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# LABOUR AND EMPLOYMENT LITIGATION

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MINI-ROUNDTABLE

# LABOUR AND EMPLOYMENT LITIGATION



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**Okem Nwogu** is an applied economist specialising in the economic and statistical analysis of data in connection with litigation matters. He provides consulting services to organisations across a variety of industries, including banking, business, healthcare, information technology, government and insurance. He has deep expertise in data analytics, the management of large sets of data from disparate sources, and the use of technology to design complex financial, economic and statistical models.

**CD: Could you summarise recent changes in labour laws and emerging issues in employment litigation? How are these trends influencing the future of employment litigation?**

**Boedeker:** Labour laws are rapidly evolving, with key changes focused on flexible work arrangements, paid leave and worker protections in the gig economy. Notably, many jurisdictions are introducing more robust protections for remote workers, ensuring that employers provide a safe work environment, pay for home office expenses and establish clear work-hour policies. Additionally, there is a growing focus on pay equity, especially as companies face pressure to disclose salary ranges. These shifts are pushing employers to rethink workplace flexibility and inclusivity, leading to an increase in lawsuits related to misclassification of workers – contractors versus employees – and workplace accommodations. Recent developments in employment law in 2024-25 reflect significant legislative changes at both UK and US federal and state levels, aiming to expand worker protections, clarify employer obligations and adapt to evolving workforce needs.

**Nwogu:** Emerging issues in employment litigation are constantly evolving due to changes in workplace dynamics, technology, regulatory frameworks and

social expectations. Remote work challenges, the impact of artificial intelligence (AI)-based employment decisions, social media and employee speech issues, as well as employee privacy and data security issues, are at the technology-related forefront. Some of these areas, such as lawsuits under biometric and privacy laws and for excessive surveillance or lawsuits over algorithm-driven employment decisions, are uncharted territory. Furthermore, in the US, we are currently experiencing a strong diversity, equity and inclusion backlash. Lastly, we see possible legal issues arising in the employee mental health area.

**CD: What are the most common types of employment disputes? How do these disputes typically affect the relationship between employers and employees?**

**Nwogu:** Most employment disputes typically fall into specific categories. When employees believe they have been fired unjustly, often related to retaliation, discrimination or violation of contract terms, wrongful termination lawsuits will ensue. Just like wage and hour disputes which include issues like unpaid overtime, misclassification of employees, or unpaid minimum wages, wrongful termination suits are often filed as class actions. In the era of the gig economy, classification issues over the status as an employee versus an independent contractor

are on the rise again. Retaliation may not only be an issue in wrongful termination cases but it can also lead to a ripple effect of adverse financial impacts for employees who have reported legal violations and turned whistleblowers.

**Boedeker:** There are a variety of potentially negative impacts on employer and employee relationships. Disputes, especially those involving discrimination, harassment or retaliation, can seriously damage trust. When employees feel unsupported or undervalued, employers may become more guarded or defensive. Even if only one employee is directly involved in a dispute, others may feel demoralised or anxious. Moreover, a perception of unfairness or inconsistency can spread quickly among teams. Employees involved in or affected by disputes may resign or disengage, and talented employees may leave if they see unresolved or repeated conflicts. Legal disputes can tarnish internal and external perceptions of the company. A culture of fear or silence may develop if disputes are mishandled. Time and resources spent managing the dispute take attention away from daily operations. However, if managed well, disputes can prompt revisions to policies, better training and stronger leadership accountability. Transparent and fair

resolution processes can build a culture of open dialogue. When employees see issues addressed fairly, it can increase confidence in leadership and human resources. Some disputes lead to clearer expectations, mutual understanding or even reconciliation.

**“In the era of the gig economy, classification issues over the status as an employee versus an independent contractor are on the rise again.”**

*Okem Nwogu,  
StoneTurn*

**CD: What are the key labour laws and regulations governing employment practices in your jurisdiction? How do these laws impact oversight of employment practices?**

**Nwogu:** In the US, several laws govern employment practices. The Fair Labor Standards Act regulates minimum wage, overtime pay and child labour. Title VII of the Civil Rights Act

prohibits discrimination based on race, colour, religion, sex or national origin. The Americans with Disabilities Act protects employees with disabilities from discrimination and requires reasonable accommodations. The National Labor Relations Act protects employees' rights to unionise and engage in collective bargaining. These laws are meant to ensure that workers' rights are protected while providing a framework for employers to manage and oversee employment practices effectively. Non-compliance can result in significant legal consequences and reputational damage.

**Boedeker:** Employment laws significantly shape how organisations oversee and manage their employment practices. These laws establish minimum standards employers must follow and influence everything from hiring to termination, creating a legal framework that ensures accountability, fairness and compliance. Employment laws act as both a floor and a framework, compelling employers to establish robust oversight over their hiring, pay, treatment, safety and discipline practices. Noncompliance is not just a legal risk – it is a governance failure that can harm reputation, morale and business continuity.

### **CD: What are the main steps involved in employment litigation?**

**Boedeker:** Employment litigation involves a detailed process characterised by various stages, from pre-litigation discussions to potential appeals.

**“Noncompliance is not just a legal risk – it is a governance failure that can harm reputation, morale and business continuity.”**

*Stefan Boedeker,  
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Each step plays a significant role in ensuring fairness, allowing both parties to present their case and seek resolution under the law. Understanding these steps is vital for navigating employment disputes, ensuring informed decision making and advocating effectively for rights in the workplace. Before formal litigation begins, parties often engage in pre-litigation discussions to resolve disputes internally, often through human resources or mediation. If resolution fails, the employee – plaintiff – typically initiates litigation by filing a complaint in

a relevant court. Once the complaint has been filed and served, the defendant typically responds to the complaint through an answer or a motion to dismiss, arguing that the complaint fails to state a valid legal claim, effectively seeking to dismiss the case before progressing.

**Nwogu:** A crucial stage is discovery, where both parties gather evidence to support their claims or defences. Interrogatories, requests for production and depositions are important tools during the discovery phase, aiming to promote transparency and reduce surprises during trial. After discovery, either party may file a motion for summary judgment, requesting the court to rule in their favour without a trial. This motion asserts that the evidence compiled during discovery shows there are no factual disputes requiring a trial or that one party is entitled to a specific legal remedy based on the undisputed facts. If granted, summary judgment can resolve the case without the need for a trial. As the case approaches trial, pre-trial proceedings may occur and the parties may engage in negotiations to explore settlement opportunities, possibly facilitated by the court. Should the case proceed to trial, both parties present their arguments before a judge or jury. If a party is dissatisfied with the trial verdict or the outcome of post-trial motions, they may pursue an appeal.

### **CD: How important are documentation and evidence during the litigation process?**

**Boedeker:** Documentation and evidence are absolutely critical during the employment litigation process. They often determine the outcome of a case – whether it is settled, dismissed or proceeds to trial – because they provide objective proof of what actually happened, when and how. Without clear documentation, it becomes a ‘he said, she said’ situation – judges and juries prefer written, dated evidence. Missing required records on the defendant’s side can result in automatic liability or fines – even without proof of intent – while missing records on the plaintiffs’ side can weaken or undermine their case. In summary, strong documentation can prevent litigation, defend against it or resolve it favourably. Weak or missing records often lead to unfavourable outcomes, including settlements, judgments or regulatory penalties.

### **CD: Besides litigation, what dispute resolution mechanisms are available to parties in conflict? What are the advantages and disadvantages of these mechanisms compared to litigation?**

**Nwogu:** There are a few alternative dispute resolution (ADR) methods to litigation. The simplest

one is direct discussion between employers and employees to reach a mutual agreement, which is the least formal and potentially the quickest. The downside is that it may lack enforceability without legal oversight. Mediation involves a neutral third party to facilitate discussions and help reach an agreement to voluntarily settle a case. Settlements in mediation are confidential and less adversarial but may not always lead to a resolution because mediators cannot enforce solutions – agreements need to be formalised for legal enforceability. Arbitration is a more formal process where a neutral arbitrator or a panel makes a binding decision after evaluating the evidence and arguments presented by both parties. Generally, arbitration is much quicker than litigation, as it avoids lengthy court procedures. Arbitration proceedings are usually private, protecting proprietary or sensitive information.

**Boedeker:** ADR mechanisms play a critical role in resolving conflicts. Each mechanism – negotiation, mediation and arbitration – has distinct characteristics, advantages and limitations that influence their applicability based on the nature of the dispute, the relationship between parties and the desired outcomes. Understanding these mechanisms allows individuals and organisations to choose the most appropriate method for resolving disputes, fostering efficient, fair and sustainable resolutions in various contexts. As legal landscapes and societal

norms evolve, the integration of these mechanisms into dispute resolution practices will remain vital for effective conflict management.

**CD: What essential advice would you give employers to minimise the risk of litigation? How can proactive measures help create a fair and compliant workplace?**

**Boedeker:** Employment lawsuits can be costly and disruptive for organisations. Employers must proactively implement strategies to mitigate the risk of legal disputes arising from employee grievances, including clear policies, effective communication, compliance with laws, training, diligent documentation and a robust dispute resolution framework. By adopting these strategies, fostering a positive workplace culture, and ensuring employees feel valued and heard, employers can create an environment conducive to engagement and productivity while minimising legal liability. It is important that employers take a proactive, structured approach to compliance, communication and culture.

**Nwogu:** Rather than reacting to problems after they arise, employers should have a strategy involving proactive steps to prevent legal issues, promote trust and strengthen company culture.

Staying ahead of regulatory changes, conducting internal audits and implementing preventive policies will help ensure compliance with prevailing laws and regulations. Promoting fair treatment and transparency, fostering a speak-up culture, focusing on organisational values and explaining and managing expectations will help improve employee morale and decrease turnover, thus increasing productivity.

**CD: How do you see the labour and employment litigation landscape evolving in the coming months and years? What emerging trends might lead to new types of employment disputes?**

**Nwogu:** As the 21st century progresses, the nature of work and employment is continually transforming. The rise of remote work, advances in technology and heightened awareness of social justice issues are reshaping the employment landscape. As a result, employment litigation is likely to become increasingly complex, requiring employers and legal professionals to navigate novel challenges. Understanding these emerging trends is essential for effective dispute management and anticipation of future litigation risks. The future of employment litigation is poised to evolve significantly in response to shifts in workplace dynamics, technological advancements, legislative

developments, and heightened awareness of employee rights and mental health. To navigate this changing landscape successfully, employers and human resources professionals must implement proactive strategies, embrace emerging technologies and stay informed about legal requirements. By adopting these practices, organisations can minimise litigation risks and foster a healthier, more equitable workplace landscape.

**Boedeker:** As AI becomes increasingly integrated into the workplace – especially in hiring, monitoring and management – it is not hard to predict that AI is set to become a major source of new employment disputes. The legal and ethical challenges surrounding its use are rapidly evolving and there are numerous discussions surrounding algorithmic bias, lack of transparency, and the use of inaccurate or irrelevant data. A question that requires serious considerations is how employers can justify decisions without human review or transparency. I also foresee a large number of emerging legal and ethical questions. Who is liable – the vendor or the employer? How can employees challenge AI-based decisions? Whose duty is it to audit or explain AI behaviour? As of today, there are no answers. **CD**