

# Cray • Huber

## **Labor and Employment Law Notes**

### *Tips to Assist EPLI Claims Personnel in Performing Early Assessment of Cases Involving Employment-Related Claims*

#### **A. INFORMATION TO BE AWARE OF IN EVALUATING THE EMPLOYMENT-RELATED CLAIM WITHIN THE FIRST 30 DAYS OF RECEIPT OF THE CLAIM**

##### **1. NATURE OF THE CLAIM:**

- Are the eyewitnesses credible and independent?
- What really happened?
- Documentation issue?
- How sophisticated are/is the insured and employees involved?
- Is this a fact-intensive claim?
  - Can the case be positioned for a summary judgment?
  - This may affect the value of the claim-it may be if a motion for summary judgment would be successful, it may get plaintiff to discuss settlement early.
  - If not, do not waste time, effort and money on a motion for summary judgment because plaintiff's counsel knows if the motion is a loser.

##### **2. SCOPE OF DAMAGES:**

- Is plaintiff a wage earner?
- Back and front pay can be huge, so what are the back and front pay amounts?
- Is the plaintiff is a CEO, President, Vice President, etcetera – if so it may be tough because these people have a harder time getting a job and thus the limited pot of money (low policy limits) is eaten up quickly with high front and back pay claims.
- If someone is making a lot of money, that is definitely a factor to look at in evaluating the claim.

**3. NATURE OF CLAIMANT:**

- Is the Complainant a serial complainer?
- Usually the employer will know if the plaintiff is a serial complainer.
- Does the claimant complain a lot?
- Usually the jury hates these complainers.
- Do they have a history of claims?
- Ask co-workers regarding lawsuits by the claimant (against this or prior employers).
- Evidence of prior employment lawsuits help lower the value of the claim for mediation purposes.
- Is the plaintiff a low wage earner-smaller back and front pay?
- Low wage earner probably can find employment and, if not, they are probably not looking for work.
- Migratory work pattern?
- On the other hand-good reviews, pay increases, promotions and now adverse action? Why? Jury will pick up on this.
- Often happens with sale of company and new owner does this to the old employees. Raises a red flag.
- Despite the employer's excuse for termination-the jury will not buy it because you let the employee go because they were a high wage earner and because they had been there a long time. Chances are these people won't find a comparable job making the damages potentially higher.

**4. NATURE OF BAD ACTOR:**

**WHAT IS YOUR SENSE OF THE PERSON WHO ALLEGEDLY DID THE BAD ACT?**

- Do you need to check for your wallet every time you meet the alleged bad actor?
- What is the position in the company of the bad actor?
- Is he the owner, CEO, President, Vice President or manager-this takes on a different tone versus a co-worker or supervisor.
- Are they credible/forthright?
- Are they being evasive?
- How will they come over with the jury?
- Is the bad actor willing to shade the truth or lie?
- The case may be weak/marginal but if the bad actor appears to be or is a liar it drives up the price/value of the claim.