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## Spilman attorneys discuss major types of labor and employment suits

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By Andrea Lannom - [email](#)

Employment discrimination and wage an hour lawsuits have been on the rise, attorneys with Spilman Thomas & Battle said in the June 22 SuperVision event.

The annual SuperVision event focused on the "Employment Life Cycle" of Pat Doe in One Day, in a "cradle to grave" scenario of issues that can come up in every stage of employment.

Eric Iskra, chair of Spilman's labor and employment practice group, said he thinks the reason discrimination suits are on the rise is because there are additional avenues opening the way to more lawsuits.

Iskra said another reason could be because there is an increase in government investigators, such as those in the EEOC and the federal Department of Labor.

Lawsuits in the pre-employment phase, Iskra explained, mainly deal with failure to hire and drug testing. However, Iskra said there have been new issues on the rise.

The newest issue, Iskra said, deals with employers looking at criminal arrest records. Iskra said the EEOC has taken a narrow stance on denying employment based on prior convictions.

"The guidepost for employers is to make sure there is a connection between the conviction and the role of the job the employer can perform. If there is a nexus, it makes sense to deny it based on it."

Employers should avoid a blanket policy prohibiting the hiring of anyone convicted of any crime. Iskra said this kind of policy would not pass scrutiny in court.

Iskra said there also is a racial discrimination aspect to asking for arrest records.

Comparatively, lawsuits are more common in the termination phase, Iskra said. One of the main causes for lawsuits, Iskra explained, is paying wages in a timely fashion once a person is discharged.

Iskra said employers must pay a terminated employee within 72 hours of discharge.

"A lot are not aware of that statute," Iskra said noting some do not have a payroll process in place to do it that quickly. "There is no defense for an employer. A mistake is not a defense. If it happens 73 hours late, the employer owes three times the wages owed and attorney fees."

Iskra said the state Chamber of Commerce is trying to change this law.

"There is and will be a movement in the business community to change that law," Iskra said. "No one is harmed by getting the paycheck the next regular period. It's a cottage industry to sue under this issue."



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