



# DELAWARE

## EMPLOYMENT LAW LETTER

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### LITIGATION

## The good, the bad, and the crazy

by Lauren E.M. Russell

*One of the dubious pleasures of being an employer in today's marketplace is dealing with pro se plaintiffs. "Pro se" is a Latin phrase that means "for himself," and it describes an individual who has filed a lawsuit on his own behalf without the help of an attorney. If you can get enough emotional distance from a lawsuit, pro se litigants can provide a certain level of comic relief — they don't know the rules and frequently tell entertaining anecdotes. However, most employers find these cases frustrating at best and repugnant at worst. Here are some tips for minimizing the pain in pro se cases.*

### ***What do these cases really mean?***

In the employment context, *pro se* status is generally a strong indication that the case is very weak and that the plaintiff could not find an attorney willing to take a risk on the case. Keep in mind that employees' attorneys frequently take cases on a contingent-fee basis, meaning they do not reap a reward unless they win a case outright or reach a favorable settlement agreement. As a result, the lack of an attorney is an

indication that attorneys have decided that the case is a dud, even after hearing the "facts" in the light most favorable to the plaintiff.

This creates a lot of frustration for employers. The case against you is weak, but you're still forced to hire an attorney and spend money defending against outlandish allegations. Just as significant, ongoing litigation is a distraction for everyone involved.

### ***Coping with the strain***

So what's an employer to do? As difficult as it may be, the best approach is patience and more patience (whenever possible). Here are three coping mechanisms employers should use:

1. **Know what to expect.** All litigants should enter the court system with a solid idea of what to expect, including how the process works, what costs are involved, and what their responsibilities are. That is especially true for employers facing *pro se* litigants. When embarking in litigation with an unrepresented party, employers should be aware of — and accept — the fact that the plaintiff will get a tremendous amount of leeway from the court. He will be permitted to disregard deadlines, file frivolous motions, and generally carry on in a way that makes the process more frustrating and expensive for you. Employers should expect that when going into litigation and accept the inevitable results. Fighting the process is a losing battle.
2. **Keep calm, and carry on.** The added costs and frustration of dealing with a *pro se* plaintiff lead to a desire to, as one author put it, "grind the opposition into the dirt, to heap ashes on the dirt, to spit upon those ashes, and finally to build a monument upon the resting place of the opposition as a testament to the virility of the prevailing party and dangers of opposing him." However, a scorched-earth approach is rarely successful in Delaware courts, especially when an employer is faced with a *pro se* plaintiff. Instead, settle in for the long haul, and remember that each professional, patient, and courteous exchange you have with the court will bolster the

validity of your case in the judge's eyes.  
Remember, you're playing the long game.

3. **Keep it courteous, and put it in writing.**

Finally, be extremely careful in private communications with a *pro se* plaintiff, especially if he is still employed by your company. Whenever possible, route communications through your attorney — that's why we are here. If you must communicate with the opposing side without your attorney, do so only in writing, and always keep it civil. E-mails, text messages, and other written communications can be introduced as evidence in court proceedings. If you take the opportunity to release frustration through an e-mail or a letter, you can expect to see that document in front of the judge in the future. And it will damage your case.

*Bottom line*

Litigating against a *pro se* plaintiff can be one of the most frustrating experiences an employer has with the law. It frequently feels like you're paying money to get rid of a gadfly. But every party is entitled to his day in court, and there's rarely an easy way to get rid of unrepresented parties. Instead, employers are well-advised to accept the inherent frustration of the situation and play the long game. The case will eventually be dismissed, so the goal is to make it through with as little aggravation as possible.

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