



# Jennifer S. Divine

 Partner

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**“Clients value my ability to genuinely listen and trust me to help them analyze difficult and complex situations. My goal is to reduce the stress clients face from legal problems and find solutions that let the organization’s leaders focus on achieving their long-term goals.”**

Jennifer Divine brings years of experience and judgment to help educational institutions and other businesses resolve complex workplace situations. She represents public and private employers in a wide range of cases, including discrimination, sexual harassment, wrongful discharge, whistleblower/retaliation, and wage-and-hour claims. She counsels clients on a variety of employment issues, such as hiring, background checks, employee classification and compensation, discipline and terminations, severance agreements, noncompetition and nonsolicitation restrictions, disability accommodations, FMLA, paid sick leave and other protected leave rights, and diversity, equity and inclusion policies.

Jennifer focuses a large part of her practice on educational institutions, advising on staff and student employment, faculty tenure, shared governance, grievances, disability accommodations, student conduct and discipline, Title IX policies and investigations, threat assessment and behavior intervention, social media, free speech and student protests, and a variety of regulatory compliance issues. Jennifer understands the public relations aspects of an institution’s decisions and is adept at assisting boards and senior leaders in crafting and implementing effective communications plans for internal and external constituencies.

Jennifer’s work includes oversight of internal client investigations into student, faculty, or other employee misconduct and conducting independent investigations for educational institutions, governmental entities, and private employers. She is frequently called to assist in investigations involving racial or sexual harassment, and other policy or conduct code violations, and has served as a hearing examiner for Title IX student conduct cases.

Jennifer focuses on meeting the business and mission-driven needs of her clients. She works with in-house legal and business teams to identify risks and outline legal compliance requirements for organizational decision-makers as

## Education

J.D., University of Chicago Law School, *cum laude*, 1986

University of Toronto Faculty of Law, dean’s list

A.B., Harvard University, *magna cum laude*

## Bar Admissions

Washington, 1993

## Court Admissions

U.S. District Court, Western District of Washington

U.S. Court of Appeals for the Ninth Circuit

simply and clearly as possible. Her aim is always to find practical solutions that will effectively manage risk while allowing the organization to move forward with operations and meet its business goals.

Jennifer began her legal career serving as a law clerk for the Honorable Danny J. Boggs of the United States Court of Appeals for the Sixth Circuit and worked as a litigation associate for five years in Washington D.C. before relocating to Seattle.

### Professional Activities

- King County Bar Association, Labor and Employment Law Section, member
- Washington State Bar Association, Labor and Employment Law Section, member
- American Bar Association, Labor and Employment Law Section, member
- Washington Women Lawyers
  - King County Judicial Evaluation Committee, past chair
- Washington Council of School Attorneys, member
- National Association of College and University Attorneys
  - *NACUANOTES*, editorial board member

### Civic Activities

- Independent Colleges of Washington, board member
- Seattle Girls School, vice chair and secretary
- Greater Seattle Business Association
  - past board member
  - past program committee chair
- Seattle Civil Service Commission, former hearing examiner
- Seattle Public Schools, former member site-based hiring interview team
- Greentree/Little Eagles Child Care Centers, former board member

### Representative Experience

#### Employment Litigation & Dispute Resolution

- Defend large community nonprofit in Seattle in a lawsuit alleging discrimination and retaliation by agency board and executive director. (ongoing)
- Obtained dismissal of lawsuit alleging violations of restrictive covenants contained in sale of client's business to out-of-state employer.
- Represented a multistate employer in federal lawsuit alleging gender and marital status discrimination.
- Defended a professional services corporation in shareholder termination suit.
- Negotiated an EEOC conciliation agreement for a multinational environmental remediation company facing charges of national origin discrimination.
- Defended a Seattle employer in a Department of Labor and Industries audit involving the alleged misclassification of independent contractors.
- Advised a federal contractor through an OFCCP audit and successful completion of the compliance monitoring period.
- Represented chief medical officer of pharmaceutical company in complicated multistate arbitration in breach of contract case involving failure to vest restricted stock awards and stock options, resulting in a large monetary award to client.
- Represented executives in severance dispute resulting from division of closely held family business, resulting in six-figure judgments for each client at trial, and affirmance of judgment by appellate court.

- Defended numerous public and private employers against discrimination and retaliation charges filed with the EEOC, WHRC and local municipal civil rights commissions, and against wage and hour claims filed with the United States Department of Labor and the Washington State Department of Labor and Industries.

### **Employment Advice & Counseling**

- Regularly draft offer letters, employment contracts, severance agreements and a variety of other employment documents for businesses of all types and sizes.
- Assisted owners of financial planning group in negotiating employment agreements and restrictive covenant provisions involved in sale of business.
- Represented large Northwest social services agency through acquisition of assets and programs of another local nonprofit, including transition of employees to new employer.
- Assisted young female executive in negotiating an early release from a restrictive covenants agreement with her former employer and successfully launching her own public health consulting business.
- Advised Canadian company on expansion into Washington state, including assisting with hiring issues and drafting agreements for initial employees
- Supported an aircraft manufacturer through reduction-in-force planning and implementation of layoffs for affected employees.
- Assisted a manufacturing client with development and implementation of its DOT-compliant drug-testing policy and practices.
- Conducted numerous agency-ordered and voluntary trainings for public and private employers on various employment law issues.

### **Education—Litigation & Dispute Resolution**

- Defend private university against claims from former students alleging race discrimination and harassment by faculty member. (ongoing)
- Represented public university in lawsuit involving unpaid compensation claims from former faculty member. Successfully obtained dismissal based on faculty member's failure to exhaust administrative remedies. Later upheld by appellate court.
- Defended public university through internal grievance process involving faculty member's challenge to unfavorable rating from department chair and claims of inadequate incentive compensation.
- Defended a public university through an internal grievance process involving ongoing retaliation and harassment claims by a current employee.
- Represented private college in lawsuits alleging responsibility for sexual abuse by former member of affiliated entity, resulting in settlements on favorable terms and dismissal of client prior to trial.
- Defended public school district in lawsuit alleging wrongful termination by provisional teacher, resulting in summary judgment for district, later upheld by the appellate court.
- Defended public school district in lengthy grievance arbitration challenging teacher's non-renewal, resulting in arbitration award upholding district decision. Affirmed and upheld on appeal.
- Defended school district against unfair labor practice charges filed with the Washington Public Employment Commission by terminated teacher, resulting in dismissal of charges by hearing examiner. Later affirmed on appeal to the full commission.

### **Education—Advice and Compliance Issues**

- Regularly draft employment agreements and appointment letters, and advise on deferred compensation plans and other employment issues for senior administrators and faculty members.
- Regularly review employee and student handbooks and advise on policy development and implementation
- Assisted private universities in developing COVID-19 response plans, handling staff and student complaints, and implementing successful return to campus strategies.

- Advised private university through staff reduction-in-force process, including disparate impact analysis and resulting layoff adjustments and disclosures.
- Assisted private university in planning for potential salary reductions or layoffs of tenured and tenure-track faculty in response to budget crisis.
- Advised private secondary school on state law reporting obligations for complaint of student-on-student involuntary sexual contact and assisted school administrators through interactions with law enforcement, students, families, and legal representatives.
- Guided a private university through first union-organizing campaign, including representation proceedings before the NLRB.
- Represented private university in OCR investigation of complaint brought by student claiming disability discrimination in field placement process.
- Advised private university on financial exigency, program closure and teach-out issues, and assisted in implementing reorganization and reduction in force of affected staff members.

## Publications

- “It’s a New Academic Year in Washington—Tips and Reminders for Applying Your Revised Title IX Policy,” Miller Nash Graham & Dunn, *News You Can Use*, coauthor (Sept. 2020)
- “CARES Act Creates Potential Employer Incentives to Maintain Payroll,” Miller Nash Graham & Dunn, *News You Can Use*, coauthor (Mar. 2020)
- “Out of the Shadows: Five Tips on Treating Transgender Employees with Respect,” *Seattle Business* (Mar. 2017)
- “NLRB Takes Aim at Private Colleges and Revamps Long-Settled Precedent,” Miller Nash, *News You Can Use* (Dec. 2014)
- “Be Like Starbucks? Look Before Launching Plan,” *Puget Sound Business Journal* (July 2014)
- “Recent Washington Supreme Court Decision Creates Confusion for Religious Employers,” Miller Nash, *News You Can Use* (Feb. 2014)
- “Lessons Learned From Colleges Help Prevent Workplace Violence,” *Puget Sound Business Journal* (Aug. 2013)

## Presentations

- “Measure Twice, Cut Once: Blueprint for Constructive Diversity, Equity, and Inclusion Initiatives,” Miller Nash Graham & Dunn, Employment Law Seminar (Dec. 2020)
- “Washington’s New Overtime Rules,” Independent Colleges of Washington, webinar (Jan. 2020)
- “A Port in the Storm: Dealing With Mental Health and Substance Abuse Issues,” Miller Nash Graham & Dunn, Employment Law Seminar (Oct. 2019)
- “2019 Legal Update,” Northwest Independent Colleges Human Resources, Meeting of the Minds (Oct. 2019)
- “Accommodating Employees With Mental Health and Substance Abuse Issues,” Northwest Independent Colleges Human Resources, Meeting of the Minds (Oct. 2019)
- “The Role of Leadership in Crisis Management,” Northwest Credit Union Association, 2018 Legal Symposium (Dec. 2018)
- “Bracing for the Plot Twist: HR’s Role in Crisis Management,” Miller Nash Graham & Dunn, Employment Law Seminar (Oct. 2018)
- “Respecting Religious Freedom: Perspectives from Across the Spectrum of University Campuses,” National Association of College and University Attorneys, 2018 Annual Conference, moderator (June 2018)
- “When Politics Enter the Workplace,” Miller Nash Graham & Dunn, Employment Law Seminar (Oct. 2017)
- “Happily Ever After: A Guide to Transgender Issues for Employers,” Miller Nash Graham & Dunn, Employment Law Seminar (Nov. 2016)

- “Superheroes or Creatures From the Black Lagoon? Restrictive Covenants,” Miller Nash Graham & Dunn, Employment Law Seminar (Oct. 2015)
- “Navigating New Legal Developments on Same-Sex Marriage, Transgender Rights, and Pregnancy Discrimination: What Employers Need to Know,” Employment Law Alliance Webinar (Sept. 2015)
- “Campus Sexual Violence Prevention and Response: MOUs with Local Law Enforcement,” Independent Colleges of Washington, Fall Meeting (Sept. 2015)
- “Legal Update on Campus Sexual Violence: Clery, VAWA, Title IX and Beyond,” Employment Law Alliance Webinar (Apr. 2015)
- “Keeping Up: The Evolving Federal Landscape on Title IX and Sexual Misconduct,” Washington State Higher Education Conference on Sexual Assault Prevention & Response (Oct. 2014)
- “Avoiding Black Holes and Space Debris: Navigating Workplace Investigations,” Miller Nash, Employment Law Seminar (Oct. 2014)
- “Hitting the High Notes: Ten Tips That All Managers Should Know,” Miller Nash, Employment Law Seminar (Oct. 2013)
- “The Juggling Act: Mental Disabilities in the Workplace,” University of Washington, Employment Practices Liability Seminar (Oct. 2013)
- “What Happens After the Whistle Blows: Derailing Retaliation Claim,” Washington State Bar Association, Annual Employment Law Institute (June 2013)
- “What Happens After the Whistle Blows: Derailing Retaliation Claim,” National Association of College and University Attorneys, Spring 2013 CLE Workshop (Mar. 2013)

### Recognition & Honors

- Selected for inclusion in *The Best Lawyers in America*® in Employment Law–Management, 2013-present
- Selected for inclusion as a Washington Super Lawyer, 2007-2009, 2012-2016
- Recognized by the Greater Seattle Business Association as the Business Leader of the Year, 2012
- Recognized by Northwest Women’s Law Center with the Cynthia Gillespie Award, 2005
- Recognized by the Greater Seattle Business Association with the Special Recognition Award for Collaboration for Social Change, 2004
- Rated AV® Preeminent™ by Martindale-Hubbell®

### Personal Activities

Jennifer and her wife Lauren live in the Magnolia neighborhood of Seattle—in the same house they purchased almost thirty years ago. While ferociously proud of their daughter who is a graphic design student in Brooklyn, they are enjoying becoming “empty-nesters,” and rediscovering the joys of Northwest hiking trails, museums, and the Seattle theater scene. Jennifer relaxes through cooking, reading, and yoga, although not all at the same time.