

## Anthony G. Stergio

### Shareholder

#### PRACTICE EMPHASIS:

Labor & Employment Litigation; OSHA; Wage & Hour Compliance; Non-Competition Enforcement; Civil Trials

#### EDUCATION:

J.D., University of Kansas School of Law, 1990  
Editorial Board, Kansas Law Review  
B.A., *magna cum laude*, University of Connecticut, 1987

#### ADMITTED:

State Bar of Texas

#### COURT ADMISSIONS:

U.S. District Court, Northern, Southern, Eastern and Western Districts of Texas  
U.S. Court of Appeals, Fifth and Ninth Circuits



Email: [astergio@andrewsmyers.com](mailto:astergio@andrewsmyers.com)  
Phone: (713) 850-4214  
Fax: (713) 850-4211

#### Profile:

Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, Anthony G. "Tony" Stergio has extensive experience in the defense of State and Federal employment discrimination claims, wage and hour compliance and claims, OSHA compliance and contests, Davis-Bacon Act compliance, noncompetition agreements, Department of Labor and TWC investigations and employment policy design and review.

He speaks frequently at employment-related seminars and also counsels clients regarding developments in various areas of State and Federal employment law.

In 2017, Tony received an AV<sup>©</sup> Preeminent<sup>™</sup> Judicial Rating from Martindale Hubbell, the nation's leading legal services resource. He scored a 5 out of 5 rating, the highest rating achievable in both Legal Ability and Ethical Standards. He previously received an AV<sup>©</sup> Preeminent<sup>™</sup> Peer Review Rating from Martindale Hubbell in 2011.

#### Professional Recognitions:

Labor & Employment Law, Texas Board of Legal Specialization  
AV<sup>©</sup> Preeminent<sup>™</sup> Judicial Rating (5.0 out of 5), *Martindale-Hubbell*  
AV<sup>©</sup> Preeminent<sup>™</sup> Peer Review Rating (5.0 out of 5), *Martindale-Hubbell*  
"Texas Super Lawyers," *Texas Monthly*, 2014-present  
Recognized in Top 100 Verdicts in Texas in 2016

#### Affiliations:

State Bar of Texas  
Houston Bar Association, Employment Law and Construction Law Sections Member  
The Associated General Contractors of America, Safety Committee Member  
The Associated General Contractors of America, Employment Practices Member  
American Subcontractors Association

#### Representative Experience:

- Represented Chinese manufacturer of oil and gas materials in claim against American distributor for non-payment, resulting in jury trial judgment in favor of client for \$950,000
- Successfully reduced \$240,000 in proposed penalties in DOJ collection action by nearly 80%
- Successfully defended company in an NLRB concerted activity investigation
- Successfully reduced OSHA penalties by over 80% in a worksite fatality case
- Avoided OSHA citations for general contractors in numerous fatality cases

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Representative Experience (Cont'd)

- Negotiated the reduction of repeat and two serious OSHA violations which carried an \$80,000 fine down to one serious and one other-than-serious OSHA violation with a total \$10,000 fine
- Negotiated settlement in a post-employment non-compete case in which non-competition geographic restrictions were reduced by 75% and a near \$2 million buyout of the employee's interest in his former company was obtained
- Defended numerous OSHA contests and successfully negotiated significant reductions in penalties and degree of violations
- Obtained bench trial judgment for employer in non-compete enforcement matter against former employee and employee's new employer
- Obtained zero dollar dismissal on Federal ADA Lawsuit
- Successfully defended national origin and race discrimination cases in Federal Court
- Successfully eliminated claims in excess of \$700,000 in damages, attorney's fees and pre-judgment interest in trial of breach of contract claim
- Obtained Summary Judgment in several age, sex and race discrimination cases in both Federal and State Courts
- Obtained Summary Judgment of \$400,000 in a Benefits Fraud claim
- Defended numerous FLSA actions in Federal Court regarding employee/independent contractor issues and FLSA exemptions
- Advised clients with respect to numerous Homeland Security audits concerning I-9 issues
- Obtained Summary Judgment in a case regarding former employer's assertion that former employee had usurped confidential information and engaged in improper competition
- Successfully established fraudulent transfer of real estate in State Court jury trial
- Analyzed numerous noncompetition agreements for enforceability issues and litigation strategy
- Drafted employment policies, handbooks and agreements for numerous large companies
- Successfully blocked a temporary injunction sought by a terminated employer/shareholder who asserted that termination was a shareholder oppression

**Publications:**

- "What does a Fully Approved Vaccine Mean for COVID-19?," AM Monthly Law Alert, August 2021
- "OSHA Issues Vaccine Incentive Guidance," AM Law Alert, June 2021
- "Texas is Open for Business," AM Law Alert, March 2021
- "Yes, Employers Can Require the COVID-19 Vaccine," AM Monthly Law Alert, February 2021
- "Employee Wages during Periods of Inclement Weather," AM Law Alert, February 2021
- "COVID-19 Year End Review", AM Monthly Law Alert, December 2020
- "OSHA Fines for COVID-19 Safety Violations Reach Nearly \$2.5 Million," AM Monthly Law Alert, November 2020
- "COVID-19 Vaccine Requirements", AM Monthly Law Alert, November 2020
- "CDC Expands Definition of 'Close Contact for COVID-19 Exposure'", AM Monthly Law Alert, October 2020
- "Employer Liability for COVID-19 Infection," AM Monthly Law Alert, August 2020
- "CDC Changes Back to Work Guidance Given Possibility of Persistent COVID-19 Positive Tests," AM Monthly Law Alert, July 2020
- "COVID-19: Dealing with Contractors who have not Taken Proper Measures," AM Monthly Law Alert, July 2020
- "CDC Changes Back to Work Guidance Given Possibility of Persistent COVID-19 Positive Tests, AM Monthly Law Alert, July 2020
- "Avoiding Retaliation Pitfalls During COVID-19," AGC Houston Cornerstone Magazine, Summer 2020
- "Employment Obligations and COVID-19" AM Monthly Law Alert, March 2020
- "Coronavirus: Key Issues for Employers", AM Monthly Law Alert, February 2020
- "ANSI Aerial Lift Standard Delayed," AM Monthly Law Alert, November 2019

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Publications (Cont'd)

"OSHA Reportables," AM Monthly Law Alert, October 2019  
"Violating OSHA's Anti-Retaliation Provision can be Costly," and "EEOC Announces it will Not Collect Compensation Data Next Year," AM Monthly Law Alert, September 2019  
"Texas Defeats EEOC Background Check Guidance at 5th Circuit," AM Monthly Law Alert, August 2019  
"EEO-1 Component 2 Portal is Open," AM Monthly Law Alert, July 2019  
"Legal Low-THC Products and Employee Drug Tests," AM Monthly Law Alert, June 2019  
"FMLA Requirements and Potential Employer Advantage," AM Monthly Law Alert, May 2019  
"Drug Use on the Job – Considerations for Employers in the Construction Industry," AGC's Cornerstone Magazine, Spring 2019  
"Recent ICE Raid in Texas," AM Monthly Law Alert, April 2019  
"OSHA Multi-Employer Citations: A Closer Look," AM Monthly Law Alert, March 2019  
"Employment Quick Takes," AM Monthly Law Alert, February 2019  
"OSHA Targeting Inspections Based Upon 300A Log Submissions," AM Monthly Law Alert, November 2018  
"Temporary Injunction Extends the Battle over Austin's Paid Sick Leave Ordinance," AM Special Law Alert, November 2018  
"OSHA Clarifies Position on Workplace Safety and Post-Accident Drug Testing," AM Monthly Law Alert, Oct. 2018  
"Employment Quick Takes," AM Monthly Law Alert, September 2018  
"Andrews Myers Files Amicus Brief on Behalf of Associated Builders and Contractors of Texas, Associated General Contractors-Texas Building Branch and Texas Construction Association in Texas' Third Court of Appeals on Austin's Paid Sick Leave Ordinance," AM Special Law Alert, September 5, 2018  
"Employment Quick Takes," AM Monthly Law Alert, August 2018  
"Employment Quick Takes," AM Monthly Law Alert, June 2018  
"Is Your Handshake Deal a Potential Anti-Trust Violation?" (Co-Author), AM Law Alert, May 2018  
"OCIPs and CCIPs Necessary to Provide Workers' Compensation Bar for Owners and General Contractors," AM Law Alert, April 2018  
"OSHA Silica Inspection Issues," AGC Members Edge, April 2018  
"Paid Sick Leave in Austin," AM Law Alert, March 2018  
"Contractors Need to Prepare for Paid Sick Leave in Austin," AGC Members Edge, March 2018  
"Leave Might not be a Reasonable Accommodation Under the ADA," AM Law Alert, February 2018  
"2018 Employment Law Updates," AM Law Alert, January 2018  
"Social Media in Employment," Employment Updates, AGC's Cornerstone, Winter 2018  
"Are you Prepared for the Next Major Crises?" (Co-Author), AM Law Alert, November 2017  
"DOL Inspections Increase: Title VII Sessions Memo," AM Law Alert, October 2017  
"Pay for Employees During Work Closure for Inclement Weather," AM Law Alert, September 2017  
"Trump Administration Signals Change of Direction on Employer/Independent Contractor Distinction and Joint Employer Doctrine," Build Houston, August 2017  
"Silica Update, New TxDOT E-verify, EEO-1 Deadline Pushed Back," AM Law Alert, August 2017  
"Overtime Rule May Never Become Effective," AM Law Alert, July 2017  
"OSHA Loses Key Multi-Employer Case," The Leading Edge, July 2017  
"A Texas Legislative Update," Cornerstone, Summer 2017  
"Blacklisting Law Repealed," Build Houston, June 2017  
"Employment Round-Up," AM Law Alert, June 2017  
"President Trump to OSHA's *Volks Rule* – 'You're Fired'," AM Law Alert, April 2017  
"OSHA Delays Enforcement of Silica Rule for 90 Days," AM Employment Law Alert, April 2017  
"Individual Health Insurance Reimbursement Allowable Again if Properly Set Up," AM Law Alert, March 2017  
"OSHA Under the Trump Administration," AGC Member's Edge, March 2017

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*Publications (Cont'd)*

- "OSHA Under the Trump Administration," Build Houston, February 2017
- "New I-9s, Poster Requirements and OSHA Penalties," AM Law Alert, January 2017
- "Non-DBE Contractors and Suppliers Beware: Targeting Non-DBEs in Fraud Cases," Cornerstone, Winter 2017
- "OSHA Clarifies Stance on Drug Testing," AM Law Alert, November 2016
- "DOL New Overtime Rule Blocked," AGC's Members Edge, November 2016
- "New PTO Requirements for Government Contractors," AM Law Alert, October 2016
- "New Austin Regulations on Employment Applications," (Co-Author), AM Law Alert, October 2016
- "New Minimum Wage for Federal Contract Workers," AM Law Alert, September 2016
- "New EEOC Corporate Wellness Regulation for 2017," AM Law Alert, August 2016
- "Temporary Employees – Who Really is the Employer?" AGC's Cornerstone, Summer 2016
- "Not Taking Action on Sexual Harassment Complaints Can Cost You," AM Law Alert, July 2016
- "Post Accident Drug Testing May 'Violate New OSHA Rule'," AM Law Alert, June 2016
- "As OSHA Fines Set to Nearly DOUBLE, Contractors Must Focus on Prevention," Build Houston, April/May 2016
- "Prevailing Wage Obligations – Davis-Bacon, State Law and Contract," AM Law Alert, February 2016
- "New Open Carry Law in Texas," ABC Build Houston, December/January 2016

**Speeches and Presentations:**

- "Employee Handbooks & Policies" Houston Contractors Association, November 2020
- "COVID-19 Employment Issues" American Bar Association, November 2020
- "Hiring & Firing, Best Practices for Terminating Employees", Houston Contractors Association, October 2020
- "Webinar", Worldwide Employee Benefits Network, September 2020
- "COVID-19 Employment Issues and Other Recent Employment Law Development", BCH, September 2020
- "Safety Committee Meeting", Associated General Contractors Houston, August 2020
- "OSHA/COVID-19 Issues", Houston Contractors Association, August 2020
- "Legal Protection from Jobsite Related Infections", Southwest Insulation Contractors Association, August 2020
- "COVID Screenings and Workers Safely Returning Back to Work", Associated Builders and Contractors of Houston, July 2020
- "Legal Update for Businesses: Return to Work", German American Chamber of Commerce, June 2020
- "COVID-19; the Project Plague: Legal Checklists for Risk, Problems and Concerns" Construction Law Foundation of Texas, April 2020
- "Employment Law Coronavirus Update, March 2020
- "Challenging & Difficult Employment Laws, An Update for HR Professionals", February 2020
- "Employment Section Slide", January 2020
- "Safety Meeting", W.S. Bellows Construction, January 2020
- Panelist, SWICA - Panel Discussion on Labor Issues, November 2019
- Presentation to AGC, Houston Employment Practices/Safety Committee Joint Meeting "How to Manage Employer Injury Under FMLA, ADA & Workers' Comp," October 2019
- Panelist, ASA General Lunch Meeting: "2019 Texas Legislative Recap Panel Discussion," August 2019
- Speaker at SWICA Conference "The Legal Life of an Employee Injury," June 2019
- Presentation to AGC Safety Committee "Accident Inspections from the Legal Perspective," June 28, 2019
- Presentation to AGC TBB Safety Committee "Multi-Employer Briefing," March 2019
- Panelist, American Subcontractors Association: "What's Hot in the World of Human Resources?" February 2019
- "Austin Sick Leave Mandate," American Subcontractors Association, October 2018
- Panelist, "OSHA Fatality Investigations – Best Practices," OSHA Construction Safety & Health Conference, September 13-14, 2018
- "Crisis Management – It is Good Business," Private Client Seminar, July 2018

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Speeches & Presentations (Cont'd)

- "Supervisor/Manager Training – Sexual Harassment in the Workplace," Private Client Seminar, May 2018
- "Trends and Tips in 2018 Employment Law," Private Client Seminar, May 2018
- Panelist, "Lessons Learned in the Trenches from HR Nightmares," American Bar Association Forum on the Construction Industry, New Orleans, Spring 2018
- "Contracting with DBE Reminder & Sexual Harassment Policies Reminder," AGC Houston, November 2017
- "OSHA Recording, Reporting, Inspections, and Citations: How to Avoid Mistakes and Pitfalls," NACM Houston, October 2017
- "Fair Labor Standards Act," American Subcontractors Association, October 2017
- "Hot Topics in Employment," BCH Employment Law Seminar, September 2017
- "Social Media for Contractors," AGC Houston, July 2017
- "Big Changes at OSHA? What is Likely in Store for the Agency Under the Trump Administration," ABC Houston, March 2017
- "Expected Employment Developments in 2017," ABC Central Texas, January 2017
- "The Department of Labor's New Overtime Rules," American Subcontractors Association, July 2016
- "New OSHA E-Reporting/Non-Retaliation Regulations," AGC Employment Practice Committee, July 2016
- "OSHA on Your Project," Austin Bar Association, Construction Law Section, January 2016
- Presentation to Private Client Group: Employment Law Updates for 2015-2016, September 2015
- "Common Employer Mistakes," Presentation to CMFA, April 2015
- "Top 10 Employer Mistakes," Greater Austin Contractors & Engineers Association, February 2015
- "OSHA Compliance and Partnership," ABC Program Series, February 2015
- "Important Employment Issues Facing Contractors," American Subcontractors Association, December 2014
- "What to do in the Event of an OSHA Inspection," Association of General Contractors, September 2014
- "Temporary Employee Roundtable," Presentation to American Society of Safety Engineers, April 2014
- "Behavior at Work," Presentation to TAS Commercial Concrete Construction, Inc., April 2014
- "Expansion on Affirmative Action Requirements for Veterans and Disabled Persons," March 2014
- "Temporary Employees: An Agency and Host Joint Responsibility," Presentation to Greater Houston STEPS Network, February 2014

**Classes and Seminars:**

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|---|---|
| Equal Employment Issues and Pitfalls                      | Workers' Compensation Update: Successfully Using Modified Duty, Return to Work and Reasonable Accommodation Without Running Afoul of the ADA, FMLA or Workers' Compensation Law |
| HR Crisis Management                                      | Sexual Harassment Overview  |
| Affordable Care Act/Obamacare                             | How Alive is Employment at Will?  |
| Wage and Hour Issues and Pitfalls                         | Reasonable Accommodations under the ADA   |
| Sexual Harassment/Discrimination Training                 | How to Conduct an Internal Investigation  |
| NLRB Social Media Employment Policies                     | Managing Social Media Policies & Procedures   |
| EEOC Criminal Background Check Guidance                   | A Practice Guide to I-9 Audits  |
| Proper OSHA Procedures                                    | Understanding I-9 Requirements  |
| Fundamental Issues of TX Human Resources Law              | Employer's Best Practices   |
| ADA Workshop: Mastering the Challenges of the ADA Overlap | Keeping and Retaining a Skilled Workforce   |
| Common Employer Mistakes                                  | State and Federal Employment Updates  |
| FMLA Updates  |   |
| NLRB Updates  |   |