

HRD Liability Update

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Glossary of Legal Terms & the Civil Trial Process

By John Sample, Ph.D. SPHR

This issue of the HRD Liability Update consists of two parts: (1) a glossary of common legal terms and (2) a review of the civil trial process.

Glossary Of Legal Terms

Appellant--One who appeals the decision of a trial court to a higher court for review.

Case Law--Decisions from the courts that interpret statutes, regulations, and constitutional provisions.

Cause of Action--A legal claim that is the basis for a lawsuit.

Circuit Court--In the federal system, an appellate court between the district trial court and the U.S. Supreme Court. In some state judicial systems, a higher level trial court.

Class Action--A lawsuit brought on behalf of many people who are all asserting a common legal claim against a defendant.

Common Law--The basic system of law developed by the courts in the absence of case decisions from the courts or a statute.

Copyright--Legal protection provided to the authors of original works of authorship that are fixed in a tangible form of expression, including literary, dramatic, musical, artistic, and certain other intellectual works.

Complaint--Legal papers filed by a plaintiff for actual injuries done to him or her by the defendant.

Defendant--The person, institution, or organization being sued by a plaintiff(s).

Deposition--The verbal questioning of a witness prior to trial to discover evidence. Discovery--The pre--trial process of uncovering the evidence (see depositions and interrogatories).

Due Process--A constitutional requirement that state and federal governments conduct themselves fairly under the law and that they avoid arbitrary behavior.

Indictment--Formal charge of the grand jury resulting in a criminal defendant standing trial.

Interrogatories--A series of pre-trial questions drawn up for the purpose of determining from witnesses or parties to the case who may have information about the case.

Jurisdiction--The authority of a court to act, either over a particular person or with regard to a particular cause of action.

Negligence--Non--intentional or careless behavior that leads to an injury.

Plaintiff--One who files a lawsuit against a defendant in court. Proximate Cause--The direct or immediate cause, without which an injury would not have occurred, and sufficient to support an action of negligence.

Stare Decisis--A principle of law that cases already decided must serve as precedents to govern later cases.

Statutory Law--Body of law created by acts of state and federal legislatures. Tort--A civil wrong, such as negligence, that may be brought by a plaintiff against a defendant for damages or injunctive relief.

Vicarious Liability--The liability of one person for the actions of another.

The Civil Trial Process--How The Judicial Process Works

This section is designed to educate HRD professionals about the civil trial process, especially some of the vocabulary and stages of development in a civil suit.

Pre-Trial Stage

Pleadings are the statements of opposing parties (plaintiffs and defendants) filed with the clerk of the trial court stating the nature of a civil wrong. The plaintiff must start the process by filing a complaint (also called a petition or declaration in some courts). The complaint states paragraph by paragraph the nature of the claims and the relief requested from the court. The defendant is notified of the complaint by service of process by an agent of the court (deputy sheriff, process server, or private business that serves legal documents). In many jurisdictions, a complaint and summons are used to notify the defendant. The summons demands that the defendant answer the allegations of the complaint within a specified period of time.

The defendant files an answer (sometimes referred to as a motion) denying most or all of the allegations in the complaint. The answer may state an affirmative defense or a counterclaim

against the plaintiff. Other pre--trial motions include the following: Motion to dismiss--filed by the attorney for the defendant stating that even if everything alleged in the complaint is true, the plaintiff is not entitled to a remedy from the court. If the motion to dismiss is granted, the plaintiff is not allowed to go forward with the suit. If the motion is denied, then the defendant must answer to the complaint and the case goes forward for trial. Motion for summary judgment--at any time during the pre--trial processes, or anytime prior to a verdict, either party to the lawsuit may request a summary judgment. A summary judgment is based upon information from affidavits, depositions, and interrogatories alleging that no material fact or issue exists for which a jury trial is necessary. If granted by the judge, the lawsuit ends; if material issues or facts remain, then the case continues forward.

The pre--trial discovery process is designed to provide meaningful information to opposing counsel so that the case may move as expeditiously as possible to resolution. During the discovery process, as much factual information is surfaced and agreed upon so that the judge and jury will hear only those facts and issues that are in dispute. Each side must disclose all relevant information, including the names of witnesses, experts, books, papers and items relevant to the litigation. When properly utilized, the discovery process reduces the possibility of surprise and unfair advantage.

Two tools used by attorneys in the discovery process are depositions and interrogatories. Depositions are statements made by litigants, witnesses, and experts under oath prior to trial. The typical deposition includes the person to be deposed (witness or expert), the attorneys for the plaintiff and defendant, and a court reporter. During the deposition, the witness or expert is examined under oath by one of the attorneys. Interrogatories are written responses to questions posed by the attorney for the plaintiff or defendant.

The Seventh Amendment to the US Constitution preserves the right of a trial by jury in civil matters, and many state constitutions provide for the right to trial by jury. Prior to trial, the plaintiff and defendant must decide whether the trial will be by judge or jury. A trial by jury can be waived (voluntary relinquishment of a known right) if the plaintiff and defendant agree and the judge permits.

The Civil Trial Stage

Most states require a pretrial conference for all civil trials. The attorneys representing the plaintiff and defendant meet with the trial judge for two primary purposes: (1) to shorten the trial by further refining or narrowing the facts and issues and (2) to encourage a settlement. During the pretrial conference, guidelines with respect to the admissibility of evidence and qualification of expert witnesses may be determined. At the end of the conferences (there may be more than one), if no settlement has been reached, the presiding judge sets a date for the trial.

Once the lawsuit has proceeded through discovery and survived any pretrial motions, and if there has been no settlement, the case is set for trial. The most basic function of a trial is to settle disputes without violence. The parties in the trial have their day in court to publicly present their evidence and legal theories. The judge ensures that only proper legal arguments and evidence are presented. The primary role of the judge is to maintain order in the adversarial process and to provide authoritative decisions on issues of law.

The primary function of the jury is to hear evidence and to decide factual disputes. If the trial is heard by a jury, then the first step is to select the jury. This process is called the voir dire, and it allows attorneys for the plaintiff and defendant to challenge a prospective juror's selection if it is believed that he or she cannot evaluate the evidence impartially. Each attorney has an unlimited number of challenges for cause and a limited number of preemptory challenges. Preemptory challenges are not related to a specific cause of suspected impartiality and are based on some factor other than race.

After the jury has been selected, each attorney makes an opening statement, and usually the plaintiff's attorney goes first. An opening statement provides the jury with a general overview of the case and typically outlines the type of evidence to be produced. The attorney for the defendant has the option of making an opening statement following the plaintiff's statement, or of deferring it until the plaintiff has finished presenting evidence.

Another issue discussed during the opening statement is the burden of proof. In civil trials, the plaintiff owns the initial burden of proof. If the plaintiff fails to meet the burden of proof during the presentation of evidence, the judge dismisses the case based upon a motion for a directed verdict by the defendant. If the judge agrees with the defendant, the case is over, and the defendant does not have to present any evidence. If the judge agrees with the plaintiff, the case moves forward.

Since the burden of proof is initially on the plaintiff, evidence is introduced to support the allegations set forth in the complaint. Testimony of witnesses and experts under oath and physical evidence are used to induce belief or refute some contention by the other party. Once the plaintiff meets the initial burden of proof, the burden automatically shifts to the defendant to refute the evidence presented by the plaintiff. Now, the defendant has the burden of proof of going forward with evidence from witnesses, experts, and physical evidence.

Examination of witnesses and experts by the plaintiff's attorney is called direct examination; examination of the same witness by the defendant's attorney is called cross-examination. Cross examination is limited to what was discussed during the direct examination by the plaintiff, and the plaintiff's attorney may conduct redirect examination on points raised by the defendant's attorney. Testimony of all witnesses and experts is subject to penalty of perjury.

After the presentation of all evidence by the plaintiff and defendant, either party may move for a directed verdict at the close of the defendant's evidence. Such a motion is based upon the premise that the evidence is so clear that reasonable people would not differ as to the outcome of the case. If the judge directs the verdict, the case is taken away from the jury, and the judge enters a judgment for the party who made the motion.

After all of the evidence has been presented, and the failure of any motions for a directed verdict, the attorneys for the plaintiff and defendant are allowed to make closing arguments to the jury. During the closing arguments, each side reviews the strength of their evidence and the weaknesses of the opposing party. After the closing arguments, the judge instructs the jury on their responsibilities as finders of fact. The jury's duty is to determine the facts of

the case, accept the law as stated by the judge, apply the law to the facts, and reach a decision for the plaintiff or defendant.

In a civil suit, the jury must determine if the plaintiff has met the burden of proof by the preponderance of the evidence. Essentially, the plaintiff's evidence must simply be more creditable than the defendant's evidence. In contrast, in a criminal case, guilt of the defendant must be proven by facts beyond a reasonable doubt.

The jury deliberates in private, and when it reaches a verdict, it returns to the courtroom, and in the presence of the judge and the parties, announces the decision for the plaintiff or the defendant. A general verdict states which party prevailed and does not include any special findings of fact. A special verdict consists of answers to specific factual questions posed by the judge to the jury. In this instance, the jury does not attempt to reach a decision in favor of either party. Instead, the judge applies the law to the facts determined by the jury.

The final step in the civil trial is the entering of a judgment and final motions. A judgment states the relief granted to the prevailing party. The relief may include costs and/or damages (legal relief) and/or equitable relief in which the defendant would be ordered to act or refrain from acting in a way consistent with the judgment.

Two motions are likely to be made at the end of the trial. A motion for a new trial may be made by either party. This motion argues that a serious legal error was made by the judge during the trial. The losing party may also make a motion for judgment notwithstanding the verdict. This motion is based on the belief by the losing party that he or she is entitled to a judgment under the law even though the jury rendered a contrary verdict.

The Appeals Process

Finally, either party may file an appeal. Reasons for an appeal may include errors in admitting or excluding testimony, rulings on motions, stating the law during jury instructions, or an excessive judgment. The party bringing the appeal is the appellant; the other party is the appellee or respondent. The appellate court reviews a transcript of the case as conducted by the trial court to determine whether any error of law was made. During the appeals process, the appellate court reviews the complete trial record and may listen to oral arguments by attorneys for both parties, who also submit written briefs to support their arguments. The appellate court's decision in writing will affirm (agree with), modify (alter), or reverse (set aside) the trial court's decision. If the case is reversed and remanded, then the case is sent back for a new trial or for a modification of some kind.

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