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Pilot Program Introduces Protocols for Employment Cases

A pilot program for the federal district courts introduces new pretrial procedures for certain types of federal employment cases, encouraging more efficient and less costly discovery.

The pilot in the Southern District of New York is an outgrowth of the 2010 Conference on Civil Litigation at Duke University. Conference attendees supported case-type-specific "pattern discovery" as a way to stem unnecessary cost and delay in the litigation process and agreed that employment cases would be a good place to start.

"Employment cases are a significant percentage of the federal docket," Judge John Koeltl of the Southern District of New York explained. "It is also an area where you have a group of lawyers who, because they regularly handle these types of cases, know there are ways to handle them more efficiently."

Koeltl, who helped organize the Duke Conference, volunteered to lead a nationwide committee of attorneys to rethink discovery in employment cases. The protocols his committee developed for the pilot program create a new category of information exchange, replacing initial disclosures with initial discovery in employment cases alleging adverse action.

In any employment case, there is a core of information that will be exchanged in the course of the litigation. But, typically, the production of that information is delayed through document requests and interrogatories, which are then subject to objections. Then, it takes time to resolve the objections.

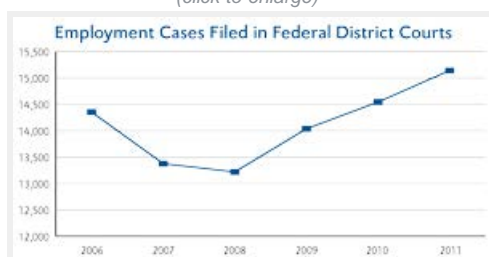
"The employment protocols cut through the cost and the time delay by getting the information produced at the outset."

—Judge John Koeltl

discrimination in hiring, harassment or hostile work environment, or violations of the Fair Labor Standards Act, the Americans with Disabilities Act, the Family Medical Leave Act, or the Employee Retirement Income Security Act.

"It took over a year of really intensive work by both plaintiff and defendant lawyers to craft a set of realistic protocols," said Koeltl. "They should cut several months off the typical case and make the litigation process efficient for both sides."

(click to enlarge)



Employment Cases Filed in Federal District Courts

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Any district judge may choose to adopt the protocols, which do not require changes to local rules. A standing order for their implementation in a pilot project, as well as a model protective order, is available online at fjc.gov under Educational Programs and Materials.

The Judicial Conference Advisory Committee on Civil Rules encourages judges to join the pilot, and last month, Judge Jeremy Fogel, Director of the Federal Judicial Center, sent a memo to all chief district judges, advising them of the availability of the employment protocols. The FJC will be evaluating the pilot project and it is hoped that this model can be used to develop protocols for other types of cases. Judges adopting the protocols are asked to inform FJC senior researcher Emery Lee so that their cases may be included in the evaluation.

“An impetus behind the Duke Conference was the protests from clients who said the costs of litigation have become too great and may deter the fair resolution of the case,” said Koeltl. “The Initial Discovery Protocols pilot program, through the early exchange of information and documents, should help frame the issues to be resolved and lead to more efficient and targeted discovery.”



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