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Contact: Lucinda Underwood
E-mail: lunderwood@abfn.org
Phone: 312.988.6573
Fax: 312.988.6579
Online: www.americanbarfoundation.org

MAJORITY OF EMPLOYMENT DISCRIMINATION LITIGATION IS BROUGHT BY INDIVIDUALS

American Bar Foundation research reveals that collective action is rare, contradicting popular opinion

CHICAGO, June 9, 2010 - Employment discrimination lawsuits are one of the largest categories of civil cases filed in the federal court. Yet, widely reported class actions lawsuits brought in recent years, like those against WalMart, Mitsubishi and other well-known corporations, are extremely rare, according to a new study released by the American Bar Foundation. Most people who file employment discrimination lawsuits do so as solo plaintiffs and are likely to receive modest settlements if they receive anything at all.

"Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States," published in the June 2010 issue of the Journal of Empirical Legal Studies, studies employment discrimination cases filed in federal courts between 1987 and 2003. Laura Beth Nielsen, Robert L. Nelson and Ryon Lancaster reveal the startling finding that the overwhelming majority of employment discrimination cases consist of a solitary plaintiff. Cases involving multiple plaintiffs, class actions and representation by the EEOC or a public interest law firm are extraordinarily rare. More than 40 percent of plaintiffs either have their cases dismissed or lose at summary judgment. The other half are likely to settle very early in the process. Only 6 percent of those filing employment discrimination lawsuits in federal court go to trial, where their chances of winning are one in three.

The study draws data from case filings in the recent decades that some scholars refer to as "the post civil rights era" in the United States, a time in which anti-discrimination law has shifted from attacking blatant exclusion of minorities and women from market opportunities to addressing a broader set of protected classes, including the aged and disabled. The new study delves into how such lawsuits fare in the courts and what determines their outcomes. The findings have implications for the relationship between law and workplace discrimination, and, perhaps, for the legitimacy of law itself.

"There is a lot of speculation about what kinds of claims make up the bulk of employment discrimination litigation, but these debates are rarely informed by the numbers," said Nielsen, research professor at the American Bar Foundation and associate professor of sociology and director of the Legal Studies Program at Northwestern University. "For example, many commentators claim that class action lawsuits are quite common. In reality, they make up less than 1 percent of the federal caseload."
The study explains outcomes of these cases in detail. In “Individual Justice,” the authors show that for plaintiffs without legal representation, the prospect of receiving even a modest settlement or going to trial is slim. 20 percent of plaintiffs are not represented by lawyers. Over one-half of them have their cases dismissed. Nielsen explained, “most cases don’t get anywhere near trial. Many plaintiffs, especially those without legal representation, are dismissed or lose on summary judgment. Many companies offer token settlements early in the process.” She concluded, “As a result, very few cases make it to trial. And in those, plaintiffs mostly lose.”

Co-authors with Nielsen are American Bar Foundation director and Northwestern University professor Robert L. Nelson and ABF faculty fellow Ryon Lancaster of the University of Chicago.

Professor and expert on employment civil rights, Samuel Estreicher of New York University Law School said, “This kind of careful research about what actually happens when people file discrimination lawsuits is unprecedented and vitally important for policy making,” as he underscored the report’s value for policy-makers, academics and lawyers.

The American Bar Foundation is the nation’s leading research institute for the empirical study of law. An independent, nonprofit organization for more than 50 years, ABF seeks to advance the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world.

For more information on the study’s data set, please contact: Laura Beth Nielsen, lnielsen@abfn.org; or 312.988.6574.