



## **Michael J. Studenka**

Partner

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Michael Studenka wins complex cases based on decades of legal knowledge fueled by a drive to fight for his clients and win courtroom battles against all odds. Charting a stellar trajectory for the firm's labor and employment group, Michael goes the distance to proactively advise business owners on best employment practices, and when needed, defend against California's stringent employment laws. He focuses his practice on employment litigation for employers, and on commercial construction disputes for general contractors. As evidenced by his recent successes, Michael defends all aspects of litigation and overcomes the myriad issues that arise in California's employee-friendly regulatory climate for companies doing business in the Golden State.

### **COVID-19 Challenges**

In challenging times, businesses turn to Michael to trailblaze the maze of unprecedented issues related to COVID-19. Clients rely on him to prevail on the frontline of disputes fueled by the financial crisis and to pioneer guidance on new workplace actions that impact their employees and the bottom line. Frequently responding to critical situations in real-time, Michael leverages his legal experience and leadership skills to navigate emerging issues around layoffs and furloughs and compliance, with state and local regulations and government guidelines around remote work and return to office issues. In addition to the construction and manufacturing industries, he is particularly attuned to the challenges faced by boutique franchisees in the entertainment, hotel, and restaurant industries.

### **Employment Litigation**

A renowned litigator with world-class trial skills and extensive jury trial experience, Michael's track record speaks for itself. Michael is the lawyer you want if your current counsel is avoiding trial – he does not back down, and he is not afraid to take on the hard cases and win. As a Judge Advocate in the United States Marine Corps, Michael defended numerous felony cases that received national and international media attention. He was named the "Defense Counsel of the Year" as a Marine Corps Judge Advocate in 2006.

Michael leverages his high-profile legacy as a criminal attorney and prosecutor to defend his clients against deep-pocket claims from their employees. Long before a case comes to trial, Michael strategically gathers evidence and evaluates the facts of each action, often taking unique approaches to investigate, build evidence, and focus his strategy to emerge victorious with his client's reputation intact. Approaching every dispute with the goal to prevail and avoid monetary and reputational damage, Michael defends wrongful termination, discrimination, harassment, retaliation, misappropriation of trade secrets, wage and hour complaints, clashes over commission agreements and employee embezzlement.

### **Labor and Employment Law**

Michael reverse-engineers his courtroom experience to conduct in-depth management seminars that train company leaders, executive teams, and managers on all aspects of labor and employment law and how to avoid litigation landmines. A pro at risk-avoidance, he advises employers on employee handbooks and policies, employment contracts, reduction in force, wage and hour issues, and employee terminations. Michael draws on leadership and personnel management skills learned as a Marine Corps Officer to advise his clients' managers on their legal obligations. He conducts California's AB 1825 and SB1343 sexual harassment training and often speaks on critical issues in labor and employment law.

### **Construction Litigation**

Attune to the fast-paced complexities of commercial construction, Michael staunchly defends owners, and contractors with a no-holds barred approach. His understanding of the interplay of construction dynamics, business demands, and team management make Michael a sought-after resource in several key areas. He defends commercial contractors in litigation ranging from delay claims, extra work claims, and mechanic's lien claims to construction employment issues, defect litigation, and insurance coverage disputes. Michael takes a litigation-savvy approach to drafting and negotiating construction prime and subcontractor contracts designed to avoid claims actions. He has successfully litigated and arbitrated contentious construction disputes, garnering complete awards for his clients including the recovery of all legal fees.

### **Services**

- Labor & Employment
- Commercial Construction
- Healthcare

### **Awards & Recognition**

- Selected to the Southern California Super Lawyers list, 2014-2018
- Selected to the Southern California Super Lawyers Rising Star list, 2013
- USMC, Defense Counsel of the Year Award, 2005-2006

### **Professional Affiliations**

- Orange County Bar Association
- November 10th Association
- San Clemente Sunrise Rotary, Former President (2013-2014)

### **Admissions**

- California, 1999
- U.S. District Court, Central District of California, 1999
- U.S. District Court, Southern District of California, 1999
- U.S. District Court, Eastern District of California, 1999

### **Education**

- University of San Diego School of Law (*J.D.*, 1999)
- College of William & Mary (*B.A.*, 1996)
  - History (High Honors)
  - Government

## **Successes**

### **Newmeyer Dillion Defends Lender in Labor & Employment Suit Between Former, Current Executive**

Successfully defended a prominent, national lender in a contentious sexual harassment, retaliation and wrongful termination lawsuit brought between a former and current executive. With over one million dollars in lost wages, emotional distress and punitive damages at stake, plus upwards of \$400,000 in costs and legal fees, it was a high-stakes and hostile claim within the finance industry, amid the backdrop of the #MeToo movement. We focused our strategy on prevailing at trial, leveraging criminal trial experience during deposition testimony and informal discovery to drive a slashing cross-examination during arbitration. On the first day of arbitration, Michael Studenka's day-long cross-examination of the plaintiff yielded a waiver of costs, walk-away deal that ended 14 months of litigation—a rare outcome.

### **Newmeyer Dillion Defends National Homebuilder in California Age Discrimination and Wrongful Termination Claim Resulting in Total Defense**

Successfully defended a national homebuilder in its first labor and employment lawsuit, which was centered around age discrimination and wrongful termination. Not only could this lawsuit have jeopardized the culture and reputation of the client, but the victory prevented the client from paying over \$560,000 in alleged lost wages and non-economic damages, \$2 million in punitive damages and up to \$400,000 in attorney fees sought by the plaintiff. Drawing from our extensive experience defending clients in high-stakes labor and employment disputes,

our strategy focused on guiding the company through each stage of the lawsuit – protecting their reputation and leaving no stone unturned as our team triumphed through five full days of arbitration and the examination of 13 witnesses scattered across the country. Ultimately, the client walked away paying \$0 in total – a monumental win for the client and the second total defense verdict for Michael Studenka and our Labor & Employment team in 90 days.

### **Bad Faith Federal Jury Trial**

Lead trial counsel in a several week long Federal jury trial against a major insurance company for bad faith denial of coverage. Through the development and presentation of evidence revealing a bad faith scheme and plan by the carrier resulted in a favorable settlement reached to the benefit of the insured.

### **Pursuit of Rogue Employee for Misappropriation of Trade Secrets**

Successfully pursued former high level employee of a large, international company who left and began to compete against our client relying on trade secrets and proprietary information. Through formal and informal discovery techniques, was able to reveal a plot to unfairly compete against the client. Compelled a settlement that saw the return of all trade secret information and payment of hundreds of thousands of dollars to the client in damages.

### **Recovery of Breach of Contract for Delinquent Subcontractor**

Solo counsel in a 3 week arbitration with multiple percipient and expert witnesses pursuing an electrical subcontractor that was performing untimely, and defective work. Recovered the total amount demanded to offset the costs of the supplementing subcontractor and all of his own fees in the litigation. General contractor client collected all amounts to make them completely whole.

### **Successful Defense of Age Discrimination Lawsuit**

Took over an age discrimination lawsuit against a major homebuilder and within 60 days, through his own informal discovery efforts and deposition was able to show that the plaintiff had engaged in various illegal activities to compel a settlement that required the client to pay nothing.

### **Successful Defense of Discrimination / Harassment Lawsuits**

Defended a restaurant in several lawsuits arising out its kitchen personnel. Single-handedly uncovered a plot amongst various former employees to defraud the employer through litigation, implicating even their counsel. Litigation ended in “waiver of cost” deals for the employer for which they paid nothing.

### **Successful PAGA Defense**

Handled defense of client with more than 500 employees in resolving PAGA complaints which alleged numerous Labor Code violations regarding minimum wage, overtime, rounding meal and rest breaks, expense reimbursements, and paystubs.

### **Client Triumphs in Insurance Bad Faith Lawsuits**

We represented a large public company client in dozens of lawsuits initiated by a mammoth insurance company attempting to intimidate the client into walking away from significant insurance policy benefits. We were able to turn the tide on the insurance company by weaving together from the evidence a compelling story of a pattern and practice of bad faith claims handling conduct. Once the insurer realized that we were going to tell a compelling punitive damage story at trial, a favorable settlement was quickly reached.

### **General Contractor**

Successfully resolved and achieved a downgraded citation brought by CalOSHA concerning a workplace accident.

## **Publications**

March 31, 2020

**What The Coronavirus Aid, Relief And Economic Security Act Means For Employers Considering Mass Layoffs Or Furloughs**

Forbes

March 26, 2020

**Department Of Labor Publishes Required Families First Coronavirus Response Act Employer Notice Poster**

Forbes

March 20, 2020

**Time To Hit Pause: What Employers Need To Know About The Families First Coronavirus Response Act**

Forbes

August 13, 2019

**Where There's Smoke... California's New Emergency Wildfire Smoke Protection Regulation and What Employers Are Required To Do**

December 6, 2017

**A Smart Approach to Accommodating Employees with Disabilities**

March 29, 2016

**Fed OSHA Issues Final Rule Protecting Workers From Silica Exposure**

March 10, 2015

**Ensuring A Silent Night: Reducing the Risks of the Office Holiday Party**

September 2, 2013

**When Smartphones Are Not Smart for Your Employees: the Risks of Remote Access in Your Workforce**

## News

March 12, 2019

**Michael Studenka Quoted in *Law360* Article, "Afraid to Mentor Women Because of #MeToo? Time to Man Up"**

February 14, 2019

**California Law Now Requires More Sexual Harassment Training by January 1, 2020**

January 30, 2019

**Nine Newmeyer Dillion Attorneys Recognized as Southern California Super Lawyers**

October 29, 2018

**HR 2025: 7 Critical Strategies to Prepare for the Future of HR**

September 24, 2018

**EEOC Sues Employer for Maintaining an English - Only Policy**

September 4, 2018

**California's New Contractor Test will Impact the Gig Economy**

August 28, 2018

**Think Before Asking About a Veteran's Discharge Status**

August 9, 2018

**English-Only Workplace Rules: Both Discriminatory and Disengaging?**

May 18, 2018

**Summer Dress Codes: 5 Tips For Employers**

February 28, 2018

**Workforce Strategies, a supplement to Bloomberg BNA's Human Resources Report**

February 28, 2018

**Sexual Harassment Training: The Do's and Don't's**

February 14, 2018

**California Lawmakers Want to Ban Confidential Sexual Harassment Settlements**

January 30, 2018

**11 Newmeyer Dillion Attorneys Recognized as Southern California Super Lawyers**

November 11, 2017

**Honoring Veterans Under Our Roof & Across the World**

November 11, 2016

## **Honoring Veterans Under Our Roof & Across the World**

June 6, 2016

**Newmeyer Dillion Attorneys Selected to the 2016 Southern California Super Lawyers List**

## **Events**

January 23, 2020

**ND 2020 Annual Seminar**

January 17, 2019

**Newmeyer Dillion's 2019 Builder Update**

*The Pacific Club*

October 9, 2018

**California Worker Classification: Determining Employee or Independent Contractor Status Post-Dynamex Decision,**

*Center for Competitive Management (C4CM)*

February 14, 2018

**Newmeyer Dillion's 2018 Builder Update**

*The Pacific Club*

October 24, 2014

**The Pitfalls of Technology and Social Media in the Workplace: What Employers Should Know**

*AGC Fall Conference*

## **Military Experience**

Prior to joining Newmeyer Dillion, Michael was a Judge Advocate in the United States Marine Corps. In his two tours on active duty, he served as the Senior Prosecutor and Senior Defense Attorney at various locations, including deployment in support of Operation Iraqi Freedom. In total, he prosecuted and defended over 390 Marines in cases for offenses including premeditated murder, sexual assault, the distribution of narcotics, and larceny. He defended several Marines in high-profile felony cases that received national and international media attention. For his service as a Marine Corps defense attorney, Michael was named the Defense Counsel of the Year Award: 2005-2006.

While serving in the Marine Corps, Michael received three Navy and Marine Corps Commendation Medals, the Navy and Marine Corps Achievement Medal and the Iraqi Campaign Medal.

