



# Profile: Denise Top

*Employment lawyer has had a very varied career, both within the law and before law school.*

*Now, she's where she wants to be*

BY STEPHEN ELLISON

Life tossed a pretty nasty curve at Denise K. Top, and she managed to hang in there and fight it off.

The Ohio native had been working at a job she loved, retail analysis, in a place she adored, the Bay Area, when she received news no one in their early 30's wants or expects to hear.

"I got a phone call at work that my dad, he was 56 at the time, had dropped dead," Top said. "So I rushed home, and through that whole process I realized, while I really loved what I was doing, it was nothing that I saw myself doing in terms of a career. And what happened to my dad made me realize life is short. If you want to do it, you've got to do it now."

Top promptly re-examined her career goals. She had originally moved out to the Bay Area to establish residency and go to law school. So she refocused, filled out the applications and went for it. The change was for herself, to be certain, but in a way, she realized later, it also was a tribute to her dad.

"I really wanted to help people. Growing up, I think my dad sort of planted that in me," Top recalled. "I remember when I was in third grade we had to do a report on what we wanted to be when we grew up; my cover page had the seals of justice on it, and I wanted to be a lawyer. I didn't really understand what being a lawyer meant at the time, I just knew it was a way to help stick up for people and to be a voice for people, and that was something that naturally I always did. It was always an interest of mine, and then, when I lost my dad at such a young age, it really made me think I have to go pursue my goals right now."



Top

Today, Top has her own firm – Top DePaul LLP, based in Oakland – and a practice that, by design, focuses on the area she loves most: plaintiff employment law. Her early experience at de-

fense firms, representing public and private entities against discrimination, harassment, retaliation and wrongful termination claims, provided her with a unique and deep understanding of how employers work and how their legal cases are handled. Thus, she can often get results even before a lawsuit is filed, she said.

With employment law, her ultimate goal is to make a better workplace for people, Top said. That was her motivation for making the switch from protecting employers to making sure they were complying with the law.

"At some point, after doing it for a long time, I sort of wanted to not only challenge the way I thought about things but also start to use the skill and knowledge I'd obtained to help employees," she explained. "There were repeat problems, and I got to a point where I was like: 'Well, I've done a lot to help employers, and I feel really good about the work I've done. Now I really do want to focus on helping individual people.' And I made that switch when

I opened up the firm here with Michael DePaul."

Top's expertise in employment law goes beyond the courtroom walls. Her practice has included developing and presenting workplace trainings on such subjects as preventing sexual harassment, discrimination and retaliation; embracing diversity in the workplace; protected leaves; and mandated reporting laws.

## Career and life transition

Top was raised in northern Ohio and went to college near Cincinnati. After graduating from Miami of Ohio University with a degree in psychology, she was at a point in her life where she could live anywhere and do anything she wanted. She chose San Francisco initially with the idea that she could get a job in social services, which she did for a number of years. But then came the opportunity in the corporate office of a large retailer.

"I ended up in a job where I was working in an office of a buyer at a retailer doing retail analysis, and I loved it because numbers don't have personalities," Top said. "It was a great break for me. I worked for a couple of big retailers at the time and really liked the people I worked with and liked the culture."

After her father died and she made the decision about going to law school, she landed at Golden Gate University School of Law, where she recalled thinking that she was one of very few law students who truly enjoyed the learning experience.

That studious culture didn't change much at Top's first job out of law school with Pave & Bogaards, a small insurance defense firm where Debra Bogaards became her mentor and role model in the firm culture. But beyond mere learning



of the trade, Bogaards' firm provided Top with an opportunity, and she took it.

"In law school, it was more about getting the experience, trying to find out what I wanted to do, what kind of environment I wanted to work in," Top said. "With the Bogaards' firm, I got so many opportunities. They were excellent trial attorneys, and they really inspired me because that's what I wanted to do. It helped me identify that I wanted to be a trial attorney."

Those opportunities mostly centered on insurance defense in personal injury cases but eventually led to an employment case, on which she worked with Bogaards. Employment law cases, Top said, contain the perfect amount of heady statutes and salacious facts, and after getting a taste from that first trial, she started exploring her options, reaching out to her contacts to see where she would be able to take a deeper dive into employment law. She met with a friend who was with Gordon & Rees, just trying to find out how to get into it and whether or not her friend liked it.

"And she said, 'Well we're hiring. Why don't you submit your resume?' And I did," Top recalled.

After nearly three years there, Top spent about a year with the State Bar as director of examinations and then two years with Liebert Cassidy Whitmore, a large employment and education law firm. Then it was time, she decided, to really take charge of her career.

### Going into business

Opening her own firm was a proud moment for Top – and a bit frightening.

"It was one of the scariest things I've done," she said. "Going from steadily and predictably receiving a paycheck every couple of weeks to not knowing when I would get paid again was a huge deal for me, especially living in the Bay Area and having a family and a mortgage. That was a big adjustment."

The transition to the plaintiff side also meant a sea change for Top. She said it's a completely different mindset from

being a defense attorney, although her defense experience has come in handy. "I've really learned a lot in the year and a half since we opened in terms of looking at cases differently and working with individuals and, you know, the challenges of having the burden of proof," she said. "But it's very different. It's really challenging work, but really gratifying work too."

One of her first cases when she was still with the Bogaards firm involved a worker at a religious school who was accused of sexual misconduct. The school refused to extend a defense to the former employee because of its religious tenets, and the woman was going to have to pay for it out of pocket. The allegations caused havoc on the woman's personal life. Top fought hard to try to find someone who would pay for her client's defense, and it turned out some of the alleged misconduct took place at her apartment.

"After a lot of diligence, a lot of fighting, a lot of persuasion, I was able to get the insurance carrier on her renter's insurance to cover her defense," Top said. "That was such a huge thing for me not only to be able to help her in that way but in terms of really molding how I thought about the legal system and justice."

"That was really inspirational," she continued. "We knew that in discovery she had to give up any policies that were in play, so we knew she had renter's insurance, and I thought we should try. I really give the insurance company a lot of credit because at first they were saying no way, no way, but as I persisted, they actually couldn't believe the employer wasn't extending a defense. It was a really reasonable attorney representing the insurance company."

As for her trial strategy, Top harps on preparation to the point where she memorizes transcripts from depositions almost word for word. She then creates a clear roadmap of what she intends to prove, starting about a hundred days out from the trial date, and filling it in with the evidence as she goes through it.

"From there, it's just knowing what the evidence is so I'm nimble enough in the courtroom to be able to maximize what the evidence is where it's favorable to my side of the story," she said.

### Smelling the roses

When she's not at work, Top spends most of her free time with her family. She has two young children, a 4-year-old and a 7-month-old, and the former Ironman triathlete joked that her triathlon training these days consists of feeding, burping and bathing. Even during her busiest times, she makes sure to reserve family days.

"Part of what I learned when my dad died, something I've really tried to see through, is to do things now and appreciate the present," Top said. "I've tried really hard to focus on what needs to get done today and where to draw the line so I'm able to prioritize where I need to be spending my time."

Top said the best advice she could offer aspiring attorneys is to find an area of law they'll enjoy working in. She's met too many lawyers who despise what they do, and she has trouble comprehending that.

"Life is so short. If you like law and you don't like the area you're practicing in, continue to go forward," she said. "People told me after I started practicing personal injury, 'You'll never get into employment law, especially on the defense side; that's just not how it works.' But that's what I was interested in, and I wasn't going to give up."

"Don't make yourself miserable," Top added. "Continue to explore – maybe even take a pay cut because it will pay off in the long run. There's always something to learn and room to improve. If you're driven by competition with yourself, then it's a really fulfilling profession."

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