

Pick Your Poison: Choosing Between Judge, Jury, and Arbitrator in Employment Cases

The decline of the jury trial, increasing popularity of arbitration as a means of dispute resolution, and the continuing importance of judicial persuasion in litigation invites the question, “What are the real differences between these three various fact finders?” Are there some distinct similarities and differences among fact finders, or is the jury still out? This presentation focuses specifically on employment litigation in comparing the three fact finders, beginning with statistics highlighting the verdicts and damages in employment discrimination cases. In addition, data from surveys and interviews with judges, arbitrators, and jurors specifically related to employment cases are shared and discussed. Effective strategy for all fact finders is also included throughout the presentation. Topics include:

- The parallels among the three fact finders
- Whether arbitrators are actually pro-defense
- The fact finder more likely to favor law over ethics
- The fact finder best equipped to decide highly emotional or highly technical cases
- The fact finder more likely to find for the plaintiff
- The fact finder more likely to award reasonable damages
- The fact finder more likely to have anti-corporate bias
- Ways to tailor your messages for each audience

Arbitration v. Litigation (Colvin & Pike, June 2012)			
Employment Cases			
	Arbitration (AAA)	Fed. Litigation	State Litigation
Employee Win	25.2%	36.4%	57%
Median Damages	\$81,835	\$462,307	\$336,291

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