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ATTORNEYS AT LAW

HOW TO CHOOSE AN EMPLOYMENT LAWYER

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INTRODUCTION

You're reading this because you or someone you know has been fired, harassed, discriminated against, or in some other way mistreated by an employer. You are wondering what to do next. What are my rights? What can my employer do, and what can't it do? More important, what can I do about the situation? If you are considering hiring a lawyer, you may already have talked with your boss or supervisor, or your HR (Human Resources) department, and you aren't satisfied with the answer you got. So you are thinking you need to talk with a lawyer, and you want to know how to go about choosing the best lawyer for your situation. Should you call the lawyer who drew up your will, or who handled your automobile accident, or your parents estate? Should you ask a friend if they have any ideas? Should you contact your local bar association? Should you start surfing the internet, or leafing through the yellow pages?

And once you decide which lawyer to call, how will you know if she or he is the best lawyer for your particular situation? What questions should you ask? What questions will the lawyer ask you? How much will it cost, and how much should it cost? How will you know if this lawyer has the experience necessary to give you proper advice and to handle your issues properly?

Hiring an attorney for an employment issue is not like hiring an auto mechanic for your car, or a house painter or a plumber. There are only so many ways to repair a car, paint a house, or fix a clogged toilet, and as long as your person gets the job done at a reasonable price, you will be happy. But a lawyer is different—and an employment lawyer is different from other lawyers. If an estate lawyer prepares a will properly, so that it carries out the wishes of the decedent and the tax consequences are as favorable as possible under the circumstances, then the client will be happy. If a criminal defense attorney gets a DUI charge dropped or reduced, the client will be happy. But how do you know if an employment lawyer has done a good job for you? What if she can't save your job? What if he tells you there's nothing you can do to keep it? What if the lawyer tells you that you should accept the small severance package your employer is offering and that your case isn't worth filing a lawsuit? Or what if the lawyer says she'll write a letter for you to tell the employer she's going to sue him if he doesn't start treating you better? How will you know if this is good advice, or very bad advice? How will you know if this lawyer knows what she's talking about?

Employment law is a very specialized area of the law. There are many employment laws, procedures, rules, and customs that a lawyer will not understand or know about unless he or she has a lot of experience in employment law. And, different states have different laws and different procedures. An Ohio employment attorney, for example, may not understand the laws and procedures in Indiana, Michigan, Pennsylvania, or Kentucky. If you or someone you know has an employment problem, you need to know how to go about finding the best lawyer possible to help save your job, if possible, or to protect your rights and obtain whatever compensation you are entitled to. That's what this book is intended to help you do.

PART ONE

Do I Need A Lawyer?

Many employees aren't sure if they need to consult an attorney, and the many questions they have about cost and other things may keep them from searching for one. Some people wait too long to consult a lawyer, until after events have occurred at their job that will make it more difficult or even impossible for a lawyer to help. The truth is, you won't know for sure whether you need a lawyer until you've talked directly with a lawyer about your situation. Only a competent and experienced employment lawyer, who takes the time to listen to your story, will be able to tell you what a lawyer can or cannot do for you.

Here are some questions that may help you decide if you need a lawyer:

- Have I just been fired for reasons that seem unfair?
- Have I been passed over for a promotion or assignment that I felt I should have received?
- Am I being harassed at work because of something about me that I can't change—for example, my gender, my race or national origin, my health or disability, my sexual orientation, my age, or my religion?
- Have I been put on a "performance improvement plan" and threatened that if I don't successfully complete it I will be terminated?
- Did my employer start treating me differently and less favorably after I took FMLA (Family and Medical Leave Act) leave?
- Did my employer start treating me differently and less favorably after I filed a Workers Compensation claim?
- Was I fired or treated less favorably after I became pregnant?
- Am I an hourly employee who is working more than 40 hours per week but not getting paid overtime pay?
- Am I being asked to sign a non-compete agreement in order to keep my job, or to get a new job?
- Am I leaving a job where I had to sign a non-compete agreement and wondering if the non-compete agreement is enforceable?
- Is my employer paying me less money than other employees who do the same job and have the same amount of seniority at the company?
- Have I just been terminated and offered a severance package if I will sign a release promising to never sue my employer?

- Was I fired or treated less favorably after I reported wrongful or illegal conduct by my employer?
- Are certain groups of employees treated better than other groups?—for example, do the best assignments or promotions or raises seem to go to men instead of women, to younger instead of older employees, or to members of a certain race or nationality?
- Did my boss or supervisor start treating me differently after I refused to go out with him or her?
- Is my employer starting to ask me when I plan to retire, or how long I'm planning to work, and does it make me feel like they think I'm getting too old to stay on the job?
- Was I fired or disciplined for reporting safety violations?
- Was I fired or treated differently because of a serious health problem, or because I had to take time off work to care for an ill family member?

PART TWO

How Much Will It Cost to Consult With a Lawyer?

Initial Consultation On Phone Or In Office

First, you should understand that a reputable employment law firm will have someone talk to you over the phone free of charge. A knowledgeable employment attorney or paralegal will know the relevant questions to ask you to ascertain whether or not they can help you at all. You may discover that the lawyer or paralegal is asking you questions you did not think were important, or that they don't seem to be interested in some of the facts that you think are most important. Don't be put off initially by the lawyer's questions. If he knows what he's doing, he is asking the questions that will help him decide whether he can help you. You may not understand why they are important because you don't understand the law. That's okay—that's why you're consulting a lawyer!

The lawyer might tell you frankly over the phone that you don't have a case. Depending on your situation, it may take 5 minutes or 25 minutes for the attorney to get enough information to decide whether or not he can help. Remember, this is not like an automobile accident case, or a DUI offence or a divorce—lawyers who handle that type of case can agree to represent you without knowing a whole lot of facts first. But an employment attorney will have to dig deeper to know whether or not there is anything she can do for you.

After your initial phone conversation, the attorney might ask you to come to the office to discuss your situation in more detail before agreeing to take your case or deciding whether to represent you. Sometimes a situation is so complex that the attorney needs to review

documents, meet with you, and ask you more questions before he can decide whether you have a claim. Sometimes attorneys charge a fee for these in-office consultations, especially when they are taking a significant amount of time to understand your situation and to give you advice about how to proceed. It should be clear up-front whether you will be charged a fee for a consultation. The attorney should tell you what, if any, fee will be charged for an in-depth consultation, and if he doesn't tell you, you should ask.

Fees

If the lawyer believes helping you will require more than just a quick piece of advice, she will expect to be paid for her services. The amount and type of the fee will depend on the type of employment problem you have, and whether or not litigation appears likely. Following are some of the more common issues that clients bring to employment lawyers and how lawyers might charge for them.

Hourly Fee

Most employment lawyers have a set fee per hour that they charge for certain work. At the end of the engagement, you will owe the lawyer's hourly rate, times the number of hours spent on your case. The hourly fee might be appropriate when the task the lawyer is performing is limited—for example, writing a letter and negotiating a higher severance package for clients who have been terminated. Some clients have complicated situations that require a lot of the attorney's time to understand and give advice on, and it is common and appropriate for an attorney to charge by the hour for in-depth consultations involving such things as non-compete agreements, executive employment contracts, and stock option agreements. The lawyer should be able to give you at least a ball-park estimate of how many hours he thinks it may take to complete the task.

Flat Fee

A flat fee is a set amount of money the lawyer will charge to do something for the client. For example, if you have a complex situation and the lawyer asks you to come to the office, perhaps with documentation, to discuss the issues in more detail, he may ask for a consultation fee of a certain amount of money. If you have an employment contract that you want the attorney to review, he may quote you a flat fee for reviewing the document and discussing it with you. In general a flat fee may be appropriate when the work is limited and not particularly unique or difficult. However, the attorney may be willing to do more complex tasks for a flat fee, depending on the circumstances.

Contingent Fee

A contingent fee is a fee that depends, or is "contingent," upon the outcome the lawyer achieves. The most common type of contingent fee case is the personal injury case, where the lawyer takes a percentage of any recovery obtained for his injured client. If there is no recovery, then no fee is owed. But contingent fees are used in many other types of case, including employment cases. In contingent fee arrangements, the client and the lawyer share

the risk that the outcome may not be good. If the client loses the case against his employer and receives no money, then he does not owe the attorney any fee, and the attorney had done all of the work for nothing. On the other hand, if the case is successful, then the lawyer gets a fairly large percentage of the recovery as his fee—commonly one-third to forty percent of the recovery, sometimes more, sometimes less, depending on the circumstances.

A contingent fee is the only way most people can afford litigation. If the lawyer files a lawsuit on your behalf, the time he spends on the case begins to mount quickly, and most people would be unable to afford the cost on an hourly fee basis. Contingent fees make it possible for ordinary people to bring suits against employers and others who have harmed them or violated their rights.

The type of fee you agree to pay an employment lawyer will depend on what the lawyer needs to do for you, and what you negotiate with the lawyer. Don't hesitate to ask for a certain kind of fee if you are not comfortable with the one the lawyer suggests, and to ask all the questions you have about how the fee will be calculated, what the attorney estimates it may total, and so forth. For example, an attorney may be willing to negotiate a higher severance package for you on a contingent fee basis, or for a flat fee, rather than an hourly fee, if that makes you more comfortable.

Bear in mind, however, that every type of fee has its trade-offs. An hourly fee for negotiating a severance package or a quick settlement might be bad if no settlement is reached, or only a low one. On the other hand, if the attorney succeeds in getting you a nice settlement with just a few phone calls, you might be happy you are on an hourly fee basis rather than a contingent one, where the lawyer would get a nice percentage of the recovery for relatively little time spent. Feel free to talk these issues through with the attorney. The attorney should be willing to openly discuss the pros and cons of each fee type with you, and to explain why she may not be willing to use one type or another in your case.

PART THREE

How Do I Find a Lawyer to Consult With?

Direct Referral From Family Or Friends

If you are fortunate enough to have a family member or trusted friend who has used an employment lawyer who they were happy with, that is an excellent place to begin your search. Not only will your friend or family member be able to tell you something about the lawyer and what their experience was like, but the lawyer will have a connection with you that may help you establish a rapport. Remember that every case is different, so don't expect the lawyer to give you the same advice, achieve the same result, or even charge you the same amount. But certainly a referral from a trusted source is the best way to begin your search for an attorney.

Referral From Another Attorney

Next to family and friends, other attorneys probably make the best referral sources for an employment lawyer. If you know an attorney, ask him or her for a recommendation. It may be a casual acquaintance, like another soccer parent you've met, or a neighbor down the street; or it may be the attorney who drafted your will, handled your divorce, or settled an auto accident claim for you. The lawyer may well know a good employment lawyer personally. If not, he can ask his colleagues, check the local bar directories, or otherwise try to identify a competent and well-respected employment lawyer. Lawyers have reputations within the legal community that don't necessarily extend to the general public, so another lawyer may be able to help find an employment lawyer with a good reputation for quality work.

Remember that choosing an employment lawyer is a decision you should make personally, after meeting and speaking with the lawyer. A strong recommendation might help you feel comfortable with your choice, but don't let the recommendation be your choice. You personally must feel comfortable that the attorney you choose is interested in you and your case, will give your case the time and attention it deserves, and understands and is aligned with the specific goals that you have. A lawyer that was great for one client in one situation may not be good for a different client with a different personality in a different situation.

Internet

Internet searches have become the most common way to find a lawyer. Many people with an employment law issue sit down and Google their question before they even think about asking a friend or family member for a recommendation. Even if you've received a recommendation from someone you know, your next move will probably be to pull up the attorney's web site to learn more about her.

Internet advertising is complex and ever-changing. The fact that a certain lawyer or his law firm is first on the first page of your Google or other search-engine search does not mean the lawyer is the best—or even that he is good. The first few spots on a Google search are usually paid advertisements, for which the lawyer has paid Google to be ranked first, second, or third. The lawyers listed down the right side of the page have also paid Google a fee to be listed there. There is certainly nothing wrong with a lawyer paying for advertising, and today all lawyers must advertise if they hope to stay in business. And many of those lawyers who pay for top-spots on internet searches are excellent lawyers. There are also many excellent lawyers who don't pay for a position on Google, and their web sites may be further down the page, or not on the first page at all. The point is simply that the Google ranking does not tell you how good the lawyer is! And they certainly can't tell you whether it's the right lawyer for you.

The non-paid rankings may, however, tell you something about how good the lawyer's web site is—at least in the eyes of Google. A law firm's ranking on Google, after the top, paid-for spots, is the result of a complicated algorithm that Google keeps secret and is constantly changing. A law firm that ranks high on the first page of Google may not be on the first page at all in a few weeks, depending upon a variety of rather mysterious factors that only Google understands

completely. In general, Google likes to see web sites that have a lot of good and useful content for users. So, Google attempts to rank highly those web sites that users may find the most useful, with good information about the subject—in this case, employment law issues. But again, Google has no idea how good the lawyer is—only how “good” the web site is, according to Google’s standards. This means that there are many excellent lawyers who do not rank on the first page of Google, because they have not invested the time and money into creating a web site that can compete with the web sites on the first page. It also means that there could be many mediocre lawyers who rank highly on the first page simply because they have invested in a web site that meets Google’s criteria better than others.

The reality is, however, that many people will not go very far down the list of law firms that pop up on their Google search. Most people stay on the first page, unless they can’t find a lawyer they like there. And most people stay near the top of the first page. That’s just a reality. If a lawyer’s web site appears on the first page of the Google search, at least you know that the lawyer is seriously “in the game” of practicing employment law, and is serious about getting clients to serve. That doesn’t tell you anything about how good a lawyer they are, but it does tell you that they are contenders. From there, you must peruse the web site, read the content, read about the lawyers, their philosophy, and their experience, and decide whom to call to speak with about your situation.

PART FOUR

How Should I Prepare for the Consultation?

Your first conversation with the lawyer will be a “consultation,” even if it’s only over the phone, even if there is no attorney-client relationship established, and even if there is a follow-up meeting to discuss your situation in more detail. In this initial phone consultation the lawyer will need to know a lot of details, some of which may seem irrelevant to you. Employment cases are complex and difficult, primarily because the law is complex, and the specific facts can make all the difference. Therefore, it is important for you to be prepared to provide the attorney with what he needs at the consultation.

Get Right To The Point

Realize that attorneys are busy. She is taking time out of her busy day to talk with you, a perfect stranger, to see if she can help you with your problem. Realize also that she has talked with dozens, hundreds, or even thousands of people about their job problems, many of whom she could not help because the facts and the law would not permit it. Don’t be surprised if the lawyer interrupts you to ask a question, or to redirect the discussion, or to cut short a monologue that is not helpful to the decision she must make. If she is a competent employment lawyer, she knows which facts are important for her to know at this point, and which aren’t. Don’t be offended or impatient. Give the attorney the information she needs, not just

the information that you think is important.

To get right to the point, be prepared to state succinctly what happened, and what you want. Don’t start your “what happened” story ten years ago, when you were first hired. Start with now, and then give the background the lawyer requests. “I was fired yesterday after five years on the job. I want to know if I have a case.” “My boss at work is sexually harassing me and I don’t know what I should do to stop it.” “I didn’t receive the promotion I was entitled to, and I think it’s because I’m a woman. I want to know what I can do about it.” “I signed a non-compete agreement and I want to know if I can work for this new company.” If you begin this way, you have told the lawyer exactly what your question is. Then he can ask you the questions he needs to know to understand whether and how he can help you.

Avoid the temptation to give a fifteen minute history of events before you lead up to the question at hand. The lawyer will immediately wonder where this is going, and will probably interrupt you to ask, “so, what’s the issue—have you been fired? What’s the immediate problem that made you call me?” Help him focus on the real issue by getting right to the point. You’ll have time to fill in the details.

Documents

Have the important documents at hand, whether you are on the phone or in the attorney’s office. Depending on your situation, the lawyer may want to see:

- Employee handbook
- Employment contract or offer letter
- Commission schedule
- Letter of termination
- Written warnings and other write-ups
- Non-compete agreement
- Stock option agreement
- Any other relevant emails, memos, or other documents

Be careful not to take documents from your employer that you are not entitled to take. This may not be immediately obvious, but if you have any doubts, try to consult with a lawyer before taking documents that may be considered confidential by your employer. Many employment lawsuits have been ruined when the employer learns that the employee took or made copies of documents that company policy forbid them to take.

PART FIVE

What Will the Lawyer Want to Know?

We touched on this above in Part Four. The lawyer will want to know what happened, and what you want. He will want to know the details of what happened, and he will have many questions about the facts. Some of the facts he will want to know are:

- Employee handbook
- Where did you work, and how long did you work there?
- What was your salary or wage?
- Were you a manager?
- Who did you report to, and who reported to you?
- How many employees does the business have?
- If you are being harassed, have you reported it to anyone?
- If you were fired, do you have a new job yet?
If not, how hard will it be for you to find one?
- If you were fired, what do you think the real reason was?

This last question is one of the most important ones, and one that many employees don't understand. In discrimination cases, the reason for the employer's decision to terminate an employee makes all the difference. It's not usually enough that the termination seems unfair, or that you weren't given any warning, or that it was because of a "personality conflict" with your boss. Employers in most states, including Ohio and Kentucky, are free to fire employees "for any reason or no reason," as long as it's not an illegal reason. Illegal reasons are generally those that have been declared illegal by the state or federal government. It is illegal to terminate or fail to hire someone on account of her race, gender, disability, age, religion, national origin, and for some other specific reasons that society has decided should be illegal. But it is generally not illegal for employers to fire employees for unfair reasons, or for reasons that may not even be true. If you were fired because you were wrongly accused of stealing, or of not doing your job properly, it may be completely wrong and unfair, but it is not illegal and there is probably nothing a lawyer can do for you.

A good employment lawyer will probe you with questions to see if there may be some hidden reason that you may not be aware of, or to see if you have a claim that isn't immediately obvious. But generally, if you were fired unfairly for reasons that don't have anything to do with your age, race, sex, disability, pregnancy, religion, medical leave, reporting an important safety violation, refusing to do something illegal, or for some other reason that has been declared illegal by a legislative body or the courts, there may not be anything a lawyer can do for you.

In your consultation, your lawyer will quickly get to the issue of the motivation for your termination. If there appears to be no illegal motive, in most instances you will not have a case.

PART SIX

What Should I Ask the Lawyer?

Much of your initial consultation will be taken up with the lawyer's questions to you, but equally important are your questions to the lawyer. Don't be afraid to ask them. This is your career and your livelihood, and you need to be sure that you understand what the attorney can do for you and whether he or she is the right attorney for you. Several questions you should be sure to get answered are:

How much experience with employment law?

It's important to know if the lawyer has a lot of experience with employment law. How long has he been practicing employment law? How much of his practice is devoted to employment law—is it most of what he does, or only a fraction of it? Ask about your specific issue—has he handled sexual harassment cases, FMLA cases, Americans With Disabilities Act (ADA) cases, non-compete cases?

Trial Experience

Be sure to ask about the lawyer's trial experience. It is hard for lawyers to get trial experience these days because so few cases go to trial. But that doesn't mean trial experience is not important. Your attorney will be sized-up and judged by the other side in part by his reputation as a trial lawyer. This is because if the case doesn't settle and proceeds to trial, the lawyer's trial skills and experience can make the difference between winning and losing, and can greatly affect the amount of the jury's award. If your attorney does not have trial experience, the other side won't be afraid to risk going to trial. And if you do go to trial, you will be at a distinct disadvantage if there is an experienced trial lawyer on the other side.

How Will You Be Charged?

The lawyer should bring up this issue, but if she doesn't, you should. You should leave the first consultation with a clear idea of how you will be charged. If it is to be by the hour, you need to know what the per hour rate will be, whether you will be expected to pay monthly or on some other schedule, and an estimate of how many hours the matter may take. You should understand that an estimate from a lawyer is just that—an estimate—and not a bid or a firm price. The estimate may turn out to be very inaccurate. You should discuss with the lawyer any budget restrictions you have so that unexpected costs and fees can be dealt with before they get completely out of hand.

A flat fee, as discussed, is a definite amount for a prescribed service. You will want to be clear

about when the flat fee will be due—at the beginning of the representation, sometime in the middle, or at the end.

A contingent fee is normally a percentage of whatever recovery you receive. The contingent percentage may stay the same, or it may increase to a larger percentage as the litigation progresses through motions to dismiss and to trial.

Costs and expenses are another matter that you need to be clear about. Does the attorney expect you to pay the out-of-pocket costs as you go, or will she bear those expenses and wait to collect them until the case is over? Most employment lawyers will expect you to reimburse them every month for the out-of-pocket costs they incur. You need to ask how much the costs might end up being. Again, this will only be an estimate, but the attorney should explain the types of costs that will be incurred and give you a general idea of how much he expects them to total through the representation.

It goes without saying that the fee agreement should be in writing. Review it carefully and ask the attorney any questions you have about it before you sign it. Attorneys are ethically required to treat their clients with fairness, and the vast majority of attorneys are ethical and would not try to insert something unfair or misleading in their fee agreements. But even ethical agreements can be difficult to understand. Don't be afraid to ask the lawyer any questions you have about the proposed fee agreement.

Who Will Be Working On Your Case?

Sometimes the senior attorney in the firm will meet with you and give the impression he or she will be handling your case, but then you find that an associate attorney is the one doing all of the work. This is a common practice and is not necessarily bad, but you have the right to know exactly who you are going to be working with and what role the senior attorney will have on your case. The lawyer should make it clear to you who will be doing what on your case, but if he doesn't, you should ask.

The reputation of a small law firm is usually based primarily on one or two senior litigators who have a lot of breadth and depth of experience. If your case is not going to warrant the attention of the most experienced lawyers, you have a right to know that up front and to be clear on how the firm will divide the labor and what role if any the most experienced lawyers will have.

At the very least, the lawyer handling your case should regularly consult with the senior attorneys to insure that your case is getting the benefit of their wisdom and experience. The senior attorneys should review the important court filings, especially responses to motions to dismiss, motions for summary judgment, and appellate briefs. In addition, the most experienced litigators should be available for mediations and for arbitrations or trial, to insure that your case is presented in the best way possible.

If it is important for you to have a particular attorney working on your case, you should make that clear up front, and you should have a conversation about whether the firm can accommodate your requests.

What Is The Plan Of Action?

The lawyer should share with you a clear plan of action—how he intends to achieve the results you are seeking. The action plan should make sense to you and be completely aligned with your goals. Will the lawyer begin with a letter to your employer making a demand for money, reinstatement, or an end to unfair treatment? What will the initial settlement demand be? Is the lawyer willing to file an EEOC charge and a lawsuit and take the case all the way through trial if necessary? Or will he want to settle it for whatever the other side is willing to give?

Every case changes complexion as it progresses, and your lawyer may learn things during the course of the investigation and discovery process that make him believe more strongly—or less strongly—in the merits of your case. No matter how much you think you know, and no matter how thorough you are in explaining your version of the facts to the attorney, you will not have a full picture of the case until discovery has progressed and the other side has presented its version of the facts. But the lawyer should be willing to discuss with you a clear game plan in the beginning and explain how each proposed action is going to help achieve your goal.

What Are The Stages Of An EEOC Investigation And A Lawsuit

EEOC Investigation

Filing an EEOC charge of discrimination is fairly simple, but you should ask the attorney if she would draft and file the charge for you if you retain her as your counsel. She should explain to you what happens during the EEOC investigation, how long it might take, how much direct involvement you may be expected to have, and what it means when the EEOC ends its investigation and reaches a conclusion.

Generally, the EEOC takes six months or more to investigate a charge and decide whether or not there is probable cause to believe a violation of law has occurred. In most cases, the EEOC finds “no probable cause.” In practice, a finding of no probable cause makes little real difference—it usually cannot be admitted as evidence in court, and you will receive the same “right to sue” letter giving you the right to file a lawsuit in federal court that you would receive if the EEOC finds probable cause. A finding of probable cause does, however, give you some leverage in settlement discussions with the other side, because the employer's attorneys may assume that if the EEOC can find probable cause then your case may not be completely meritless, and a jury may find in your favor.

After you receive your “right to sue” letter from the EEOC, you will have just 90 days to file a lawsuit, which is another reason to have a lawyer assist you in filing the charge so that he is lined up and ready to go when the 90 day clock begins.

Stages Of A Lawsuit

The attorney should be able to walk you through the various stages of the federal lawsuit—which will span 12 to 18 months or more from the date of filing to the date of trial. She should explain to you the discovery process—written questions, or “interrogatories,” depositions,

motions for summary judgment, trial preparation, and trial. The attorney should stress that it will be important for you to be available and involved when necessary to respond to discovery request, prepare for your deposition, prepare for trial, and do many other things that are essential to successful litigation. Long periods of time may go by when it seems like nothing is happening and you aren't required to do anything. Then, there may be a flurry of activity while your lawyer prepares to take depositions and prepares you to give your deposition.

Your lawyer should be willing to keep you apprised of every major development in the litigation, including the dates for discovery deadlines, depositions of key witnesses, motions deadlines, settlement discussions, and of course hearing and trial dates. Your lawyer should also make it clear that she will require significant chunks of your time to prepare for your deposition—usually parts of two or more days.

Finally, trial preparation and trial are major events that will require your full time attention. Your lawyer should explain that you will be required to spend many hours with her preparing your testimony for trial. You will of course be required to attend the entire trial, which will take most of a week and perhaps longer, depending upon the case.

Trial may seem very far off when you are first choosing your employment lawyer. But your conversation with the lawyer should include some discussion of what will happen if the case does go to trial, and what will be expected of you. Feel free to ask any questions you have about the litigation process. The lawyer should be willing to patiently and thoroughly answer them.

What Is My Best Up-Side If I Pursue A Claim? What Is My Worst Downside?

Filing a lawsuit is a commitment of time and money. You need to know whether it's worth it to you to begin that process. The lawyer should be able to help you figure that out by answering your questions and asking his own questions about your goals, personality, lifestyle, and values.

Many people have very inaccurate views of what their case might be worth and what a lawsuit might accomplish for them. These views come from the media, and from rumors about what someone else got from their lawsuit. The value of an employment lawsuit is driven primarily by the amount of wages or salary you have lost, and secondarily by the degree of emotional distress you experienced. In cases where the employer's behavior is especially egregious, punitive damages may be awarded to punish the employer and send a message to others not to treat employees that way. Your lawyer should be able to give you a range of what he thinks your case might be worth and explain how he arrived at that value. Each case is different, and the value will depend on the specifics of your situation.

Your attorney may require you to be responsible for paying the out-of-pocket costs of the litigation as it moves forward. You will want to know how the lawyer will bill you for those costs—monthly, or at the end of the case—what items you will be charged for, and an estimate of how much those costs could be. Costs may include things like court filing fees, court reporter fees for depositions, travel expenses, expert witness fees, and photocopying fees. The total amount of these costs will depend on the case; how many witnesses there are whose deposi-

tions have to be taken, how much travel will be required to take depositions and conduct investigations, and so forth. In general, the more complex the case is, the more the costs will be. It is not unusual for costs to total from \$2,500 to \$5,000 for a case, and some cases can cost several times that amount. You must understand that it will be impossible for your attorney to give you a precise estimate of the costs your case will involve, but you should have a frank discussion about what they might total and how they will be paid.

How Long Will My Case Take?

Everyone wants the answer to this question, and your lawyer should be able to give you at least a general idea. The length of time it takes to get through the EEOC process so that a complaint can be filed in court depends on your jurisdiction, but generally it will be at least six months and even up to a year or more before the EEOC completes its investigation and issues a right to sue letter. Then, once the complaint is filed, the trial date the court sets will depend on how busy that court's docket is. In the Cincinnati area, federal trials are usually set about 12 to 18 months from the time the complaint is filed. Other jurisdictions may have shorter or longer schedules. If your case is appealed by one side or the other, the appellate court process will add at least one year, and sometimes more, to the length of the litigation.

Since most cases settle before trial, you will probably resolve your case within a year or so after you file it. But your attorney should discuss with you the possible delays and likely trajectory of the case if it goes all the way through trial and appeal.

PART SEVEN

What Should I Be Looking For In My Lawyer?

Choosing a lawyer is a personal decision that you should make only after meeting face-to-face with the lawyer and discussing your case and your questions. Some of the questions you should ask yourself are:

Does This Lawyer Listen To Me?

You need to be comfortable that the lawyer respects you enough to hear what you have to say, and is willing to gather the facts necessary to represent you well by hearing you out.

Does This Lawyer Have Experience In Cases Like Mine?

The lawyer should be comfortable telling you what kind of experience she has in cases like yours, and you should satisfy yourself that she has sufficient experience to handle your case well.

What Is This Lawyer's Reputation?

Perhaps the best indication of a lawyer's skill and experience is the reputation he has among

other lawyers and his past clients. Be sure to check out the lawyer's credentials on line as much as you can. Does he have client testimonials or endorsements on his web site? Is he recognized by lawyer rating groups such as Super Lawyers, Martindale-Hubbell, Avvo, and other groups? Is there any negative background, such as discipline from the bar association? What do other attorneys say about him?

Will This Lawyer Have Time For Me?

Perhaps the most common complaint that clients make against their lawyers is that they don't call them back or stay in touch. Successful lawyers are busy, but the good ones make time for their clients. Your lawyer may not be able to take your call immediately every time, but she should call you back within a reasonable time. Lawyers often don't take the time to inform you of every small development in the case, but she should not resent or ignore you if you occasionally call to see what's happening with the case.

Do I Trust And Feel Comfortable With This Lawyer?

When it comes down to it, you should have a good feeling about your lawyer—you should trust him and feel positive about him. You are about to entrust the lawyer with a very important part of your life. You need to feel comfortable with him, so that you can speak openly and honestly and work well together preparing your case. If you leave the interview feeling uneasy about the lawyer, you should interview someone else.

PART EIGHT

What Should I Expect In a Fee Agreement?

You absolutely must have a written fee agreement with your lawyer. In most places a written agreement is required for any contingent fee agreement. Although a written agreement may not be required for hourly or flat fee work, you should insist on having one, and your lawyer should offer it.

Fee And Costs

The fee agreement should clearly state how you will be charged for the lawyer's work—by the hour, with a flat fee, a contingent fee, or some combination of these. It should also explain how out-of-pocket costs and expenses incurred by the lawyer on your behalf will be paid. Be sure to review the fee agreement carefully, and don't be afraid to ask questions so that you understand the document you are signing.

What If I Fire My Lawyer?

The fee agreement should address the issue of termination of the lawyer's services. In general, you have the right to terminate the attorney's services at any time for any reason.

However, you will be responsible for costs incurred, and perhaps for attorney fees incurred to date, depending on the situation and what the fee agreement specifies. Terminating a lawyer's services is a major decision because it can negatively impact your case and can have financial consequences, but if you decide that is what you must do, the fee agreement should spell out the consequences.

What If My Lawyer Fires Me?

Just as you may fire your lawyer, your lawyer can end her representation of you. Lawyers are under strict ethical duties not to end a representation in a way that harms the client's case. So, for example, you lawyer cannot "fire" you just before a major motion is due and then fail to file the motion. Many times, the lawyer must get the court's permission to withdraw from the case, and the lawyer will ask the court to give you time to find a new lawyer before anything else happens in the case. The fee agreement should state that the lawyer is free to end the representation as long as it is done in accordance with ethical rules, which include insuring that your case is not unfairly prejudiced as a result. Feel free to ask the lawyer about what kinds of circumstances might require her to withdraw.

PART NINE

Final Questions

After you have found and interviewed an attorney who you feel comfortable with, there are several remaining questions you need to ask yourself. Do you have the time and energy for this litigation? Do you have the money to see it through? Is your spouse, partner, and family supportive of it? Based on everything you've learned from the attorney, and everything you know about yourself, is this case important enough for you to go through with it? A lawsuit requires a commitment of time, emotional energy, and money. Some people decide it simply isn't worth it.

Some, on the other hand, are strongly motivated by a desire to see justice done—for themselves and for others who may come after them. If your commitment to see fairness and justice prevail is strong, and if you find a lawyer who believes in your case and is willing to champion your cause, then you can move forward with the knowledge that you are doing the right thing and that, if justice prevails, you will win your case.