

SETTLE-OR-TRY DECISION WORKSHEET

A structured record for evaluating harassment trial risk

HOW TO USE

Complete this with legal, HR, communications and business leadership. Scores organize discussion; they do not replace judgement. A single gating issue may outweigh the total.

MATTER SNAPSHOT

Matter/Forum	Claim, jurisdiction, court or agency
Claimant	Role, tenure, reporting line and key protected activity
Accused	Role, authority, visibility and business importance
Alleged Conduct	Nature, frequency, duration and protected basis
Demand/Exposure	Current demand, insurance, fee posture and business constraints
Publicity Status	Known coverage, threatened disclosure and internal awareness
Decision Date	Next milestone and required authority

GATING QUESTIONS

- ☐ Is there missing, deleted or inadequately preserved evidence?
- ☐ Could the accused be treated as the employer's proxy or have taken a tangible employment action?
- ☐ Does the company's public position conflict with the known or likely evidence?
- ☐ Are there credible prior complaints, retaliation allegations or inconsistent comparator decisions?
- ☐ Does the claimant possess unrelated information that creates regulatory or enterprise risk?
- ☐ Is a key company witness materially dishonest, unlikeable or unprepared to testify?

If any answer is yes, identify the owner, immediate containment step and effect on settlement authority before relying on an aggregate score.



A. LEGAL AND EVIDENTIARY POSTURE

Criterion	Low risk/strength	High risk/weakness	Score 1-5
Actionable conduct	Conduct is isolated, not protected-basis related or legally insufficient.	Evidence supports severe or pervasive protected-basis conduct.	
Employer liability	Strong prevention, reporting paths and prompt correction.	Proxy/supervisor risk, tangible action or ineffective response.	
Admissible proof	Key facts are corroborated by credible witnesses and records.	Case depends on inference, missing evidence or inadmissible material.	
Preservation	Holds and collections were timely, complete and defensible.	Deletion, device gaps or inconsistent collection creates a cover-up story	
Investigation	Independent, timely, scoped and explainable.	Delayed, conflicted, incomplete or apparently predetermined.	

B. WITNESS AND NARRATIVE RISK

Criterion	Low risk/strength	High risk/weakness	Score 1-5
Claimant credibility	Material inconsistencies undermine the core allegation.	Claimant is consistent, relatable and well corroborated.	
Accused credibility	Accountable, consistent and believable under pressure.	Defensive, minimizing, dishonest or powerful in ways jurors may resent.	
Company witnesses	HR, investigator and leaders explain decisions clearly.	Witnesses conflict, hide behind policy or appear to protect rank.	
Defense theme	Simple, morally acceptable and earned by the evidence.	Technically correct but emotionally implausible or overly aggressive.	
Bad facts	Can be acknowledged and explained without changing liability.	Create anger, betrayal or a simple plaintiff narrative.	

C. FORUM, DAMAGES AND TRIAL ECONOMICS

Criterion	Low risk/strength	High risk/weakness	Score 1-5
Judge and venue	Favorable law, disciplined trial management and manageable jury pool.	Unfavorable rulings, high verdict environment or hostile local narrative.	
Damages	Limited economic loss and defensible emotional-distress record.	Large back/front pay, punitive exposure or compelling distress proof.	
Fee exposure	Early resolution posture and limited fee-shifting risk.	Long runway, statutory fees and compromise-verdict risk.	
Trial cost	Manageable spend and limited leadership distraction.	Extensive ESI, experts, travel, executive time and operational disruption.	
Appeal/post-trial	Strong record and manageable precedent risk.	Novel issues, weak preservation record or costly post-trial exposure.	

D. ENTERPRISE AND REPUTATIONAL EXPOSURE

Criterion	Low risk/strength	High risk/weakness	Score 1-5
Media	Low-interest matter with a stable, process-focused response.	Salacious facts, visible parties or a persistent public narrative.	
Employees	Limited internal disruption and confidence in the process.	Morale, retention, organizing or internal leak concerns.	
Customers/Investors	Low connection to brand, leadership or market trust.	Consumer-facing brand or material investor/partner sensitivity.	
Precedent	Resolution can be contained without encouraging weak claims.	Settlement or verdict may influence multiple matters or governance.	
Business objective	Litigation path advances a clearly defined objective.	The legal strategy conflicts with confidentiality, speed or stability goals.	

DECISION OPTIONS

Path	Best when	Primary risk	Conditions/authority
Early resolution	Confidentiality, speed and disruption avoidance have high value.	Overpaying before facts mature; precedent or copycat concerns.	
Mediation after targeted discovery	A small number of facts or witnesses drive value.	Costs and publicity continue while the record develops.	
Defend through summary judgment	Legal threshold is strong and the necessary record can be built.	Discovery may worsen witness, process or reputational risk.	
Prepare for trial	Demand is unreasonable and the defense story is credible and provable.	Verdict, fees, publicity, executive time and appeal exposure.	



DECISION RECORD

Recommended path	Recommendation and settlement/trial authority
Why this path	Three most important reasons
Required actions	Immediate owners and dates
Facts that change it	Evidence, ruling, demand or publicity developments that trigger reconsideration
Decision makers	Participants, approvals and dissenting views
Review date	Next scheduled reassessment



Important

This resource is for educational purposes and is not legal advice. Applicable federal, state and local law, court rules and organizational obligations vary. Consult counsel for the specific matter.

KEY CONTACT



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Selected Sources

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Faragher v. City of Boca Raton, 524 U.S. 775 (1998); Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998).

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