

Avoiding the Top 20 Employment Litigation Landmines

◆
by **John F. Dickinson, Esquire**

Constangy, Brooks & Smith, LLP

jdickinson@constangy.com

904-356-8900

Jacksonville, Florida

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Why Participate in this Session?

☐ Why should You care?

☐ How will this session help you “sniff out”
the landmines in your workplace?

☐ What must you do?



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Why Should You Care?

Let's Talk Numbers

- Jury Awards ***\$13 Million*** in Disability Discrimination Case (Las Vegas, Nevada 1999)
- Jury Awards ***\$30.675 Million*** Verdict in Age Discrimination Case (Youngstown, Ohio 2001)
- Mitsubishi Motors Settles Sexual Harassment Lawsuit for ***\$34 Million*** (Normal, Illinois 1999)
- Coca Cola Settles Race Discrimination Lawsuit for ***\$192.5 Million*** (Atlanta, Georgia 2000)
- Government Will Pay ***\$508 Million*** to Settle Sex Discrimination Suit (CNN – March 22, 2000)

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Business Week

For Every 10,000 Lawsuits, Few Losses, but High Cost

The maneuvering companies engage in to avoid wrongful-termination lawsuits is out of proportion to the risk of actually losing in court. One big reason: the high cost of litigating claims, even the ones that end up with the company winning.

Out of 10,000 employment suits	Stage of lawsuit	Cumulative cost for a company to defend a single lawsuit
7,000	FILING Settle (most settlements are for nuisance value)	\$10,000
2,400	SUMMARY JUDGMENT Get resolved by summary judgment and other pretrial rulings	\$100,000
600	START OF TRIAL Go to trial	\$175,000
186	END OF TRIAL Trials are won by plaintiffs	\$250,000*
13**	APPEAL Plaintiff victories survive appeal	\$300,000

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Learn to
“Sniff –Out”
Employment
Litigation
Landmines



*Before they
are triggered
and create
great expense
for your
County*



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Mistake No. 1:

**Failure to Conduct Adequate
Background Checks on
Potential Employees**



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Tip: Conduct Adequate Background Checks

- **History of alcohol abuse**
- **History of drug abuse**
- **History of theft**
- **History of violence**

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Tip: Conduct Adequate Background Checks

- **Driving**
- **Contact with the Public**
- **Handling Money**
- **Safety Sensitive Positions**

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Tip: Conduct Adequate Background Checks

- **Fair Credit Reporting Act**
- **Tort Reform Act of 1999 (768.096 F.S.)**
 - FDLE criminal check
 - Contact references and former employers
 - Use job application -- conviction record
 - Driver's License check
 - Interview applicant

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Mistake No. 2:

Inconsistent Recruitment and Hiring Practices

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Mistake No. 3:

Inappropriate Interview Questions and Comments

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Mistake No. 4:

Failure to Contact Human Resources or Employment Counsel Before Taking Employment Action

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**Mistake No. 5:
Inappropriately Classifying
Employees as “Salaried” as
Opposed to “Hourly”
Employees**

**Tip: Don’t Let Hourly Employees Work “Off
the Clock” / Properly Classify Employees as
Exempt or Non-Exempt**

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Mistake No. 6:

**Failure to Implement,
Disseminate and Periodically
Review Personnel Policies and
Procedures**

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Mistake No. 7:

Failure to Train Employees



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Mistake No. 8:

Failure to Document Events in a Timely and Accurate Fashion



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Document Performance Problems and Discipline

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Document Oral “Informal” Counseling

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Document “Formal” Counseling

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Contents of Documentation

- 4 Principles to Effective Documentation
 - **“LITIGATION PERSPECTIVE”**
 - What would a judge or a jury say about this document?

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Contents of Documentation

- 4 Principles to Effective Documentation

- OBJECTIVE

- Avoid subjective comments like:
 - “He has a bad attitude!”

Contents of Documentation

- 4 Principles to Effective Documentation

- FACTUAL

- Specific facts in comments add to the credibility of the document

Contents of Documentation

- 4 Principles to Effective Documentation

- **ACCURATE**

- Incomplete or inaccurate information can detract from the document and often trigger an audit!

Contents of Documentation

- **Necessary Components in Documents**

- Date created
- Name & signature
- Page labels
- Purpose of document
- Name(s) of witness or parties involved
- Description of attachments

Tips for Effective Documentation

- **Use Dates**
- **Specific Acts & Behavior**
- **Document History**
- **Employee Response**
- **Consequences**
- **Signatures**

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Consequences of Effective Documentation

- **Clear expectations**
- **Authority to act**
- **Workplace consistency**
- **Eliminates surprises**
- **Reduces lawsuits**

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Mistake No. 9:

Failure to Appropriately Evaluate Employment Performance

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Mistake No. 10:

Failure to Adequately Discipline Employees

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Progressive Discipline is Valuable

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DISCIPLINE AND DISCHARGE GUIDELINES

- In documentation - use - who, what, when, where and why
- Recount past problems
- Check for inconsistencies
- Understand possible legal theories
- Adhere to policies

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Mistake No. 11:

Failure to Keep Evidence

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Mistake No. 12:

Failure to Conduct Thorough Investigations into Employee Complaints and, if Necessary, Take Prompt Remedial Action

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Mistake No. 13:

Failure to Curtail the Inappropriate Use of Office E-Mail



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Mistake No. 14:

Failure to Curtail Employee Favoritism and/or Inconsistent Treatment of Employees

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Mistake No. 15:

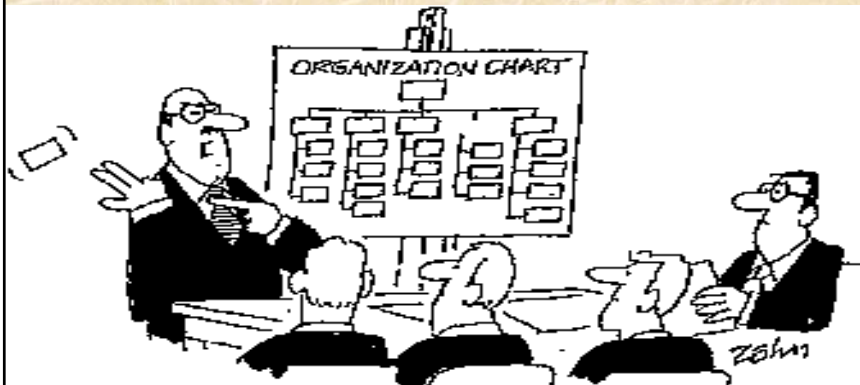
Failure to Designate Absences as FMLA Leave

Tip: Take note of the relationships among the ADA, FMLA and Workers' Compensation when it comes to leave issues

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Mistake No. 16: Failure to Plan and Prepare for Foreseeable Employee Terminations



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"...and that, Ferguson, was you."

Mistake No. 17:

Inappropriate or Defamatory Comments About Former Employees



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Mistake No. 18:

Failure to Provide Former Employees Notice About Their Rights to Elect Continuation of Health Insurance Coverage Under COBRA

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Mistake No. 19:

**Failure to Prepare for
Unemployment Compensation
Hearings**

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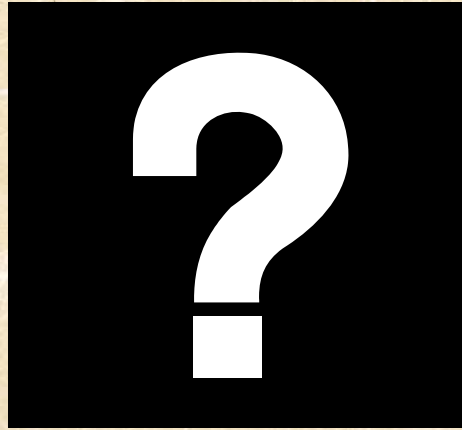
Mistake No. 20:

**Failure to Carefully Prepare
Statements of Position or
Responses to Demand Letters**

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QUESTIONS



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