

There Must Be Fifty Ways to Lose a Lawsuit

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**“There Must Be
Fifty Ways
To Lose
a Lawsuit”**

Paul, Simon, and Loophole

Family and Medical Leave Act

Litigation Losers

- 1. Understanding Reasons for Leave and “Serious Health Conditions”
- 2. Notice of FMLA Rights
- 3. Right to Reinstatement

Fair Labor Standards Act

Litigation Losers

- 1. Calculations of Work Time
- 2. Misdesignation of Employees as Exempt
- 3. Improper Deductions from Exempt Employees

Immigration Liability

Litigation Losers

- 1. Inaccurate/Incomplete I-9 Forms
- 2. Pre-Employment Citizenship Inquiries
- 3. Inaccurate Reporting to a Government Regarding Status of Foreign Students (Post Sept 11th Focus)

Americans with Disability Act

Litigation Losers

- 1. Understanding Coverage under ADA
- 2. Failure to Engage in the Interactive Process
- 3. Failure to Make Reasonable Accommodations

Age Discrimination in Employment Act

Litigation Losers

- 1. Inaccurate Performance Appraisals
- 2. Absence of Job-Related Criteria for Reduction-in-Force
- 3. Waiver Language and Waiting Periods

Title VII: Race Discrimination

Litigation Losers

- 1. Hiring To Create Favorable Numbers
- 2. Avoid Confrontation By Providing Enhanced Performance Appraisals
- 3. Racial Harassment

Title VII: Gender Discrimination

Litigation Losers

- 1. Failure to Train and Document Training
- 2. Gender Harassment/Sexual Harassment
- 3. Benefits/Prescription Drug Issues

Title VII: Religious Discrimination

Litigation Losers

- **1. Inconsistent Provision of Leaves of Absence**
- **2. Second-Guessing Appropriateness of Religion or Religious Beliefs**
- **3. Denial of Accommodation**

Retaliation

Litigation Losers

- 1. Focus on the Spurious Nature of Employee Demand/Complaint
- 2. React Emotionally to Employee Conduct/Statement
- 3. Inadequately Document Employee Conduct

Hiring

Litigation Losers

- 1. Solicitation of Inappropriate Information
- 2. Failure to Complete and Document Pre-Employment History
- 3. Hiring to Achieve Quotas

Performance Evaluation

Litigation Losers

- 1. Limit Evaluator's Rating Choices
- 2. Fail to Hold Evaluators Responsible for Quality of Evaluations
- 3. Dramatic Changes in Individual's Performance Evaluations

Employee Termination

Litigation Losers

- 1. **Absence of Mandatory Pre-Termination Review**
- 2. **Inconsistent Application of Work Rules**
- 3. **Absence of Last Chance Provision**