

# Employee Legal Problems and Well-being

**Well-being in Connection to Employee Legal and  
Financial Stress**

By Robert L. Heston, Jr.



## Understanding the Specifics: How Legal and Financial Problems Cause Employee Stress?

### A. Most Inherently Agree that Legal Problems are Stressful

The 10th Annual Study of Employee Benefits in 2011 referenced previously looked at employee groups across all ages to determine the impact of financial troubles on employees, noting:

*“Stress is associated with exacerbating and driving health problems, and financial stress is a prime cause of personal stress. The recession has resulted in widespread financial insecurity across all employee age groups. In fact, there is a virtual ‘epidemic’ of financial ‘illness’.”*<sup>1</sup>

10<sup>th</sup> Annual Study of Employee Benefits

*“As much as employers have been focused on traditional health and wellness, there is compelling evidence that ‘financial illness’ also contributes to health care costs, as well as to reduced productivity. Employee financial security may be a major driver in accomplishing business goals.”*<sup>2</sup>

Personal Finance Employee Education Foundation

Figure 1 also provides a snapshot from the MetLife study of employee concerns.<sup>3</sup>

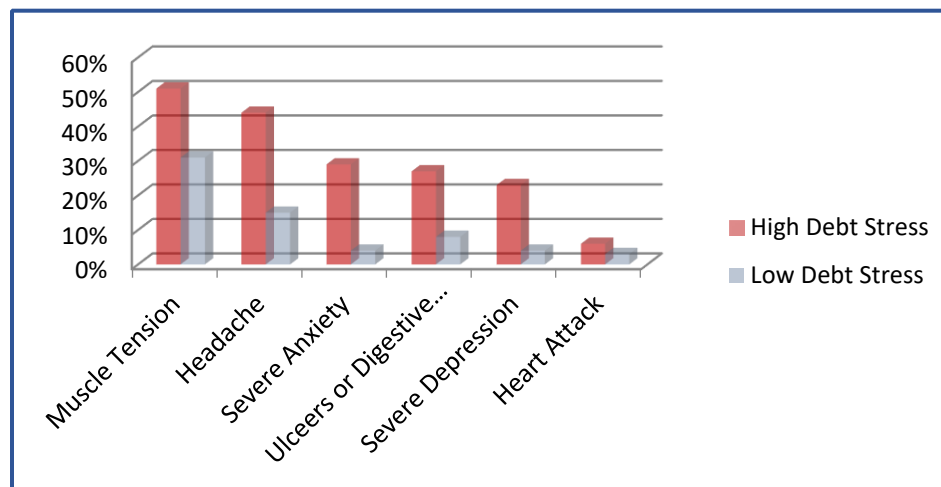
<b>Employees Who Report that They are Very Concerned About...</b>					
Age Bracket of Employees	20-29	30-39	40-49	50-59	60-69
Having enough money to make ends meet	53%	49%	52%	58%	52%
Job Security	50%	52%	49%	51%	52%
<b>Employees Who Strongly Agree that...</b>					
Age Bracket of Employees	20-29	30-39	40-49	50-59	60-69
Have trouble paying bills	53%	33%	32%	31%	23%
Living paycheck to paycheck	40%	43%	41%	43%	35%

Among the key findings:

- There is a direct association between poorer health and stressful financial situations.
- Employees that are not in control of their finances or that live paycheck to paycheck are more likely to report worse health.<sup>4</sup>

The study also shows exactly the nature of health-related issues employees suffer from financial stress, and Figure 2 demonstrates the pervasiveness of these problems.

Figure 2: Poorer health is associated with stressful financial situations.<sup>5</sup>



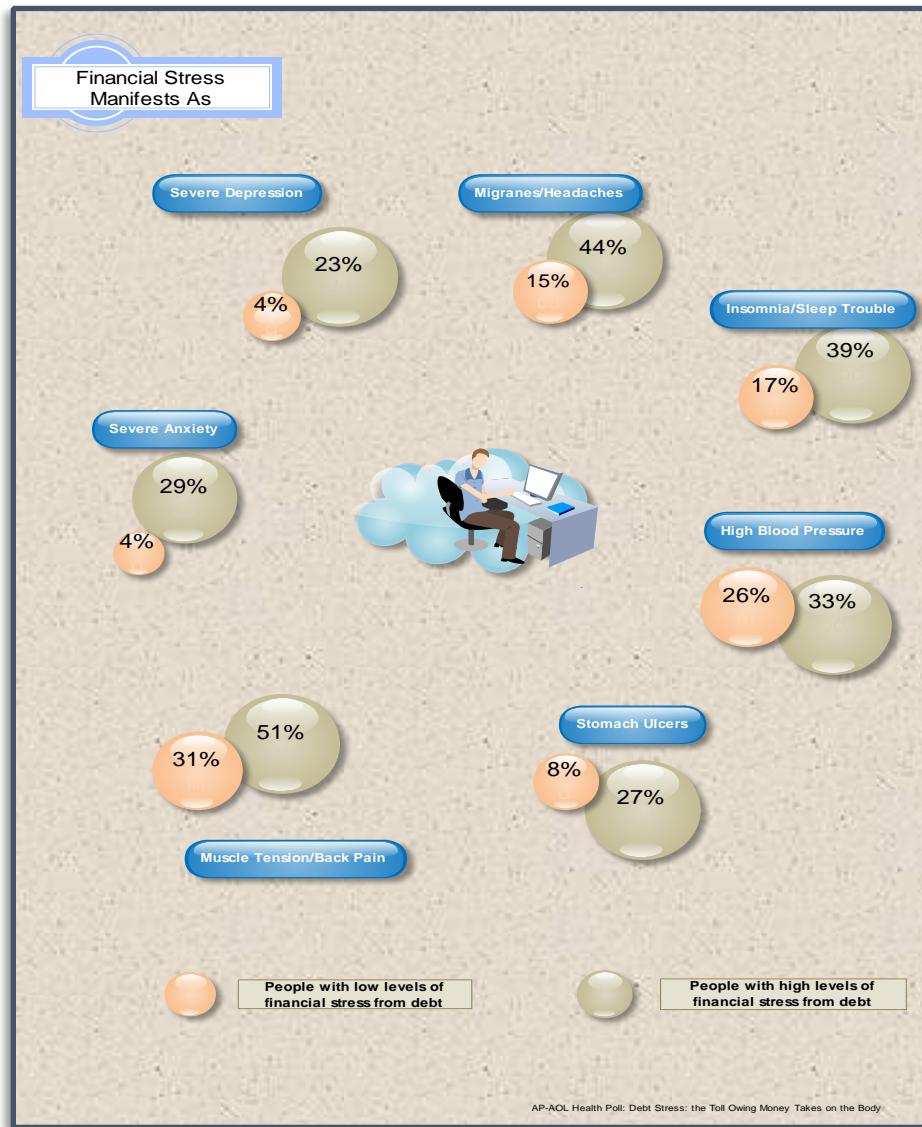
As part of the study, MetLife interviewed a number of HR professionals, of which one reported:

*"I think stress is a huge driver of illness – physical, emotional – and it's mixed together. We have lots of people having financial struggles right now. Disabilities are up. Depression is up."*<sup>6</sup>

HR Professional (1,000 – 3,000 employees) Chicago, July 2010.

In Figure 3 below, a study for the American Psychology Association shows the effect on health from serious stress problems related to debt.<sup>7</sup>

Figure 3:



**Why are these effects of stress present and how many are caused by upset, anger, frustration, worry and anxiety over financial and legal issues outside the workplace? This particular American Psychology Association study addresses that very question.**

While the study demonstrates that employees are suffering financial impacts from their problems, we still need to understand exactly how much of this stress is related to the legal and financial problems of employees and understand how much this may be costing the employer.

- We must first attempt to understand how these legal and financial problems actually create stress in employees, which is something that has not been analyzed in detail in the past.

- Once we understand how stress is caused or increased by legal and financial problems, we might then determine if there are existing programs, wellness or other programs that can manage or even decrease these personal stress factors.

A number of key questions must be addressed related to employee drug, tobacco and alcohol use.

- How many employees engage in excessive behaviors because of underlying problems not related to stress in the workplace but rather caused by stress pressures in their personal lives that they bring to the workplace?
- How many employees use drugs, alcohol, excessive eating and related factors to mask, hide or deal with financial or legal problems threatening bankruptcy, calls from collection agencies, job loss, divorce and related problems?
- Are there other causes of harmful and costly lifestyles that lead to credit card debt increases, expenditures of retirement accounts, savings accounts and emergency fund accounts and the threat of large legal expenses related to handling debt or collection litigation?

If employers can understand exactly how outside financial and legal issues cause employee stress, which employees bring into the workplace, employers can better help workers manage and possibly eliminate personal stress. Similarly, if HR better understands the impact of employee legal and financial issues impacting the workplace, HR managers can better understand the root causes of issues impacting company-wide productivity, injury and increased healthcare costs.


This need for understanding has become hypersensitive given the so-called Great Recession of 2008 that sparked lawsuits and legal fees impacting millions of Americans. HR and benefits managers must have a clear understanding of the issues with which workers grapple beyond the workplace if companies are to deal successfully with the outside stressors that bring harmful effects to their employees. Simply stated, companies must implement targeted programs to help their employees. However, some of the programs being implemented may not be focused on the source-based causes.

## **B. How Legal and Financial Problems Cause Employee Stress**

Once an employee is drawn into a serious financial or legal problem that embroils them into the legal system, a series of challenges arise that can substantially impact the already high stress the employee feels. For most employees, there is a significant gap between hoped-for expectations of what the legal system can deliver and its actual realities. Because legal and financial problems can be so debilitating, it is critical that HR understand each of these challenges since each may cause a mountain of stress-related workplace problems.

There are essentially four (4) major challenges that cause employees to seriously misunderstand the legal system and handle associated emotions and stress poorly:

1. The stress caused by the legal problem itself
2. The exorbitant cost of legal help and solutions
3. The stress of not knowing which attorney to use or not having access to an emergency attorney when one is needed
4. The complicated legal system that most employees do not know how to navigate alone



Each of these challenges causes stress, and when compounded by the presence of other challenges, these four issues can paralyze an employee.

### **C. Challenge One: Stress Caused by the Legal Problem Itself**

Legal problems come in all shapes and sizes — divorce, child custody battles, parental kidnappings, bankruptcy, foreclosures, arrests, juvenile court, domestic violence, will contests, neighbor disputes, contentious legal problems — and serious stress can be caused by the underlying legal problem itself:

- Family-wide devastation from a divorce filing
- Probate expenses when a parent/spouse dies unexpectedly
- Arrest and potential incarceration of oneself or a family member
- Bankruptcy that wipes out a lifetime of accumulation
- Costly repairs and remedial actions
- Unexpected appearance of and financial claims by a lost child
- Foreclosure and the associated legal bill and loss of home
- Automobile costs that may include credit card debt, collection agency pressures or repossession that leads to loss of car and loss of job
- A legal adoption overturned on appeal
- IRS back tax lien filing from a former spouse with no formal divorce in place
- Undetected identity theft of a social security number that leads to frozen bank accounts or fraudulent liens placed on an almost-paid-for home

One of the most obvious legal problems is when an employee files for divorce or is served with divorce papers. Stress levels skyrocket, particularly if the divorce was unexpected, because the employee must respond immediately to the divorce petition. Chances are the employee feels lost, like their life has been turned upside down, that they must iron out issues with their children and that there is the prospect of losing friends, their lifestyle and financial and material holdings acquired during the marriage.

The employee's concentration shifts away from work to divorce, and feelings of betrayal, frustration, anger and even rage emerge against the spouse who they perceive as the one creating this situation. Managers or supervisors who have witnessed an employee going through a lengthy and nasty divorce can attest to the effects on the workplace, which can be turned upside down.

Several recent studies have directly linked marital and relationship breakdown to the increased likelihood of developing serious physical and emotional disease.

- A multi-year study found that men who divorced or separated were 3.3 times more likely to experience depression than men who remained with their spouses. Among women, the odds of depression after a break up were about 2.4 times higher. For many in the study, depression remained a problem for as long as four years post- divorce. (Statistics Canada, The Daily, May 22, 2007)
- According to University College in London, stress associated with marital struggle was found to increase the likelihood of a heart attack or other heart trouble in both male and female subjects by as much as 34% over the 12-year life of the study concluded in 2007.

- The American Diabetes Association has suggested that stress caused by poor relationships aggravates diabetes for those afflicted with the condition.
- Researchers at Ohio State University found that when couples re-lived past arguments, self-inflicted blister wounds healed at only 60% the rate of wounds inflicted on couples who exhibited lower-hostility behavior.

But that's not all. Studies compiled by Life Innovations in 2006 on behalf of the Marriage Commission had key findings:

- Immune system function is lower in couples surviving poor relationships compared to couples enjoying satisfying relationships. (Waite & Gallagher, 2000)
- The likelihood of domestic violence grows as relationships fail. (Gallagher, 2002)

Domestic violence costs corporate America up to 7.9 million paid workdays of lost productivity annually. (Corporate Alliance to End Partner Violence, 2006)

- Unhappily married couples are almost four times more likely to have a partner abusing alcohol than in happily married couples. (Whisman, Uebelacker, & Bruce, 2006).
- Those with alcohol problems skip or miss work 30% more than those without such problems. (U.S. Department of Health and Human Services, 2004) <sup>8</sup>

There are other examples in which the legal problem itself can be the cause of major stress because of the high costs of battling or defending a lawsuit. These may include being sued to recover an unexpected and substantial medical expense incurred by an employee, a lawsuit to recover damages and serious injuries caused by an employee's spouse's or child's car accident, lawsuits over evictions, repossessions, creditor pressures, collection calls, foreclosures and mortgage or student loan defaults. Each of these situations causes serious and increasing amounts of employee stress, as well as worry, anxiety, concerns, upset, anger, depression and even rage in some instances.

#### **D. Challenge Two: The High and Unexpected Cost of Legal Help**

A fundamental stress producer inherent in the American legal system is high attorney fees and repeated delays that can cause legal expenses to skyrocket. This second challenge has three sub-parts:

- The lack of an emergency fund to pay for legal fees
- The inherent and seemingly unnecessary delays that cause the legal bill to escalate
- The often unfounded but prevalent expectation that the opposing party will pay all legal fees if the employee is not at fault in a lawsuit

##### **1. Employees do not have thousands or tens of thousands of dollars in reserve for legal expenses.**

The bottom line is simple: attorney expenses drive whether an employee can start or continue a legal case. Since most employees do not have an emergency fund for legal fees, not having money to pay for legal counsel may be one the most substantial producers of employee stress.

**Question:** Why is the cost of legal help so high?

**Answer:** Legal expenses are high, in part, because litigation costs have skyrocketed, and modern legal problems can be very complex.<sup>9</sup>

The fear of unaffordable legal fees paralyzes many moderate-income Americans from accessing legal assistance. And while would-be clients, courts and lawyers struggle to find cost structures that bridge the gap between needs and services, another barrier — **distrust of the private bar** — is cited repeatedly.<sup>10</sup>

*“What most people don’t realize is that — while how you divorce or what there is to split may play a part in the cost — the number one way for you and your spouse to save money in a divorce is to deal effectively with the emotional aspects of the split.”<sup>11</sup>*

Susan Pease Gadoua  
Divorce Expert and Author

Of course, dealing with the emotional aspects of divorce is easier said than done. With the build-up of many years of anger, resentments, neglect or jealousy, as well as demands for justice and vengeance, these emotions can, and often do, drag cases through years of litigation.

The net effect of a lack of extra funds can force the settling or abandoning of a lawsuit or legal dispute before the case is won, since most employees do not have a rainy day lawyer fund and may be forced to use their savings, take out a loan or even borrow money from a 401k retirement account. In addition, most employees are not sure in the first place how much money might be involved in resolving disputes.

Many employees do not understand the billing system in the legal world, nor do they understand how fees can be so high. At closer review, legal fees *can* create a number of misunderstandings.

- A lawyer generally charges an hourly rate for time spent on a legal situation and not for the outcome or results. Experience, expertise, personal relationships with the judge and other non-tangible services are also reflected in an attorney’s hourly rate.
- Broken down into its technical aspects, what causes problems and, ultimately stress, for an employee, as a lawsuit continues drags on, lies at the intersection of two sub factors:
  - The complicated and overwhelming legal system procedures that require more and more explanation from lawyers to help employee-clients better understand what is happening in the case.
  - The reality that the more explanation the lawyer provides the client equals more time the lawyer spends on the client’s case which leads to a higher legal bill.
- Clients of law firms routinely complain about legal fees, but few take the time to understand how lawyers record their billable hours and generate legal fees. Clients continue to pay for legal fees, so they must feel in some way that the fees are worth it, but they often still resent an attorney’s bills because of a lack of understanding about the way lawyers bill their time.<sup>12</sup>
- It may not be until a client sees the first attorney’s bill that it is clear time equals money. Every time a question is asked, or a conversation takes place with a lawyer, the bill goes up. To keep costs down, the client may stop asking questions and the lawyer may opt to spend less time on a client that can’t afford large monthly legal bills.



When you also consider the employee's perspective, more misunderstandings unfold:

- The employee sees the legal system as complicated and unwieldy.
- Not being informed about what is happening in their case hurts a client's understanding of the legal process.
- Attorney failure to provide a detailed explanation of the legal processes and procedures leads to a lack of understanding, which in turn leads to frustration, anger and other stress factors.

Here are some comments of participants in the previously referenced major ABA Study:

*"I was very impressed (with the work the lawyer did for me), but shocked at the charges because I did not realize they bill you for every little minute. The overall complete thing was wonderful, but we paid out the nose to get all the estate trust settled. But, it's not something that a normal person can do, and there are all kinds of rules and regulations."*

Female, 62  
Dallas, Texas

*"My lawyer told me that for a divorce, to set up the paperwork was going to be \$750 to \$1,000. By the time I was through with it, it was \$7,000. I don't know what happened. I wasn't in there through most of it."*

Male, 46  
Dallas, Texas

*"What they do is they charge you so much for ten minutes or so much for an hour, but they never come forward with their accounting of all of their minutes."*


Male, 61  
Chicago, Illinois

*"I had one lawyer with a law firm, and I said, 'Before we go any further, what are you going to do for me?' And, they couldn't answer me. I said, 'But, you took my money. How can you put a price on something when you don't know what you're going to do?'" <sup>13</sup>*

Male, 67  
Boston, Massachusetts

When an employee feels that an attorney is spending little time on the case or is not communicating case developments, the employee's stress increases, particularly as the case progresses. As a client, the employee has questions, needs answers and explanations, and gets frustrated when the attorney is not forthcoming. The employee also gets increasingly upset having to spend more money to get seemingly simple answers to basic questions.

In this era of information overload from the internet and other sources, an employee may have a difficult time when adequate information is not provided by the attorney and may feel that the attorney is not interested in educating and updating them about the case unless billable time is involved. After all, a client might reason, all that's needed is an understanding of a few critical legal terms that may help the litigant make more informed decisions about their legal matter.



Now consider a workplace scenario in which employees are involved in protracted litigation. Without an understanding of the legal system, the employees may become increasingly frustrated at both the system and their attorneys. For some employees, this will spur bouts of depression or missed workdays. Others, equally anxious, lack focus on the job, as their minds are consumed with the uncertainties surrounding complicated legal scenarios.

For a forklift driver preoccupied with the fear of losing a child to a drunken or abusive spouse through a court action, this could spell danger to himself and others, and the costs of these problems to the individual worker, business associates and the company can be huge. Without warning, the distracted forklift driver, for example, might dump an entire palette of heavy machinery on several unseen employees taking a coffee break.

In addition to major accidents and injuries on the job, costs can also include absenteeism, lack of focus of a worker on the job and presenteeism, along with mistakes and internal conflict that impact productivity.

If employees could better understand the fundamental hurdles of the legal system, and if more effective solutions and support for workers could be implemented, the immense personal costs would be reduced significantly. Similarly, if HR could better understand these issues, steps could be taken by the company to find ways to confirm that help is on the way for their employees.

## **2. Inherent delays seem unnecessary and add thousands of dollars to the legal bill.**

The second part of the second challenge is the lack of reserves set aside to pay for the high cost of attorneys and the pressure caused by delays in the court system that also add to the attorney bills.

Before being involved in a lawsuit, many employees may not fully appreciate how long it takes to get a case to trial or resolution. One of the most widespread obstacles to a fast and satisfactory resolution of a lawsuit is accepting that court rules and procedures may actually impede a quick resolution. In a nutshell, the lengthy procedural steps in America's legal system are real.

The Institute for Legal Reform conducted a detailed study about lawsuit delays.<sup>14</sup> One of the most common complaints about the court system, particularly when compared to mediation, is the timespan and its impact on legal fees.

This frustration with delay can be illustrated by one of the most common issues confronting an employee-participant in most any court action. As an example, the opposing party asks the judge for a continuance (a postponement of the court business already scheduled for that day) for a date several weeks in the future. Without realizing the impact on his or her own client, the attorney for the employee-participant agrees. Continuance, or postponements, are a normal procedure in all court cases and are routinely granted for a myriad of reasons.

While this may be routine in the legal system, the employee probably does not understand why his attorney never spoke up for his client's position to the judge and why there was no progress in court despite the employee having taken a full day off work. Before court cases even begin, however, lawyers are able to make a number of motions that add more time to pre-trial actions. The motion that is most

obviously a cause of court delays is this continuance, which allows a party to choose to wait to go to a hearing, motion or even trial until a later date.<sup>15</sup>

Repeated delays in the case create serious frustration and stress for an employee that does not want to compromise, believes a win is forthcoming or cannot see the lawsuit being resolved in any realistic timeframe. In most cases, the employee is already having serious financial or legal issues because of the lawsuit and delays exacerbate the financial strain. Other employees may complain that lawyers drag out and overstaff cases unnecessarily, possibly to inflate their expenses on a case.

Participants in the American Bar Association Study offered these comments<sup>16</sup>:

*"I gave a deposition a while back, and the other side had three lawyers and an assistant there. There were four of them, and I had my one lawyer. The other side was probably \$1,000 or \$1,500 an hour for asking me questions. They didn't have to do that to their client. One of them could have asked all of the questions."*

Male, 57  
Los Angeles, California

*"Sometimes lawyers are very shrewd in knowing how to drag a case out. And, the reason for that is the fee keeps going. They are not stupid."*

Male, 58  
Boston Massachusetts


*"I had an experience with one lawyer where I just felt they were money hungry. They stretched it out over a year. To me, they deliberately held on to my check so they could get interest on it."*

Female, 32  
Los Angeles, California

In reality, an attorney for one side may often give the other side the benefit of the doubt early on for a continuance request in case he or she needs one for themselves in the future. If an employee-participant doesn't understand how the system works, frustration and stress mount early. As litigation proceeds, the need to somehow end the lawsuit becomes more pressing to the employee-participant, which can cause even more stress for several reasons. The employee may realize their attorney is part of unwanted delays, the lawsuit is not getting resolved and justice is not being served because of ongoing delays.

Anger, frustration, mental anguish, depression and helplessness are all caused by financial and legal issues and often do not appear to decrease or go away as the litigation moves ahead. While most employee-participants initially believe a lawyer should make it go away once the lawsuit is filed, delays stare back at them. In reality, the legal system itself causes increased stress over and above the stress and anger the underlying lawsuit causes.

These inherent delays oftentimes seem unnecessary and without merit, and the procedural steps in almost every court action increase an attorney's time and fees. An employee-participant will feel stress,



anger and frustration that the attorney is working in the legal system but seemingly not for his benefit. This increased stress and frustration carries over into the workplace, becoming a serious external circumstance with a range of work-related consequences.

### **3. Many employees mistakenly think the opposing party will be forced to pay all legal bills.**

There is generally a complete lack of understanding as to who is responsible for paying lawyers in a lawsuit.

To illustrate, consider this scenario. An employee is incorrectly billed \$44,000 one month for mobile phone usage fees when the monthly bill averages \$200. During phone calls to dispute the charges, several mobile phone company associates admitted the charges were incorrect and the employee should not have to pay. However, the employee is sued for \$44,000 plus interest and attorney's fees. At the outset, the employee believes he will be vindicated, the incorrect bill will not have to be paid and the mobile phone company should pay the employee's attorney's fees.

**Employee Belief:** I will be able to recover most of my costs when I win my lawsuit.

**Reality:** In most cases, without a prior written agreement, each party pays its own legal fees and expenses.

An employee involved in a lawsuit may also believe that attorney's fees will be recovered at the end of the case if the ruling is in his favor, especially where the case seems bogus. In limited situations this may be true, but each party generally pays its own costs and expenses, even when a lawsuit is bogus or the suing party is wrong. Unfortunately, an employee may not realize until some point during the court process that the legal fees will end up costing as much as or even more than the amount of the legal battle. In our example above the employee has to unexpectedly defend a lawsuit, hire a lawyer and find money to pay retainer fees, all on a lawsuit that the company's employees have admitted was a mistake. Yet, there is no easy forum by which to vindicate himself and explain the \$44,000 mistake.

To the employee, this seems not only unfair, but also the significant cost associated with legal representation exponentially increases the high degree of frustration, dissatisfaction, stress, anger and emotional distress associated with the financial or legal problem. After all, the offending party has already cost the employee a significant amount of money, and now the employee must spend more money to pay for an attorney to try to recover the loss or have the lawsuit dismissed and resolve the issue entirely.

It is not surprising, then, that employees routinely report that delays and the resulting expenses exceed fairness and create an enormous amount of hostility and anger; and, therefore, a lack of concentration routinely brought into the workplace.<sup>17</sup>

An employee engaging with the legal system for the first time will often be distressed to learn it operates differently than expected. Stress is ignited the moment a person walks into an attorney's office or courtroom. Trepidation and discomfort heighten the pressure, which all too often carries over into the workplace. This stress is exacerbated more when the employee, such as the one in the mobile phone lawsuit scenario, believes he is on the right side of the litigation and should not even be in court. This expectation can create a disconnected gap between belief and reality.

## E. Challenge Three: A Legal Problem Strikes an Unprepared Employee

Another of the most misunderstood problems that causes substantial amounts of stress, absenteeism and increased healthcare costs for an employee is the process one must go through when a legal emergency first strikes.

The primary problem for an employee is not having an established relationship with an attorney when a legal problem arises. Unlike an existing relationship with a doctor when sickness strikes, most employees may not have an attorney to call upon when a legal crisis strikes. The problem is exacerbated if an employee thinks he has an attorney that can handle the case, when in fact he does not.

**Question** How does the lack of an attorney relationship or knowing the right type of attorney to handle a case impact an employee?


**Answer** Employees with legal problems are largely on their own and without help to find the right lawyer. Upon being served with a lawsuit, an employee must scramble to find an attorney who can handle the case. Lawyers that advertise on TV and billboards generally only handle a certain type of case and cannot help, and this oftentimes is the only attorney an employee knows to call.<sup>18</sup>

### 1. The Race Against the Clock – Time Deadlines in Court Cases Create Tremendous Pressure to Find an Attorney Quickly

This race against the filing clock takes shape every day for thousands of employees embroiled in lawsuits and follows a predictable chain of events.

- An employee receives the summons and complaint/petition with the requisite days to respond or default.
- The employee calls referred attorneys.
- The employee takes off of work for scheduled appointments, only to find that the attorneys are not the right attorney, generally based on experience, disposition or pricing.
- The employee then combs the Yellow Pages or searches online, making call after call to attorneys and chasing dead ends.
- Days turn into weeks.
- The employee misses several days of work for more attorney visits, which yield nothing except more possible referrals.
- Default is at risk.
- The employee becomes desperate.
- In addition to time off for attorney visits and consultations, the employee sees a physician or psychologist due to heightened lawsuit-related anxiety, fear, depression and lack of legal assistance.

Whenever a lawsuit is filed, there is generally a 20 to 30 day mandatory deadline to respond to the lawsuit filing, depending upon the state in which the lawsuit is filed. Under the pressure of the 20-30 days



mandatory deadline, an employee must quickly get leads for attorneys. After identifying several lawyers for potential representation, an employee must, through a rudimentary interview process, attempt to visit each attorney to handle the case, discuss fees and choose legal counsel, based on very limited information. It is estimated that an employee must take off of work at best several days and make at least four visits to different attorney's offices to find one that can take the case.<sup>19</sup> And getting appointments can easily take up the majority of the 30 day time limit waiting for the attorney to respond with an appointment.

It is true that lawyer advertising has made it easier to find an attorney. However, there is still a problem in finding the right attorney for specific needs. If a lawyer is inexperienced, incompetent or lacks the willingness or ability to communicate effectively, the employee-participant will not be satisfied with the lawyer's service. In order to find the best attorney for each legal matter, an employee needs more than a list of names of attorneys.<sup>20</sup>

Certain legal areas, such as personal injury or wills and probates, have many attorneys advertising their services. However, the vast majority of cases facing employees are not cases in those areas, leaving employees to feel as if attorney access is nonexistent for a legal matter with an immediate deadline.

Consumer dissatisfaction with lawyers has become a major problem. A survey taken in 1995 by Consumer's Union revealed that out of 30,000 respondents, one-third were not well-satisfied with the quality of their attorney's services, citing key attorney shortfalls:

- Failing to keep clients informed on the progress of their cases
- Failing to protect client's interests
- Failing to resolve cases in a timely manner
- Charging unreasonable fees

This widespread dissatisfaction is linked to the lack of knowledge by consumers on how to find attorneys experienced with the types of problems they are facing, as well as knowing what questions to ask a lawyer. The results of a 1,000-person survey reported in the Florida Bar Journal revealed that nearly one-half of those surveyed said it was hard to find a good lawyer, and more than a quarter of respondents said they didn't know how to find a lawyer. It is remarkable that 80% of respondents said they wished there was a source for information on lawyers' experience and credentials.<sup>21</sup>

Additionally, many employees believe they know attorneys that can help them if a legal matter arises. Many employees have family members or in-laws that are attorneys or have friends or colleagues that have used an attorney in the past. While they believe they could call these attorneys if they ever had a legal problem, reality sets in with deadlines looming to respond to a petition or face default when employees learn for the first time that those attorneys may not be a good fit for a range of reasons:

- The fees are too high and unaffordable for the employee
- The lawyer's specialty is not aligned with the employee's needs
- The lawyer is not taking new cases

## 2. Widespread Misunderstanding of Retainer Fees

This is often an all too common scenario that results from an employee having to settle for any attorney who would respond to them and take their case at what appears to be a reasonable fee called a retainer fee. Retainer fees can be confusing to employees and cause great amounts of stress when they learn the nature of these fees.

Specifically, there are usually two (2) major misconceptions with retainer fees:

1. Traditionally, when hiring a lawyer, the retainer fee must be paid upfront and can range from several thousand dollars to as much as \$10,000 and upward before an attorney will begin working on the case. An employee is not prepared to pay this amount and may tap into saving, retirement accounts or max out credit cards to pay these unexpected fees.

*"It is vital for workers to do all they can to help avoid tapping into their retirement savings."*<sup>22</sup>

Catherine Collinson  
President Transamerica Center for Retirement Studies

This problem may be the most significant contributor to employee stress and also the most difficult to understand.

2. The second problem that is not apparent to an employee hiring an attorney for the first time is that many attorneys quote a low upfront retainer fee to get the case in the door, followed by higher fees that have to be paid sooner than those quoted by other attorneys with larger retainer fees. Employees who end up paying the low retainer fee often do not understand that more fees will be required to be paid as the litigation progresses and that retainer fees are not the one and only fee. The pressure to come up with more money unexpectedly creates an enormous amount of pressure on the employee and distrust of the employee's attorney.

Left unchecked, legal and financial problems will inevitably thrust employees into the legal system in some form. And, as we will see, workers are largely unprepared when they are thrust into America's legal system.

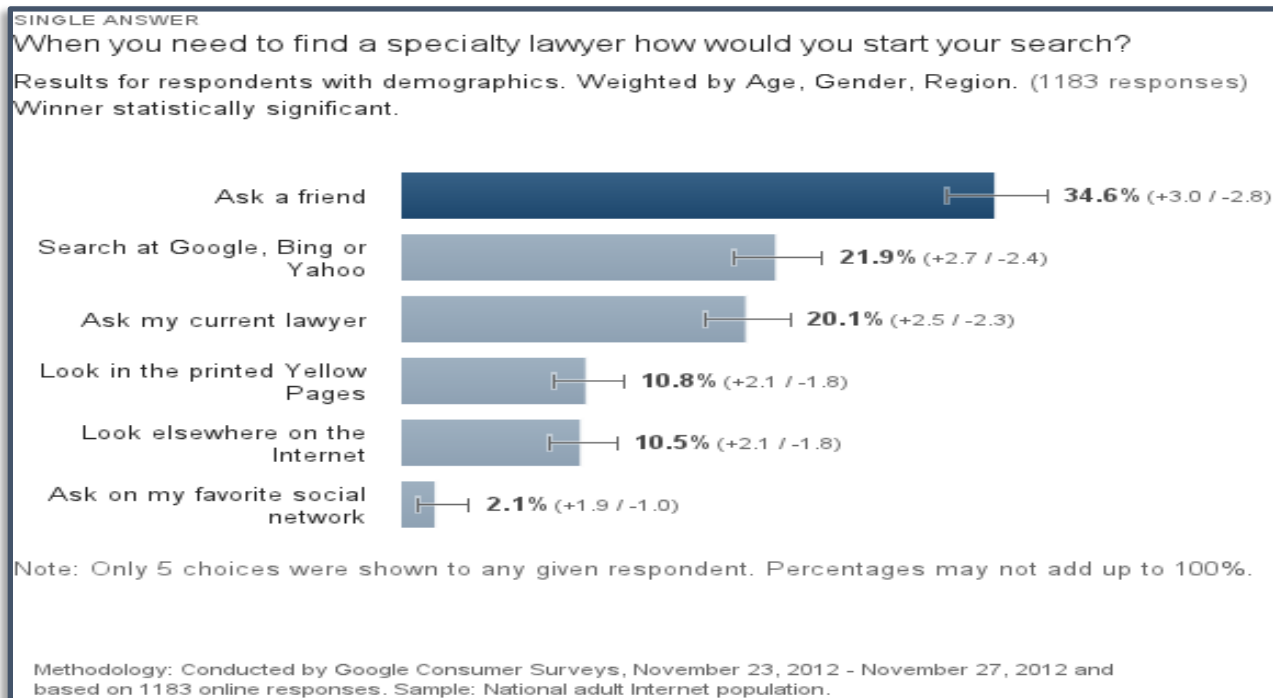
Let's go back to our example of one morning an employee is served with divorce papers not anticipating being embroiled in a lawsuit for the next two years. Upon being served, questions abound for that employee: Who will help me? Who will represent me? How much will it cost? Where will I live, and how much is the rent? How can I see my children? All types of significant life issues are visited in almost every divorce as the reality sets in that the marriage will not continue. The levels of stress may skyrocket, depending on the employee's character composition and their preparedness for this life event.

An employee's emotional state is a critical component during legal problems like divorce. If the employee is not able to let go of negative emotions and be logical, it will be impossible for the employee to negotiate financial issues effectively. The same applies if the employee's spouse is unstable, in which case the employee will need to consult with a psychologist for help in understanding such irrational behaviors.<sup>23</sup>

### 3. How Does an Employee Search for an Attorney? - A Typical Search for An Attorney

Figure 4 shows the ways employees search for attorneys when a legal problem arises unexpectedly.

Figure 4:



Not surprisingly, most people ask a friend for an attorney referral. Even in the online and social information age, people still rely on their friends, as well as other people they trust.<sup>24</sup>

But why don't more employees know lawyers who can help them? Finding an attorney seems like it would be easy, given all the attorney advertising, the billboards and the access to advice. Everywhere we turn today, there is a commercial or web site promoting legal services. When the United States handed down its decision in *Bates v. State Bar of Arizona*, which struck down state laws prohibiting lawyers from advertising as an unconstitutional interference with free speech, it was widely thought that it would then be easier for individuals to find an attorney. This belief was based on the premise that since lawyers were allowed to compete in the same way as other businesses, it would be easier to meet consumers' needs for legal representation and legal costs would go down.

But fears associated with attorney selection are not only monetary. The effects of losing the underlying case can be devastating. An employee may lose custody of their child, spouses may be hiding resources to increase child support income, credit scores may be preventing re-financing and mortgage problems and an automobile repossession may prevent an employee from getting to work on time or at all. Thousands more examples like these are causing substantial amounts of employee stress.<sup>25</sup>



## **F. Challenge Four: Lack of Concrete Information about the Legal System, the Client/Attorney Relationship and Procedural Hurdles in the Path of a Case Resolution**

The fourth major challenge for employees facing the American Legal System has three parts:

1. different expectations about the system leads to much stress and worry when an employee finds out their attorney is often not as available to help as the employee expects;
2. not receiving the expected guidance and understanding while their case winds through the legal system; and
3. the failure on the part of employees to understand that the Legal System is set up to almost require parties to compromise their cases and settle the matters without winning and that an actual trial is rare.

### **1. Vast Differences in Expectations**

Perhaps by understanding this part of the fourth challenge — how different employee expectations are from the realities of the legal system — employees, their HR managers and companies can better understand what tools may be available to reduce the ever-increasing stress levels of employees when a lawsuit arises.

Another conclusion of the 2002 American Bar Association Study examined earlier was that most Americans are ill equipped to face the challenges of the judicial system. Sixty-six survey participants expressed frustration with the delays, costs, procedures and complexity of the courts and legal system. Most Americans equate being involved in a lawsuit to having a root canal for each day the lawsuit drags on, sometimes for several years. The lack of understanding of how the system works and the lack of available information to explain many court idiosyncrasies are two of the largest contributing factors that make employees ill-prepared to navigate the legal system.

Most HR managers intuitively know there are complications anytime one engages with the court system or lawyers. Though they may not fully understand the complexities of the legal system, most HR managers and employers can relate to the pressures, costs, uneasiness, unpredictability and uncertainty faced by those who must deal with it.

While some might suggest the nation would be better off without lawyers, we often fail to consider the help lawyers provide. For example, if a teenager is arrested on a drunk driving charge that results in a court record that might keep that teen from professional schools and societies, a good lawyer quickly becomes an ally. Lawyers can achieve other similar positive results:

- When businesses are able to freeze the bank accounts of a debtor and recover the money the debtor refused to pay for goods
- When homeowners are saved from foreclosure after litigation shows the mortgage company's mistake in payment allocation
- When a spouse is able to thwart a court-ordered child visitation schedule, preventing an ex-spouse from spending time with their children after a divorce
- When spouses are reprimanded for non-compliance with court-ordered child support payment schedules

- When elderly parents are prevented from unknowingly depleting their entire estate, leaving the other spouse virtually penniless, so one spouse can receive nursing home care
- When the parents of a college student face a lawsuit because their child paralyzed a six-year old girl in a car accident

For these reasons and many more, it is clear, we need lawyers. What can help lower anxiety and stress levels is learning how to work better with them.

**Action Item:**

**HR must understand how the legal system's intricacies can create problems for employees caught in its web and who are unaware of its subtle traps. These intricacies and traps cause serious frustration levels. If HR managers know exactly what tools these employees need to better handle the financial and legal issues, much of the stress on employees can be better managed or even eliminated.**

Let's expand on a deficiency we saw earlier: the idea that when an employee needs help with explanations, the lawyer may be unavailable for cost reasons.

The stringent requirements, rules and procedures of the legal system convey an extraordinary seriousness and create fear and apprehension among employees engaged with it. For example, imagine an employee being handcuffed, wearing an ill-fitting orange uniform and being led into a court room, making the employee a criminal in the U.S. Legal System. Or, imagine a company executive's children being taken from her in a custody battle. HR managers may face this problem almost any workday. Most employees and managers never consider these possibilities, and yet legal problems, arrests and related issues can arise at the most unexpected times and in the most unexpected circumstances and are not limited to major criminals.

Almost every case in court is serious, but individuals tend to believe their personal cases are the most serious. This can become a problem for an employee involved in litigation because, while their case may have serious consequences, it may not be as serious to the court as the employee thinks. An employee will likely run into this issue the first time in court when waiting all day for the judge to call the employee's case.


**Employee Belief:** My case is very serious and will be a priority for the judge.

**Reality:** A court may deal with more than 25 cases a day, and other cases may be much more serious.<sup>26</sup>

A number of realizations may arise when an employee goes to court:

- The realization that there are many other serious cases to be heard by the court
- The realization that the employee's attorney has a number of other equally important clients
- The employee's perception that his case is not getting appropriate attention from the judge

Any one of these realizations can spark an ever-increasing level of frustration and even anger in some cases, and the employee's stress goes beyond the intensity of the issue that thrust the person into the



legal system in the first place. The employee realizes, but only after the lawsuit is brought, that the strict rules of the court and the sheer number of existing cases means the employee's case will not get the level of attention the employee believes it should. The employee likely entered the court with the belief that he would simply go to court, tell the judge his story and the magistrate would agree with him.<sup>27</sup> After the initial appearance in court, the employee begins to see that the underlying financial or legal problem is not being resolved quickly and there will not be a quick resolution.

## **2. Needed Guidance and Help in Navigating the Legal System that is Quite Simply Not Available**

Many employees believe there should be customer service representatives or counselors in the legal system that they go to for guidance, to make complaints or get detailed information from to address areas of confusion. As a result, another common employee expectation arises:

**Employee Belief:** Employees want someone with experience to counsel them through both the legal system and the mental aspects of the legal matter.

**Reality:** Lawyers are not counselors, and most lawyers are not equipped to handle the emotional aspects of a client's case.

The idea and expectation that lawyers or someone in the court system will explain things and talk the employee through the legal matter is met with quite the opposite reality: explanations are virtually non-existent without running up an exorbitant legal bill. One of the most difficult factors for an employee involved in an upsetting legal dispute to understand is how difficult it can be to work with an attorney, and one of the most misunderstood issues is the inherent problem of client expectations that differ from legal system realities.

## **3. Clients Need and Expect Counselors**

When interviewed about what they needed most from their attorney, most clients expect their attorneys to act like a counselor, a consultant and even a psychologist.<sup>28</sup> In effect, they want to be taught how the legal system works and what they can expect as their case goes through the litigation process. Clients often want every detail explained, especially those workers accustomed to their health or dental plan benefits and coverage being explained in great detail. At face value, this seems like a simple expectation.

However, attorneys are trained to be client advocates in and out of court. An attorney's primary function in litigation is to advocate to the judge and to the other side's attorney on behalf of the client. Overwhelmingly, clients fail to understand this function. This misunderstanding becomes apparent when their attorneys do not take much time to explain vital details or spend much time talking to clients during their cases, either in or out of court.

Because lawyers are trained advocates and not counselors, clients find that:

- Attorneys may not be adept at counseling.
- Attorneys are not trained to address the psychology of the legal battle from a client's perspective.
- Many attorneys generally do not foster or cultivate an overly positive counseling aura.

- Attorneys new to legal practice are often completely unprepared to assist emotionally distraught clients.
- Traditional law school curricula does not mandate coursework related to client interview skills or how to involve clients in the representation plan.

The knowledge, values and skills taught in schools of social work can be useful tools to address many common challenges faced by lawyers.<sup>29</sup> But most lawyers do not have this training.

A client may become disappointed when the attorney is fact-oriented, disinterested, unemotional or dismissive once court is over for the day. A client typically expects the attorney to engage in a discussion of the emotional impact of the case, confirm the magnitude of the legal problem and agree it is the worst and most urgent problem in the system. And because of the significant costs associated with lawsuit, a client generally expects the attorney to be absolutely devoted to the legal matter and totally committed to the wrongness of the opposing party.

Unsatisfied expectations tied to the misunderstanding between the role of advocate and the role of psychologist/counselor creates a number of debilitating issues for any litigant in the American legal system. Clients begin to have issues with their attorneys, and trust deteriorates when attorneys fail to meet clients' expectations that the attorney should be a counselor, legal instructor and advocate.


It's not unusual for an attorney to have no clue that a client is upset with them. In fact, many lawyers report that clients are usually well satisfied with their responses when asked for clarification. Attorneys with high client sensitivity understand that the need for clarification arises from the legalese used in initial client contacts — a problem lawyers and physicians share. If an attorney starts a conversation with terms like retainer agreements, prelims, OSCs, motions to set aside, summary judgment, dismissals, sanctions or other technical jargon, a client's bewilderment, frustration and anxiety is usually stirred.

Attorneys can better manage client expectation. For example, by clearly indicating the probable timeframe involved for a resolution, fees, the actual workings of the court system and by addressing common concerns up front that add to client stress. The problem for most clients is actually finding client-sensitive attorneys on their own. This metric, as important as it is, is almost never depicted in advertisements, online searches or other informational sources about attorney credentials and qualifications.

#### **4. High Customer Service Expectations Can Broaden the Lawyer/Client Rift**

High customer service expectations create additional challenges for an employee engaged in the legal system.

Imagine a customer service manager at a consumer bank dealing with an issue for a major bank depositor. The manager would devote undivided attention to the customer, researching the problem, identifying the customer's needs, locating the source of the issue and offering a resolution to the problem. In a different scenario, imagine that while the manager was handling this customer's problem, the manager shifted attention to three other bank customers' problems and then gave the first customer an invoice for the full 45 minutes it took to resolve the problem. That depositor is not likely to remain a bank customer.



The second scenario may be exactly what happens to cases in the U.S. legal system and wreaks havoc with an employee's expectations when an attorney is retained to handle a financial or legal matter. It's easy to see the inherent frustration over divided attention by an attorney. As the case drags on, the employee may think the lawyer is not devoting enough time to his/her case and not working with or for them, which creates a severe and fundamental stress problem in the case.

The quality of the working attorney-client relationship is vital to the success of the case. Clients and lawyers that work well together dramatically increase the likelihood of obtaining a favorable result. Conversely, lawyers and clients that display symptoms of a dysfunctional relationship tend to take it out on the case. Increased stress and higher costs aside, changing lawyers mid-stream signals the opposing side that problems exist. While these problems may have absolutely nothing to do with the underlying case, the opposing side may misinterpret the cause of the severed client/attorney relationship, conclude the case is in trouble and make a lower settlement offer.<sup>30</sup> The problem is that it is not uncommon, once the litigation proceeds, for a client to feel stuck with the attorney they selected and helpless to change their situation.

### **5. Clients Expect Attorneys to be Devoted Solely to Their Cases**

A client may believe that once an attorney is retained, that attorney will work solely for him and make the case a priority, but that is most often not true since most attorneys have many important cases, all of them serious.

According to a popular advice-based web site, it's important to seek out an attorney that will make a client's case a priority, noting:

*"Though attorneys are generally very conscientious, they can get busy or have too heavy a caseload. This means that a client's case can get relegated to a lower priority or that the attorney is too busy to respond to your questions. Realistically, an attorney will give you the highest level of attention when you are a prospective client — before you hire the attorney, you are potential new business, which provides the firm with an incentive to return your calls promptly and treat you as though your legal matter is a top priority. Therefore, if the firm is slow to return your calls at this stage, you can expect that your questions will be even less of a priority once you retain the firm."*<sup>31</sup>

An employee complaint about his lawyer often stems from this client priority concept. Lawyers have many clients and competing client cases. This often cause frustration and dissatisfaction for the litigant. Most clients outlay thousands of dollars for the attorney's services. As a result, most clients expect their case to be the only one the lawyer handles. Indeed, there can be much surprise when their lawyer juggles three or four clients in the same courtroom.

Without some mechanism to help an employee understand the legal system and how attorneys work, an employee may see his attorney as seriously inattentive. The attorney's failure to meet expectations can lead to upset, particularly for an employee engaged with the legal system for the first time. This frustration can cause an employee to take actions that lead to more frustration. For example, the employee may call the attorney's office more frequently in hopes of getting answers, make complaints or demand more attention, thereby creating more billable time that runs up the employee's bill.

One attorney blog site summed it up this way:

*“The unfortunate state of things is that many, many lawyers think of themselves as technicians – what they feel they’re MEANT to do has more to do with understanding the law or analyzing a problem than with serving a client. Some of that is the result of the way lawyers are trained. Lawyers are trained to research precedent and analyze issues in the context of previous decisions. Clients are rarely discussed in law school. There is little, if any, discussion about all of the myriad aspects of serving clients that don’t involve analyzing issues or making arguments. It isn’t surprising that the client service aspect of the profession is often overlooked or ignored, or just not valued by the time lawyers begin practicing.”<sup>32</sup>*

The author continues by delving into the customer service problem, noting:


*“Many lawyers just don’t see how client service (or lack of it) affects their bottom line – either the nature of their practice doesn’t lend itself to repeat clients or they don’t realize that clients aren’t coming back (and aren’t referring others) because they didn’t receive excellent client service. Many clients won’t leave during the course of an engagement because it’s just too expensive to change lawyers in the middle, and there’s an element of the ‘devil you know vs. the devil you don’t know.’ In those cases, the lawyer doesn’t realize she has ‘lost’ a client because the engagement gets completed despite the client’s dissatisfaction. Some clients that leave because of poor client service may give a different reason for leaving – it may sound like they’re complaining about fees, but their real complaint may be that they didn’t feel they got value for their money because the service wasn’t up to par. Since there’s often no easy way for a lawyer to know that a former client had another legal matter and didn’t return to the firm, or that a current or former client didn’t recommend the firm to a friend with a legal problem, this is, to some degree, an ‘invisible’ problem.”<sup>33</sup>*

## **6. Many Employees Expect to Just Tell Their Story and Win**

Another common example of an employee feeling powerless is what happens in court. Once in court, many employees want to tell their story immediately and successfully to the judge and have an expeditious resolution in his or her favor.

This unrealistic scenario creates an impossible expectation because the legal system is structured to enable both parties’ lawyers to advocate. Neither party can talk to anyone in the process but his own lawyer, certainly not to the judge, the opponent in the case or the opponent’s lawyer. Communication is restricted to one’s own attorney. This is why one of the first things a litigant will hear from his or her lawyer is, “Don’t say a word and let me do the talking.” And this advocacy system has strict rules and procedures that determine the times and forums by which employees or their advocates can address the court.

Not being able to present the merits of their case quickly wears on an employee that may have come into the courtroom with the expectation of going home victoriously. Dissatisfaction and impatience increases



as costs and work time off soar, and the employee becomes incensed at both the underlying problem and the lack of a resolution.

One of the most revealing examples, a situation employees face more than any other legal problem, is divorce litigation, especially when child custody challenges are involved. Spouses are abusive, inconsiderate and very mean when divorce is an issue. Much of this litigation can be contentious, vindictive and upsetting to parties at each other's throats. Often one spouse has the expectation that the other spouse is the clear bad actor and that everyone in the legal proceeding should just be able to see this and grant the employee with this expectation the relief or resolution they want. When one's attorney or judge may not agree with the employee, they begin to feel alienated and angry. The feeling that one's attorney is not there to get them quick help can create a serious rift with the employee and their attorney. These feelings can make employees believe that true help cannot be found anywhere.

### **7. The Shocking Revelation Once Litigation Starts that the Entire American Legal System is Set up to Almost Force Parties to Compromise without Going to Trial and Winning Their Cases**

One of the most shocking and ultimately frustrating realizations for an employee is that the legal system is specifically designed to facilitate compromise and lawsuit settlements.

**Employee Belief:** I am on the right side of justice, and the U.S. Legal System will help me win my case. The other party, which is in the wrong, will pay fast.

**Reality:** Regardless of being right or wrong, almost all legal cases must settle, and the parties must compromise for the system to work, *even when one of the parties is clearly in the right and deserves compensation.*

One of the foundational premises of the legal system is that *most of the cases in the system must settle or drop out before a trial verdict (or a court win) is ever reached.* This is difficult for an employee to comprehend for several reasons.

- Most employees have seen the court system operating through the lens of a major televised court trial, whether fictitious or real.
- The perception that the legal system is designed to be adversarial, pitting one party against the other with a winner and loser, and Americans want to be winners.

This concept underlies our entire jurisprudence system, but because of the win-lose adversarial nature of lawsuits, particularly those sensationalized on TV and in the media, the concept of settlement or compromise is not realized until an employee is well into the litigation and it is too late. A fundamental understanding of this necessary compromise could produce a more educated employee-base, and employees going through the legal system could be better prepared for the steps involved. Without this understanding, a few serious disconnects can occur that will inevitably cause upset, anxiety and stress.

## 8. Sensational Trials do not Reflect the Reality of Compromise

The entire legal system is created to effectuate a compromise in almost every legal battle. In fact, many lawyers argue that compromise is actually a cornerstone requirement in most lawsuits.

A whopping 97% of all lawsuits settle before going to trial, leaving only 3% of the cases going through the trial phase.

*“Nearly 1.4 million lawsuits are filed in California every year. While some of these lawsuits have merit, many do not, and these lawsuits are costing each and every one of us.”<sup>34</sup>*

California Citizens Against Lawsuit Abuse

Sensational TV trials, where the focus is on the fight between the parties during the trial, rarely include compromise, and there is almost always a clear winner and loser in the eyes of the jury and the viewing public. For example, many people were appalled by the verdict in the Casey Anthony case. In which the jury, despite seemingly overwhelming evidence, acquitted the defendant in the death of her two-year old. And, many clearly remember the highly publicized television trial of defendant O. J. Simpson, who was also acquitted of murder. In that case, there was no compromise evident to television viewers and a clear winner emerged. It’s important for an employee to understand that these TV trials in which the parties did not compromise and received a jury trial comprise a very small minority of the cases in the American courts compared to the number of cases that settle.

Are lawyers and judges misleading participants?

The answer is no, some cases do go to trial, and it is impossible to predict which cases will, and every citizen has a fundamental right in our country to have their day in court.


Getting a case to satisfactory completion or winner status causes a great deal of stress for employees because of the time and money involved throughout the normal litigation process. Litigants may not feel the stress at the beginning of the judicial process, but stress intensifies as frustrating procedures and delays add up to wasted time and financial strain.

From the start, an employee’s expectations about the legal dispute focuses on winning and finding a lawyer that will lead to victory. An employee may have the impression, or be told by the lawyer, that the employee has a great chance of winning the case and that the lawyer possesses the expertise to get the best result.

Attorneys are expensive, the legal process is complicated and the courts are inefficient, which means the cost of seeing a case to conclusion is extremely high in time, money and emotions. To reduce risk in a system that seldom works quickly, many litigants are forced to compromise and settle to limit the risks to their retirement or savings funds. As a result, most employees mired in legal disputes do not realize there is fundamental pressure surrounding every case in the court system to be resolved early and to seriously encourage parties, with the stimuli of endless time and mounting costs, to settle cases before they potentially reach the Supreme Court.

The pressure to compromise is not apparent or expected at the outset of litigation, and an employee does not realize the pressure to compromise until after the case starts. An employee that believes the attorney





will fight harder than ever soon sees the lawyer compromising early on. Because of the stressful nature of the underlying dispute — an ugly divorce, a nasty child custody battle, a harassing collection agency seeking money the employee doesn't have or a bitter sibling dispute over the disposition of a deceased parent's estate — any suggestion of compromise increases the employees stress level, often to the point of anger or frustration.

Both frivolous lawsuits and serious matters, trusts, wills and other probate issues, are getting buried in the morass of the average American courtroom. A California publication lamented in 2010 that courts in Los Angeles and Orange County were seeing probate cases once heard within a reasonable 30 to 45 day timeframe weren't getting heard until 90 or 100 days from filing.<sup>35</sup>

Regardless of the state, as a case drags out, costs climb and the expectation of getting paid quickly goes unfulfilled, frustration builds and stress mounts.

### **9. Procedural / System Delays are Rampant**

Notwithstanding the continuance and delay issues, or voluntary procedural delays, there are also structural hurdles. Mandatory procedural and statutory time limits that can prohibit a quick resolution.

**Employee Belief:** The court system has very specific rules and procedures designed to hurry cases like mine along in an efficient and judicious manner.

**Reality:** Instead of adhering to these rules, procedures and deadlines, courts and lawyers routinely manipulate the system so that hurry up rules are ignored, and court proceedings are rescheduled. Continuances require all parties to return to court on a future date for another postponed court proceeding. The employee must take off another day from work and return to court at a later date.

Postponements are often created for the convenience of the court or the lawyers, all of which may know they are causing inconvenience for the other parties. Unfortunately, legal professionals have become so accustomed to postponements and continuances that they are either unconcerned about it or desensitized to them and don't bother to consult with their clients or the other parties.

**Employee Belief:** Once in court, my case proceed quickly as a priority, and I will be back to work soon with this lawsuit behind me once and for all.

**Reality:** Once in court, the priority is the court's business and timetable, not the employee's job or their company's business.

State and federal courts impose procedural steps to help litigants and make the system fair for both sides, but these steps create delays that are costly to participants. The parties, once in the litigation, make modifications to the application of these rules to drag out the litigation longer than the rules anticipate. And, once in court, the priority is the court's business and timetable, not the employee's job or their company's business.

As an example, let's examine the required steps in a typical criminal defense case. Although each state may have slightly different rules and procedures, if courts adhere to the constitutional and statutory rules in most states, the person accused of a crime would be entitled to a speedy trial, often constitutionally defined or interpreted as 60 days from the time of arraignment. This mandate ensures that a wrongly accused defendant is not sitting in jail for lengthy periods without the case coming to a resolution.

**Question** Why do most criminal cases take far longer than 60 days from arraignment, even when the defendant is in jail?

**Answer** There are five typical steps in a felony case, detailed below, and most cases do not follow the statutory time limits in the short periods specified. Each side may request continuances to delay for reasons usually associated with additional preparation, extra time to find witnesses or locate other evidence. In some instances, criminal defense attorneys continue cases or request continuances to enable the defendant to raise additional legal fees. Additionally, the court often requires continuances, with the defendant's ostensible permission, to enable the District Attorney and defense to talk with each other under deadlines, help reach a compromise based on evidence, witnesses or a potential criminal charge that encourages the defendant to plea bargain [settle before trial] and, thus, resolve the case without trial and court time.

The five steps associated with a felony case include:

1. **Arraignment.** The defendant is usually brought to court within 48 hours of arrest to plead guilty or not guilty to the charges.
2. **Preliminary hearing.** The prosecution puts on a minor display of the evidence against the defendant to show the judge there is a genuine case against the defendant. In most cases, the defendant does not have much of a role at this phase.
3. **Arraignment again in a higher court.** Assuming the judge feels there is at least some evidence against the defendant, the accused must again enter a plea of guilty or not guilty in a new court, which will be the new trial court if the case isn't disposed of through a plea agreement.
4. **The exchange of discovery.** The parties exchange the information and evidence they have against the defendant, although some jurisdictions do not require the defendant to turn over the evidence it will use at trial to prove the defendant's innocence.
5. **Trial.** The case proceeds with a jury that in most instances will either acquit or convict the defendant.

Extraordinary stress for employee-litigants can result from the delays that arise during the five steps.

- The potential sentence and jail time hanging over the defendant can be frightening. Many prosecutors ask for lengthy sentences and threaten them if a case goes to trial. However, if the defendant settles, the sentence may be reduced.
- The defendant must consider and fear the possibility of losing.

- In both criminal and civil cases, many parties face the prospect of lengthy court battles, expensive lawyers and the distinct possibility of paying money they may not have. All of this results in extraordinary amounts of stress in many employee-litigants.

While judges and lawyers are concerned with court dockets and schedules that work best for them, there is little focus on the practical impact on an employee that must simultaneously be productive at work and grappling with a legal proceeding. Thousands of employees report that when involved in court actions, criminal or civil, delays are among the greatest causes of frustration. A worker takes a costly day off and appears in court hoping for resolution only to be told, “Nothing will happen today. Come back in three weeks.” Such continuances are a way of life for legal professionals. As discussed previously, delays provide time for parties to be forced, maneuvered or willingly led to compromise and settle. But to employees expecting quick and fair resolution to their legal or financial woes, the delays seem unfair.

The frustration factor increases exponentially with each slowdown, delay and failure to produce results for these reasons and others:

- Attorney fees are mounting
- Leave time from work is being exhausted, work tasks are piling up and maintaining productivity on the job is a challenging.
- The other party in the case appears to be the only beneficiary from the delays.

As frustration builds, so does the stress that becomes a long-term problem — a problem that ultimately produces a devastating increase in anger, frustration and stress costly to the employee and his work productivity. As an example, an employee may be in court for a prolonged divorce proceeding with a spouse not entitled to be in the house they once owned jointly, or delayed modifications of child visitation orders or an alcoholic spouse keeping custody of the children. The employee cannot help their lack of concentration and distraction in their workplace, and this condition and their stress is directly related to their legal problem.

All these court delays actually push an employee to compromise and settle, even when it may prove costly to them. The employee doesn’t want to risk getting fired for absenteeism, so after missing days and even weeks of work, compromise instead of winning becomes the goal.

It is critical for HR to understand all aspects of these challenges. To better understand these divergent employee expectations vs. legal system realities, HR managers who want to help their employees and increase work productivity when a lawsuit arises must also understand the effects of lawsuits.



## **In Conclusion – Well-being and Employee Stress Due to Financial and Legal Issues**

When an employee with legal problems is thrust into a system that, one, appears to have no immediate solutions, two, has a number of serious hurdles and, three, involves high out-of-pocket costs they can become discouraged and upset. This is compounded and exacerbated by a fundamental lack of understanding of how the American legal system works. And when the employee receives attorney bills with charges for seemingly endless and unnecessary delays, the feelings of frustration switch to deep feelings of stress, anxiety, helplessness and anger.

It is vital for our employees well-being to understand how it is possible to prevent these stresses and legal issues from even occurring in the first place. This exact topic is explored in the next paper in the well-being series entitled *How Can HR Managers Better Understand Employee Well-being Challenges*.

Footnotes:

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