



Labor and Employment Law Seminar

**2026
LAS VEGAS**

THROUGH THE PLAINTIFF LAWYER'S EYES THE PLAINTIFF'S PLAYBOOK

WHAT MAKES AN EMPLOYMENT LAWSUIT WORTH FILING,
FIGHTING, AND SETTLING?



Presented by

**JENNIFER
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THROUGH THE PLAINTIFF LAWYER'S EYES
**THE PLAINTIFF'S
PLAYBOOK**

**ANYONE CAN
SUE YOU**

There Is No Screening Mechanism at the Courthouse Door

- No strong case, lawyer, good evidence, correct theory, or realistic damages analysis required
- Generally, a filing fee or fee waiver opens the door
- You can do everything reasonably well and still be sued

You cannot make litigation impossible. You can make it less attractive.

The \$54 Million Pants. And the 11-Inch Footlong.

\$54 MILLION PANTS

A D.C. administrative law judge sued a dry cleaner over lost pants. He lost.

Customers sued Subway's "Footlongs" because they measured under 12 inches

The case became a class action. The proposed settlement focused on measuring sandwiches.

Filing a lawsuit and having a good lawsuit are two very different things.

Not Every Lawsuit. The Facts That Make It Dangerous.

- Damaging manager text
- Suspicious retaliation timeline
- Obvious comparator
- Unexplained policy deviation
- Inconsistent termination explanation
- Former supervisor willing to testify
- Payroll mistake repeated across hundreds of employees

You cannot always stop the claim. You can avoid handing the plaintiff the evidence that gives it value.

**THINK LIKE A
PLAINTIFF'S
LAWYER**

If You Were the Plaintiff's Lawyer, Would You Take This Case?

- Simple, compelling story?
- Objective evidence?
- Damaging documents?
- Consistent employer explanations?
- Meaningful damages?
- Other employees affected?
- Realistic source of recovery?

Evaluate the decision through the eyes of the person who may eventually challenge it.

Your Next Lawsuit May Already Be Under Investigation

01

Employee
contacts
lawyer

02

Initial
screening

03

Document
gathering

04

Employer
research

05

Litigation
decision

By the time you receive the complaint, opposing counsel may already know more than you expect.

The Answers That Make a Plaintiff's Lawyer Lean Forward

Less attractive: "My supervisor was unfair to me."

More attractive: "I complained about discrimination, was fired three days later, and have an email saying management wanted me gone."

Less attractive: "I think my paycheck was wrong."

More attractive: "Everyone in my department worked through lunch, but payroll automatically deducted 30 minutes every day."

A compelling story plus objective evidence makes a claim more attractive.

Not Every Bad Experience Is a Good Lawsuit

1. Strength of the legal theory
2. Quality of available evidence
3. Credibility of the employee
4. Potential damages
5. Additional potential claimants
6. Defendant's ability to pay
7. Litigation costs and settlement leverage

Litigation is both a legal dispute and an economic decision.

Would You Take This Case?

A 52-year-old employee is terminated after 12 years. The employer says performance problems. The employee alleges age discrimination.

If you were a plaintiff's lawyer, would you take this case?

CASE INTAKE

Yes

No

I need more information

The first version of the story rarely tells you everything you need to know.

Same Termination. Very Different Case.

- A positive performance review six months earlier
- Younger employees with similar performance problems received coaching rather than termination
- The supervisor texted: "We need some fresh energy on this team."
- The employee was never told termination was possible

CASE INTAKE, UPDATED

**Would you take the
case now?**

The legal theory didn't change. The evidence did.

The Most Dangerous Question: Why Now?

18 Months of Poor
Performance

Employee Complains

Terminated Two Weeks
Later

If performance was the problem, why did the company wait until now?

A legitimate reason matters. So does the explanation for the timing.

Nobody Told Me My Performance Was a Problem.

Positive Reviews

No Warnings or Coaching

Terminated for Poor
Performance

If performance was the problem, why didn't anyone tell the employee?

Termination should not be the first performance warning.

Can You Defend the Reason You Gave?

CHANGING EXPLANATIONS

Termination meeting: Restructuring

EEOC position statement: Poor
performance

Manager's deposition: Bad attitude

INCONSISTENT DISCIPLINE

Employee A: Policy violation → Warning

Employee B: Similar violation →
Termination

Which explanation should the jury believe, and why was this employee treated differently?

THE EVIDENCE THAT CHANGES EVERYTHING

Your Personnel File Looks Great.

The employer has

- Performance records
- Written warnings
- Documented reason for termination
- Supervisor's denial

Their Phone Tells a Different Story.

The employee has

- Manager text messages
- Termination recording
- Slack/Teams messages
- Private manager group chat

What plaintiff's counsel sees: Potential evidence of an alternative explanation for the employment decision.

One Screenshot Can Change the Value of a Case.

Scenario: An employee complains about discrimination. Two weeks later she is terminated for documented performance problems. Then plaintiff's counsel produces a screenshot of a manager's text.

HYPOTHETICAL

She's been a problem ever since she went to HR. We need to figure out how to get rid of her.

We Need to Get These Hours Down Before Payroll Runs.

- **Problematic:** "Make sure nobody goes over 40 hours."

Better: "Manage schedules to control overtime, but ensure all hours actually worked are accurately recorded and paid."

- **Also risky:** unexplained edits, discouraged reporting, ignored pay complaints, policies that contradict practice

Managers should control scheduling and costs, not erase time worked.

Your Former Manager May Be Their Best Witness.

THE EMPLOYER

A well-documented termination for poor performance.

SIX MONTHS LATER

The supervisor who recommended termination leaves the company on bad terms.

THE PLAINTIFF'S LAWYER

The former supervisor says management wanted the employee gone for reasons unrelated to performance.

What happens when your own former manager contradicts your defense?

Your Own Documents May Contradict Your Defense.

PERFORMANCE REVIEW | MARCH

Rating: Exceeds expectations

vs.

TERMINATION MEMO | SEPTEMBER

Reason: Chronic performance problems

What happened between March and September?

Find the contradiction before plaintiff's counsel does.

**WHAT MAKES THE
CASE
ECONOMICALLY
ATTRACTIVE?**

Sometimes the Attorneys' Fees Are Worth More Than the Claim

- Contingency-fee arrangements
- Statutory fee-shifting
- Potential liquidated damages
- Discovery expense
- Class or collective exposure
- Settlement leverage

Evaluate the total cost of litigation, not just the employee's claimed damages.

What Makes a Plaintiff's Lawyer Want Your Case?

- Strong documents supporting the employee's allegations
- A credible, sympathetic plaintiff
- Inconsistent employer explanations
- Evidence of a systemic problem
- Meaningful damages or attorneys' fees

The stronger the evidence and potential recovery, the more attractive the case.

What Makes a Plaintiff's Lawyer Think Twice?

- Consistent, contemporaneous documentation
- Credible, well-supported employer explanations
- Reliable defense witnesses
- Limited or difficult-to-prove damages
- Individualized facts undermining group claims

Good evidence doesn't just help at trial. It changes settlement leverage.

WHEN ONE EMPLOYEE BECOMES A HUNDRED

The Economics of Group Litigation

One Plaintiff Is a Case. A Hundred Plaintiffs Are a Business Model.

The lawyer asks:

- Who else was affected?
- What connects their claims?
- What evidence proves a pattern?

The real exposure isn't always one employee. It's everyone else.

Nobody Files a Class Action Over \$12.37. Until You Multiply It.

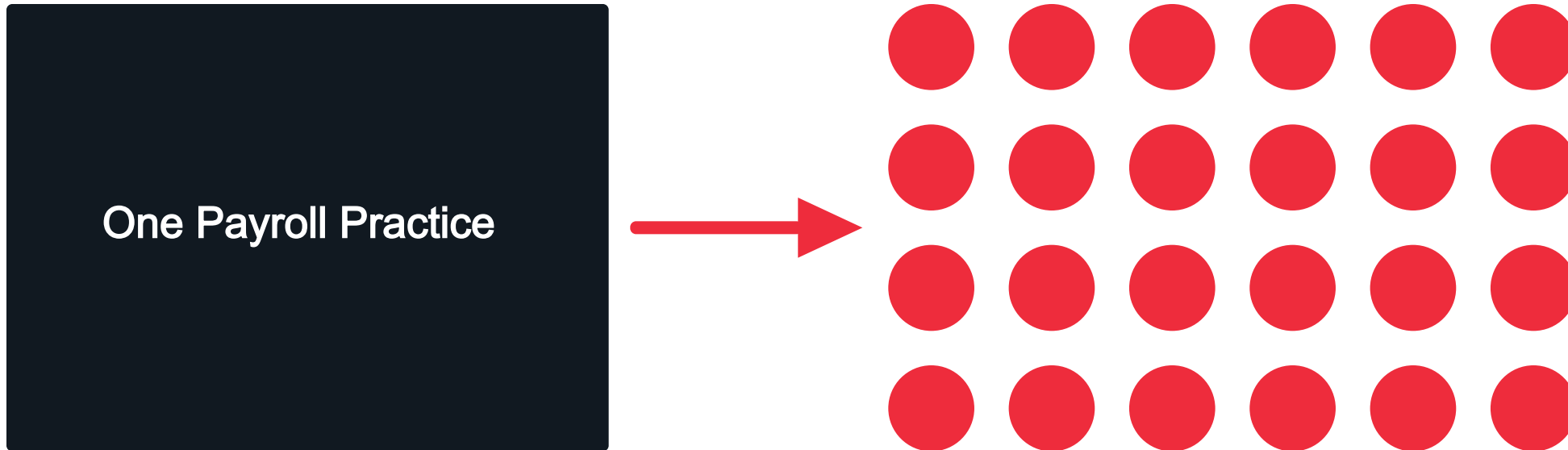
$$\begin{array}{ccccc} \text{\$12.37} & & & & \\ \text{per employee, per} & & & & \\ \text{pay period} & & & & \\ \times & \text{600} & \times & \text{78} & = \\ \text{employees} & & \text{pay periods} & & \\ & & & & \text{\$578,916} \\ & & & & \text{potential aggregate unpaid} \\ & & & & \text{wages} \end{array}$$

Potential aggregate unpaid wages before additional remedies and litigation expenses.

Small mistakes become valuable when they are repeated.

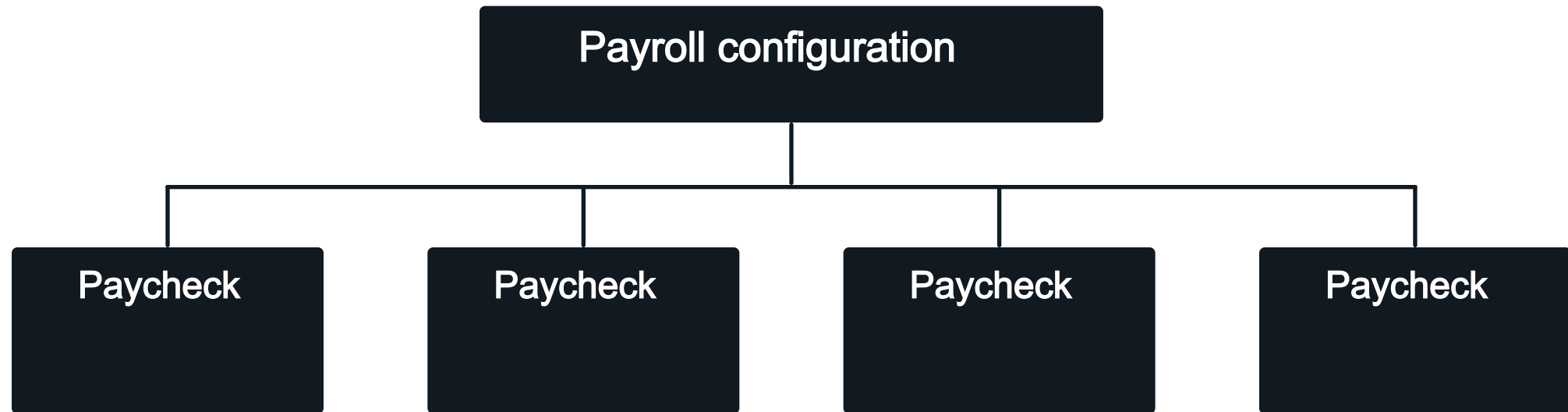
It Happened to Everyone Here.

The five words that change the value of a wage-and-hour case.



One employee's complaint can reveal a company -wide problem.

One Payroll Setting. Hundreds of Potential Claims.



Overtime calculations excluded certain bonuses and performance pay.

One common payroll calculation potentially affected numerous employees.

One payroll error can become a company-wide lawsuit.

One Paycheck. Or 200?

An employee complains about an overtime calculation.

Payroll corrects the paycheck.

But what if the same error affected 200 other employees?

Did we fix the problem or just one paycheck?

Fix the Problem. Not Just the Paycheck.

- **CORRECT:** Pay the affected employee.
- **INVESTIGATE:** Determine who else was affected.
- **PREVENT:** Fix the underlying payroll practice.

The correction isn't complete until you address the cause.

AI IS CHANGING THE ECONOMICS OF LITIGATION

Your Employee May Have a Legal Research Assistant in Their Pocket

- Identify potential legal claims
- Organize chronologies
- Review workplace policies
- Draft administrative charges
- Analyze employer correspondence
- Prepare questions and arguments

The practical barrier to developing a claim is lower than it used to be.

The Employee May Have Consulted AI Before Coming to HR.

AI gives employees a new playbook:

- **Preparation:** Identify potential legal claims before complaining.
- **Strategy:** Plan what to say, ask, and document.
- **Confidence:** Challenge management with AI-generated legal arguments.

They may not have a lawyer. But they have AI and a whole lot of confidence.

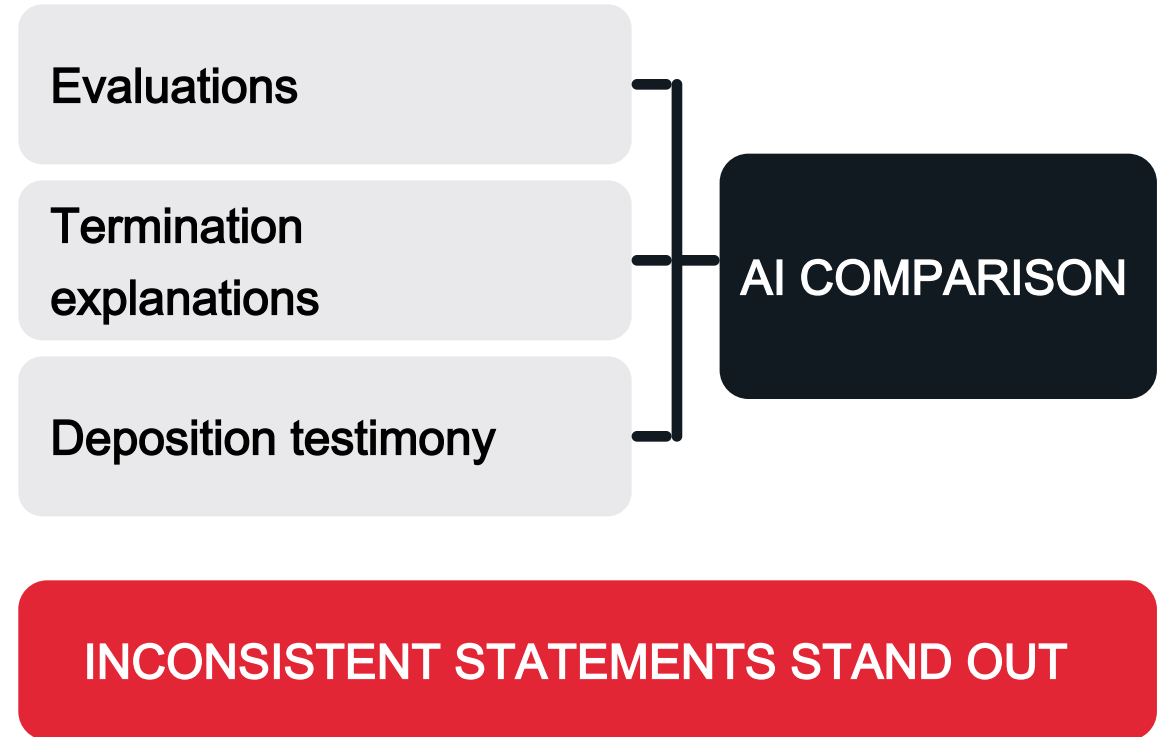
No Lawyer? That Doesn't Necessarily Mean No Lawsuit

- Draft discovery requests
- Prepare motions
- Analyze documents
- Compare testimony
- Identify inconsistencies
- Develop repeated arguments

A case does not have to be economically rational for the plaintiff to become expensive for the employer.

AI Rewards Inconsistency.

- Performance evaluations
- Disciplinary records
- HR correspondence
- Termination explanations
- Agency position statements
- Deposition testimony



Consistency in the employment record has never been more important.

**MAKE YOURSELF A
LESS ATTRACTIVE
DEFENDANT**

What Would a Plaintiff's Lawyer Find in Your Files?

- Manager texts, payroll edits, performance reviews
- Complaints, HR investigation notes, termination documents
- Treatment of comparable employees
- Consistent story, or the plaintiff's case?

The best litigation evidence is usually created long before litigation begins.

Find the Problem Before the Plaintiff's Lawyer Finds It

- Review high-risk classifications
- Test payroll calculations
- Audit timekeeping exceptions
- Review tip pooling and hospitality practices
- Examine complaint and retaliation procedures
- Train supervisors on documentation and pay practices

Identify and correct repeatable problems before they become group -wide claims.

When the Demand Letter Arrives, Don't Make the Case Worse

- Notify HR and legal. Preserve records. Suspend deletion where required.
- Identify affected employees. Assess facts and exposure.
- Avoid retaliation or interference. Choose a response strategy.

A prompt, organized response preserves options and reduces unnecessary expense.

A Simple Story. A Bad Document. A Lot of Employees.

SIMPLE STORY +

OBJECTIVE EVIDENCE +

INCONSISTENT EXPLANATIONS +

REPEATABLE PRACTICE +

MEANINGFUL DAMAGES

= A CASE WORTH PURSUING

The strongest plaintiff -side cases are often the easiest to explain.

Three Questions to Ask Before Monday Morning.

1. Would any employee be surprised to learn that their performance was supposedly unacceptable?
2. Are there manager texts, group chats, or recordings that HR has never seen?
3. Could one employee's complaint reveal a practice affecting an entire department?

The best time to evaluate your case like a plaintiff's lawyer is before there is a plaintiff.

Make Yourself a Less Attractive Defendant

1. Think Like Plaintiff's Counsel.
 2. Document Before the Dispute.
 3. Look for the Bigger Problem.
 4. Assume the Evidence Will Surface.
 5. Respond Early. Respond Strategically.
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You can't prevent every lawsuit. You can avoid making it a good one.



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Questions?



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Thank you.