

**Michael D. Seale** *Shareholder*

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## Overview

Michael D. Seale practices in the Employment and Labor Law, and Health Law groups.

Michael represents the interests of employers regarding labor and employment issues in a broad spectrum of industries, including energy, health care, construction, banking, and many other areas of business and commerce. As a young attorney, Michael was intrigued by the passing of "new" laws like ADA, FMLA, and the amended Title VII, and viewed them as shaping the future of employment law. In 1997, he became Board Certified in Labor and Employment by the Texas Board of Specialization and 25 years later continues to assist clients with their employment and labor matters.

Routinely, Michael advises clients on state and federal laws and regulations affecting businesses, including employer/employee disputes and issues. He has extensive experience with counseling clients on employment and legal compliance policies, procedures, and related best practices. In 1995, Michael started representing nursing home owners with employment and health care related matters and now devotes a substantial part of his practice to assisting similar health industry organizations in every aspect of long-term care.

Just as Michael has spent his legal career practicing labor and employment, and health care law, he has spent his entire life playing tennis. Life is good when you hear the thump of a tennis ball or the music of a live Texas Americana band!

## Representative Experience

### Labor and Employment Law

## Education

Oklahoma City University School of Law,  
J.D., 1992

University of North Texas, B.A. in  
Accounting

## Practice Areas

Employment and Labor Law

Health Law

## Admissions

Texas

United States District Courts for the  
Northern and Southern Districts of Texas

U.S. Court of Appeals for the Fifth Circuit

United States District Court, District of  
New Mexico

## Michael is board certified in labor and employment

Legal Specialization. He has litigated federal and state cases involving discrimination, harassment, retaliation, tort and contract claims. He has also handled wage and hour investigations and cases under the Fair Labor Standards Act, including defending against wage and hour collective action lawsuits. He also provides counsel and representation regarding ERISA benefits matters, including occupational injury non-subscriber plans and related claims.

Michael has represented clients before the NLRB, EEOC, IRS, TWC, OSHA and the Department of Labor. He has successfully handled a number of Rule 13 Hearings before the Texas Workforce Commissioners for healthcare, energy, and oil and gas industry clients. Some of these hearings addressed classification of workers as independent contractors vs. employees under the Texas Unemployment Compensation Act, worker classification audits conducted by the IRS involving IRC compliance and Section 530 safe harbor issues, and wage and hour audits conducted by the USDOL.

### Healthcare Compliance, Regulatory, Litigation and Transactions

Michael has experience representing healthcare providers and facilities in litigation and regulatory matters, including contract disputes, healthcare compliance, malpractice defense, federal and state regulatory, and administrative proceedings. The administrative proceedings include cases before the State Office of Administrative Hearings (SOAH) and federal Departmental Appeals Board, which involves sanctions, civil money penalties and other adverse action brought by state and federal agencies, false claims act investigations by the OIG/DOJ, and whistleblower cases.

Michael handles appeals before SOAH regarding reclassification of Medicaid reimbursement RUG claims and recoupment actions by the Texas Department of Aging and Disability Services. He also handles and advises on corporate, partnership and real estate transactions (including all aspects of long term care facility development, construction, leasing, acquisitions, divestitures, operations transfers, ownership formation, investment, licensing, and certification), and ancillary health care services and products agreements.

Michael routinely advises clients on state and federal regulations that affect

healthcare entities, including the Texas Health and Human Services Commission UPL/MPA Programs involving skilled nursing facilities, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Affordable Care Act, and compliance with Medicare and Medicaid program participation requirements applicable to skilled nursing facility providers. This includes quality of care, patient rights, peer review, reimbursement, fraud and abuse, Stark laws, anti-kickback, risk management, and compliance programs.

## **Presentations/ Publications**

- *Sleuths in the Workplace or Can an Employer be Sherlock Holmes and A Sequel on Guns in the Workplace.* Texas Association of Legal Professionals Webinar. February 25, 2017.
- *Workplace Privacy Issues.* Texas Business Conference Employment Law Update Seminar Presentation. Grapevine, Texas. 28 April 2017.
- *Management of Healthcare Decision Making in Nursing Facilities: Who Gets to Decide?* Seminar Presentation at the Long Term Care and the Law, American Health Lawyers Association. New Orleans, Louisiana. 23-25 Feb. 2015.
- *FLSA Wage and Hour Compliance and Time Clock Management.* Continuing Education Units (CEU) seminar for Licensed Nursing Facility Administrators. Victoria, Texas. 5 May 2010.
- *Wage and Hour – Ten Ways to Mitigate Compliance Concerns.* CLE Presentation for Victoria County Bar Association. Victoria, Texas. 28 Jan. 2010.
- *Ten Essential Ways to Reach Handbook Heaven.* Crossroads Webinar Series. 4 Apr. 2008.
- Instructor for Business Law Section of CPA Exam Review Course. University of Houston, Victoria. 2002-2003.
- *Risk Management for LTC Administrators.* Long Term Care Continuing Education Program presentation. San Antonio, Texas. 17-19 Apr. 2001.
- Adjunct Professor for Legal Environment of Business, Corporate Governance and Employment Law undergraduate and graduate courses. University of Houston, Victoria. 1998-2002.

## **?Publications**

- "No More Ink - Electronic Signatures are the Sign of the Times." About Management. Spring 2010.

- "Tax Authorities Sharpen Focus on Misclassification of Employees as Independent Contractors." About Management Summer 2009.
- "Employment Laws Affecting Business (Employee Background Credit Checks)." Victoria Business Magazine. Dec. 1998.
- "Employment Laws Affecting Business (Employee Background Credit Checks)." Victoria Business Magazine. Dec. 1998.
- "Employee Handbooks." Victoria Business Magazine Sept. 1998.
- "Safeguarding Employer Trade Secrets." Victoria Business Magazine July 1998.
- "New Laws Affecting Business." Victoria Business Magazine Mar. 1998.

## Published Opinions

- *Spencer vs. KS Management Services, L.L.C. d/b/a Kelsey-Seybold Clinic*, (5th Cir. No. 16-20553, decided 02/27/2017 affirming take nothing judgment in favor of defendant against plaintiff regarding disability discrimination claims following bench trial) (<http://www.ca5.uscourts.gov/opinions/unpub/16/16-20553.0.pdf>)
- *TWC Decision of the Commission Involving the Tax Liability of ExTech Consulting, L.L.C.*; Case No. TD 15-096-0615 (January 15, 2016) (determining ExTech's oil and gas consultants are not employees of ExTech or its client oil and gas operators and properly classified as independent contractors)
- *TWC Decision of the Commission Involving the Tax Liability of Entrust Energy, Inc.*; Case No. TD 15-026-0215 (August 19, 2015) (determining Entrust's door-to-door salespeople selling electricity are not employees of Entrust and properly classified as independent contractors)
- *TWC Decision of the Commission Involving the Tax Liability of SDS Petroleum Consultants, LLC*; Case No. TD 14-077-0414 (December 3, 2014) (determining seven categories of SDS's oil and gas consultants are not employees of SDS and properly classified as independent contractors)
- *Elgin Nursing and Rehabilitation Center v. United States Department of Health and Human Services*, 718 F. 3d 488 (5th Cir. 2013)
- *TWC Decision of the Commission Involving the Tax Liability of DDDS Partnership with Codan, Inc.*; Case No. TD 10-027-0310 (February 18, 2011) (determining DDDS's in home caregivers are not employees of DDDS and properly classified as independent contractors)
- *TWC Decision of the Commission Involving the Tax Liability of Kriscon, Inc.*; Case No. TD 10-004-1209 (February 18, 2011) (determining Kriscon's in home caregivers are not employees of Kriscon and properly classified as independent contractors)
- *TWC Decision of the Commission Involving the Tax Liability of Ray of Sunshine Sitting Service of Northeast Tarrant County*; Case No. TD

10-021-0110 (February 18, 2011) (determining Ray of Sunshine's in home caregivers are not employees of Ray of Sunshine and properly classified as independent contractors)

- *Elsik v. Regency Nursing Center Partners of Kingsville, Ltd., d/b/a Kingsville Nursing and Rehabilitation Center, et al*, WL 2428288 (Tex. 2007)
- *Simons v. Harrison, Waldrop & Uherek, L.L.P.*, WL 1698273 (Tex. 2006)