

EMPLOYMENT LITIGATION UPDATE AND TRIAL CONCERNS

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PREVENTING LITIGATION

- Document
- Document
- Document

INVESTIGATION

- Training
- Handbook
- Reporting Procedure

PROGRESSIVE DISCIPLINE

- When is it acceptable to deviate?

Before Litigation Even Starts

- Preserve all documents and data
- Save/Isolate Emails and Hard Drives
- Spoliation – Presumption that you have something to hide

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.

Hot Button Issues

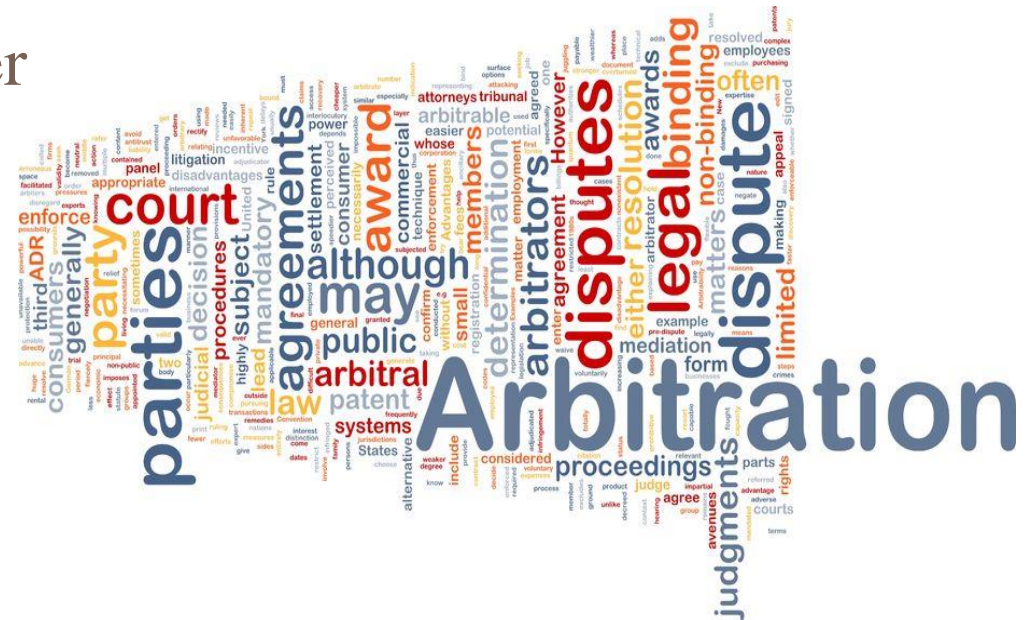
- Sexual Orientation and Gender Identity
 - These are two different issues.
- Hostile Workplace Claims
- EEOC Guidelines
- Joint Employer Status

Where is the Courthouse Door?

- Federal Court
 - Exhaustion of Administrative Remedies
- State Court
- Attorney Fees
- A Little Discrimination Goes a Long Way

Arbitration

- Not Necessarily Less Costly
- Not Necessarily Faster
- AAA Rules
- Challenges to Arbitration Clauses



Admissibility of Evidence at Trial

- The EEOC Determination
- The Underlying Investigation



Resolution

- Trial – very public
- Settlement
 - Confidentiality
 - Public Consent Decree
- Remedial measures beyond money