

# **Employment Law: What Every Paralegal Should Know and Can Use**

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Law Degree: Wake Forest University, Juris Doctor (1980)

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North Carolina Bar Association (Labor and Employment Section)  
North Carolina Association of Defense Attorneys  
Member of DRI (Defense Research Institute)

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Past Board Member, Children's Home Society of North Carolina  
Past Board Member, The Open Door Ministries

Kim R. Bauman has over 30 years of experience in civil litigation relating to employment, personal injury, and insurance matters. A significant portion of his practice involves the handling of employment matters, Department of Labor and Equal Employment Opportunity charges, and worker's compensation claims. In addition to drafting handbooks, EEO and employment policies and conducting workplace seminars, he regularly advises and represents businesses, individuals, insurance carriers and their insureds involving all types of employment discrimination and contractual disputes in both the federal and state courts.

# EMPLOYMENT LAWS



WHAT EVERY PARALEGAL  
SHOULD KNOW AND CAN  
USE

**Kim R. Bauman**



**WYATT EARLY HARRIS WHEELER LLP, HIGH POINT, NC**

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# NORTH CAROLINA IS AN “AT WILL” EMPLOYMENT STATE (AND HAS BEEN SINCE 1789)



- **“At-Will” means either the employee or the employer can end the employment relationship at any time for any reason (good cause or no cause) without any liability to the other.**

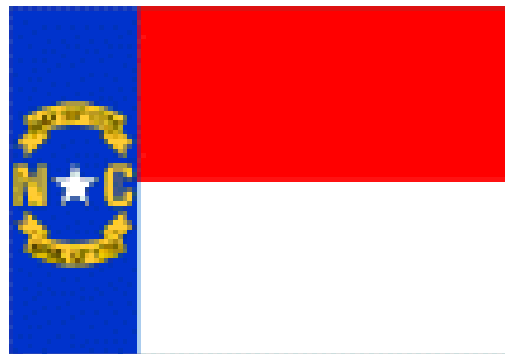


# Exceptions to At Will Doctrine

- **Federal Law**



- **State  
Law**



# Exceptions to At Will Doctrine

## Federal Law Exceptions

### A. Title VII (Civil Rights Act)



- Race
- Color
- Sex



# Exceptions to At Will Doctrine

## Federal Law Exceptions

### A. Title VII (Civil Rights Act)

- Religion



- National Origin



# Exceptions to At Will Doctrine

## Federal Law Exceptions

### B. Age (ADEA)

Calling time on  
age discrimination



### C. Disability (ADA)



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# Exceptions to At Will Doctrine

## Federal Law Exceptions

### D. Family Leave (FMLA)



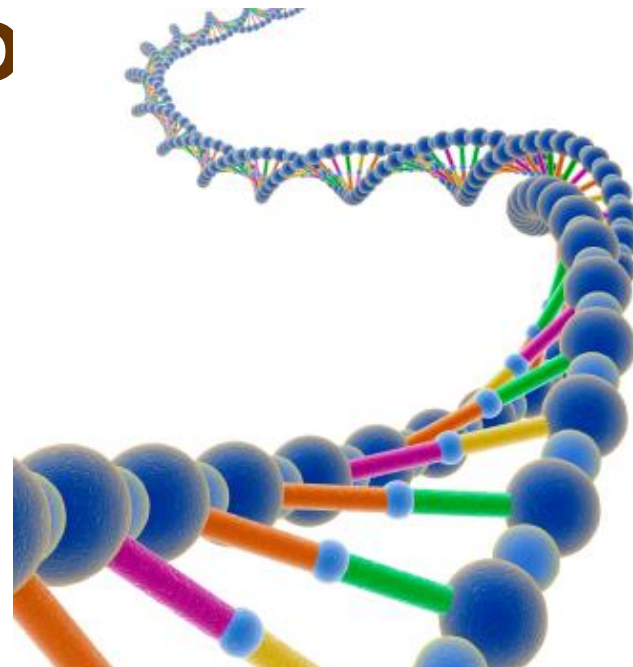
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# Exceptions to At Will Doctrine

## Federal Law Exceptions

### E. Genetic Information

**G**  **NA**  
GENETIC INFORMATION  
NONDISCRIMINATION ACT



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# Exceptions to At Will Doctrine

## Federal Law Exceptions

## State

### A. Retaliation based on **Protections**

Worker's Compensation Claim

Wage and Hour Act

OSHA

Mine Safety and Health Act

Sickle Cell or Hemoglobin C

Trait



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# Exceptions to At Will Doctrine

## Federal Law Exceptions

### State

### Protections

#### B. Jury Service

#### C. Handicapped Persons Protection Act



A blurred background image of an office setting, possibly a meeting or presentation, with a white grid overlay. The scene is out of focus, showing people in business attire. A dark blue semi-transparent banner is positioned at the bottom of the image.

# **HARASSMENT IN THE WORKPLACE**

# Legal History of Harassment

## A. 1964 -- Civil Rights Act of 1964

### No employment discrimination

- Religion



- Race

- Color

# Legal History of Harassment

- National Origin



- Sex



No mention of harassment

# Legal History of Harassment

## B. 1967

- Age



## C. 1980

- EEOC issues regulations stating sexual harassment is a form of sex discrimination



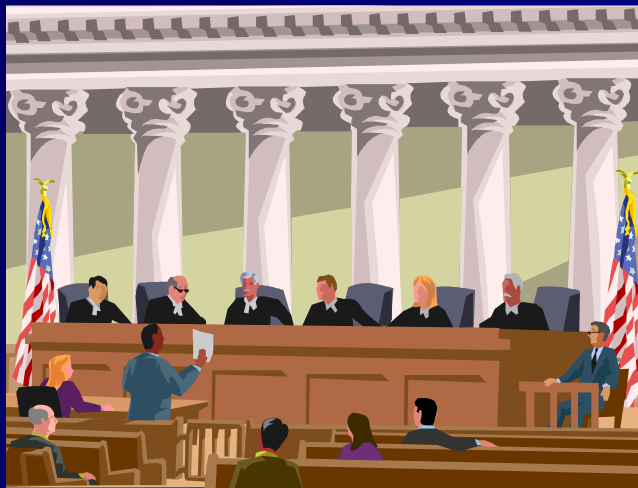
# Legal History of Harassment

## D. 1986

- U.S. Supreme Court affirms a claim of sexual harassment

## E. 1986

- Court affirms harassment based on age



# Legal History of Harassment



**F. 1991**

- **Clarence Thomas/Anita Hill hearings make nation aware of sexual harassment**

# Legal History of Harassment

## G. 1998

- Court affirms that same sex harassment is illegal



## H. 2001

- Court affirms disability harassment

# THE NEWEST AND LARGEST CLAIM



Retaliation

a/k/a

**REVENGE**



# Retaliation – Revenge

## What is revenge?

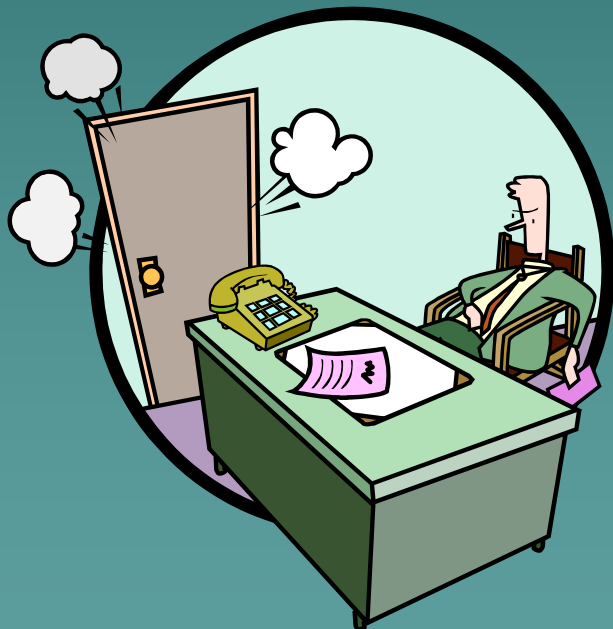
- One of the oldest human endeavors



- Don't Get Mad – Get Even . . .



# Scenario: Employee Raises Discrimination or Harassment Issue . . . .



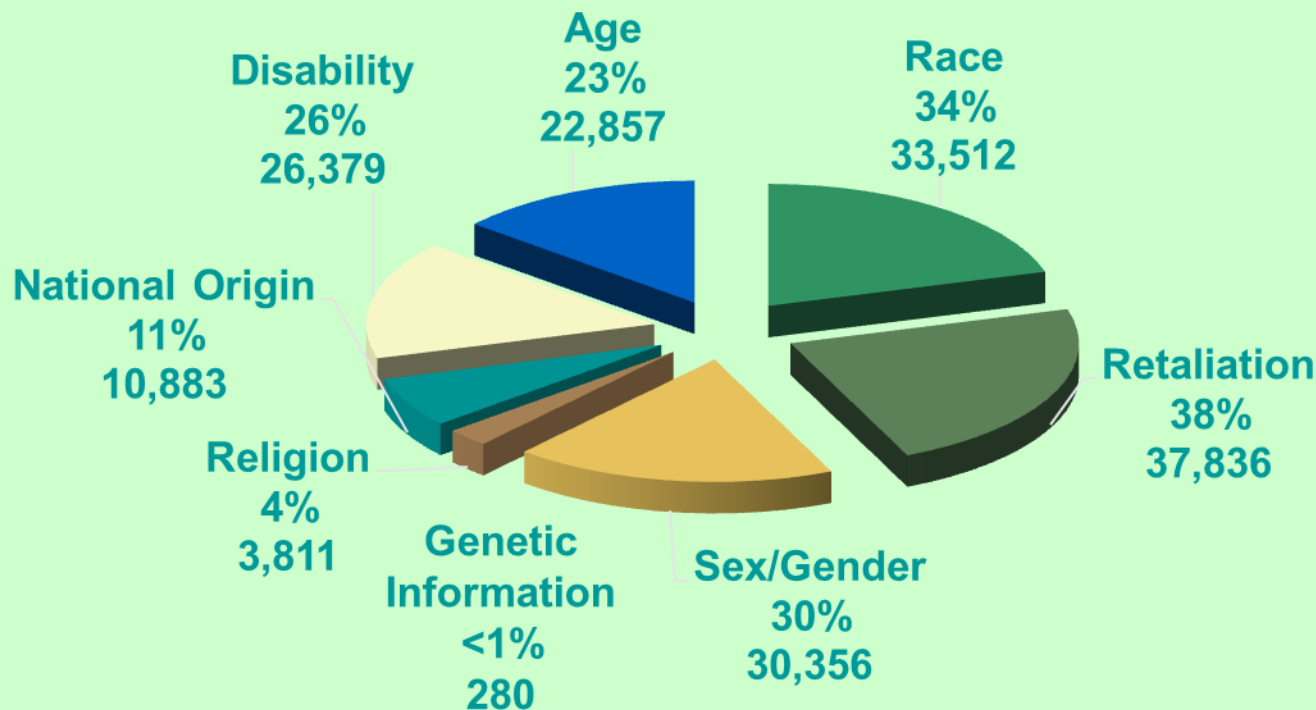
- ◆ The accused or the employee's manager begins course of retaliation



# EEOC 2012 STATISTICS

## REVENGE/RETALIATION CLAIMS ARE THE FASTEST GROWING CLAIMS

**TOTAL CHARGES: 99,412**



(% totals greater than 100% because many charges include multiple claims)



# FAIR LABOR STANDARDS ACT

## TWO TYPES OF EMPLOYEES

**NON-EXEMPT** – persons who are protected by the Act



**EXEMPT** – persons who fall outside certain protections of the Act



# FAIR LABOR STANDARDS ACT

## WHITE-COLLAR EXEMPT EMPLOYEES

- **Executive**
- **Administrative**
- **Professional**
- **Computer Employees**
- **Outside Sales Employees**



# FAIR LABOR STANDARDS ACT

## THE DEPARTMENT OF LABOR HAS DETERMINED

- **Paralegals are not exempt.**

**They are entitled to:**

- (1) Minimum wage.**
- (2) Overtime.**



# FAIR LABOR STANDARDS ACT

## NON-EXEMPT PAYMENT METHODS

Non-Exempt can be paid

- By the Hour
- By Salary
- By Commission
- By Piecework
- But always must receive at least minimum wage
- If work more than 40 hours in work week, must receive overtime



# FAIR LABOR STANDARDS ACT

## OVERTIME

- **Only on hours actually worked in excess of 40 in a work week (a 7-day cycle)**
- **Saturday, Sunday, holiday do not require overtime**
- **Paid leave time, vacation, holidays do not count as worked time**



# **“OFF THE CLOCK” ERRORS**

**Expecting employees to work during breaks and meal time**

- Meals – if perform no work, usually at least 30 minutes**
- Rest periods – must be paid if less than 20 minutes**





# **“OFF THE CLOCK” ERRORS**

**Expecting/letting employees  
work at home**



# “OFF THE CLOCK” ERRORS

Off-site “Crackberry” and  
cell phone usage



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# **“OFF THE CLOCK” ERRORS**

**Comp time**



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