

Labor Letter

Don't Believe Everything You See On TV

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While many of you have a wealth of experience with litigation – probably more than you want – other readers have been fortunate enough to go years or even decades in business without being part of a lawsuit. Some have recently moved into a new position that puts you front-and-center for lawsuit-related discussions. Those who are new to lawsuits are frequently surprised by the reality of the law, our court system, and litigation in general.

Of course, most people understand that movies and TV shows are not accurate reflections of reality. Nevertheless, if you are one of the "newbies," media depictions and things that you hear from friends-of-friends may influence your expectations of what will happen in a lawsuit. Following are a few facts that will help you prepare for the reality of litigation.

1. Cases Aren't Resolved In 60 Minutes

Naturally, no one really expects lawsuits to magically vanish within an hour, but you might be surprised by the slow pace of litigation. Don't be shocked if a lawsuit lingers for a year or more from the time of filing – and don't be surprised if the lawsuit isn't filed until many months or even years after the events that are at issue in the lawsuit. (There are time limits for bringing lawsuits, but it is not unusual for employees or former employees to wait until near the end of the allowable time to file a lawsuit, for any number of reasons.)

Of course, some cases are resolved more quickly, and others drag on much longer. But virtually none are wrapped up as quickly, or as neatly, as on TV.

2. Computers Do Not Give Quick Answers To All Our Questions

While TV detectives can identify every person who lives in a certain city and owns a red truck within seconds, and can contact long-lost relatives or coworkers within a matter of minutes; the real world doesn't work that way. It takes time – and often a good bit of effort – to locate information and documents that relate to the case. Some information we can never get. Employers are not entitled to every document or piece of information they can think of (and neither are employees) – and there are frequently legally-required timelines, which may be pushed back by extensions or delays. Witnesses may move, or ignore telephone calls. While the internet does make much research simpler and faster than it once was, it isn't magic.

3. We Need Your Help

There are deadlines in litigation – and it is our responsibility as lawyers to make sure those deadlines are met, or that we get extensions (when possible and appropriate). Frequently, this means that we will ask you for documents, information, signatures – and your time – on a timeline that may or may not be convenient for you. We may need you to attend mediations or depositions or court appearances. We will need to meet with you, or at least talk with you, to discuss the case.

Although we do our best to minimize the disruptions to your work, and maximize the time we give you to respond to our requests, we do not always have much control over the timing of deadlines and events. We understand that you have a business to run – but we can't do our job without your help.

4. Your Case Probably Won't Go To Trial

Your initial reaction to the lawsuit may be insistence that the former employee's claim has no merit whatsoever – and determination to fight to victory at trial. While this may be the appropriate strategy, and is certainly the best approach in some cases, this takes a long time (see #1 and #2), involves a lot of hassle (see #3), costs anywhere from a fair bit to a lot of money, and may not be the best plan for your case.

The vast majority of cases are resolved without trial – typically by either motion and a judge's order or by settlement. Obviously, the strategy and goals will vary for each case, but you should try to understand – early on – that your case may not end with a judge entering a judgment.

5. There Are Very Few "A-ha" Moments

Don't expect the former employee on the other side of the case to suddenly tell your version of the truth at deposition or on the stand at trial, or admit that he or she really doesn't have a claim and made the whole thing up. Although this can happen, it is exceptionally rare. Most of the time, employees stick to their stories, and the company's witnesses stick to the company's story – sometimes with little overlap between those two views of reality. The best you can reasonably hope for most of the time is that some employees will admit to some weaknesses in their claims. And that makes your case better.

Litigation is almost always stressful, but is much more manageable if you understand the process and have a roadmap for the case. Talk to your lawyer, ask questions, and keep in mind that you can't believe everything you see on TV.