law Committee, Chair-Ethics Committee, Speakers Bureau)
- El Paso Club (Chair, Policy and HR Committee)
- El Paso County Teen Court
- El Paso Diocesan Choir
- El Paso Bar Foundation (Founding Fellow)
- El Paso Society for Human Resource Management
- El Paso Women’s Bar Association
- Federal Bar Association
- George McAlmon Inn of Court
- Mexican-American Bar Association
- National School Boards Association (Council of School Attorneys)
- San Antonio Church
- State Bar of Texas (Member, Labor and Employment Law, Education, Civil Litigation Sections)
- State Bar College
- State Bar Pro Bono College
- Texas Association of Defense Counsel
- Texas Association of School Board Attorneys
- Texas Women’s Bar Association
- United Way of El Paso County (Chair, HR Committee)
- YWCA Paso Del Norte Region (Executive Committee, Chair of Policy and HR Committees)



