

# Managing Employee Lawsuits

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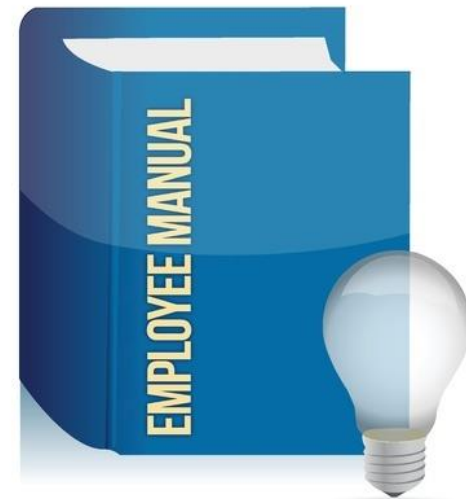
# Preventing the Lawsuit

- Education of both employees and supervisors



# Employees Must Know Their Rights and Obligations

- The employee handbook is essential
- Acknowledgment may or may not be a contract
- Solving that problem



# Educating Supervisors

- Document the investigation and undertake any appropriate remedial action
- If it is not in writing, it did not happen

# SHIFTING THE RISK

EPL Policies

D&O Policies

- Limitations and exclusions

# EEOC MISSION STATEMENT

- The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

## EEOC Statistics

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Receipts	27,356	27,270	26,777	26,756	26,820	27,893
Resolutions	29,687	31,990	30,501	27,537	25,791	28,642
Resolutions by Type						
Settlements	2,853	3,127	2,906	2,656	2,351	2,627
	9.6%	9.8%	9.5%	9.6%	9.1%	9.2%
Withdrawals w/Benefits	1,652	1,648	1,652	1,725	1,667	1,860
	5.6%	5.2%	5.4%	6.3%	6.5%	6.5%
Administrative Closures	5,607	5,844	5,132	4,777	4,877	5,258
	18.9%	18.3%	16.8%	17.3%	18.9%	18.4%
No Reasonable Cause	17,316	19,696	19,331	17,144	15,977	17,866
	58.3%	61.6%	63.4%	62.3%	61.9%	62.4%
Reasonable Cause	2,259	1,675	1,480	1,235	919	1,031
	7.6%	5.2%	4.9%	4.5%	3.6%	3.6%
Successful Conciliations	523	458	482	488	326	398
	1.8%	1.4%	1.6%	1.8%	1.3%	1.4%
Unsuccessful Conciliations	1,736	1,217	998	747	593	633
	5.8%	3.8%	3.3%	2.7%	2.3%	2.2%
Merit Resolutions	6,764	6,450	6,038	5,616	4,937	5,518
	22.8%	20.2%	19.8%	20.4%	19.1%	19.3%
Monetary Benefits (Millions)	\$118.7	\$118.5	\$113.0	\$129.1	\$93.9	\$125.5



## Where to File

- Federal Court
- State Court
- Arbitration Clauses Under Attack



# Preparing for the Litigation

- Conduct your own internal investigation so you know what to expect
- There are no good surprises
- Spoliation leads to the presumption that you have something to hide

# Discovery

- Exchange of documents can be voluminous
- Depositions
  - Key management personnel
  - Non-managerial employees
  - Disgruntled former employees



# Depositions

- Preparation is critical
- Employees must remember they are on the record
- The other side will likely have already talked to the key employees in the investigation phase

## Resolution

- Trial – very public and costly; opportunity cost
- Settlement
  - Confidentiality and Enforcement
  - Public Consent Decree
- Remedial measures beyond money

