



Current Trends in Public Employment:

What You Can Do to Prevent Claims

Olympus Risk Conference
March 29, 2023

Agenda

- Who we are
- EPL claim stats
- Trends to watch
- Real-world experience
- How to prevent these problems
- Q & A

Who Are We?

Are EPL Claims Really on the Rise?

Our Experience 2020-2022

287 Total EPL Claims = \$6.3 million

Top 10 Claims = \$3 million

Top 20 Claims = \$3.7 million

Top 5 Claim Types:

- Discrimination = 124
- Retaliation = 53
- Harassment = 27
- Disability = 22
- ADA / FMLA = 11 each

Your Experience

EEOC/UALD Charge Statistics

www.eeoc.gov/statistics/enforcement-and-litigation-statistics

In 2021, the top 5 charges of discrimination **nationally** were:

- Retaliation (56%)
- Disability (37%)
- Race (34%)
- Sex (30%)
- Age (21%)

In 2021, the top 5 charges of discrimination in **Utah** were:

- Retaliation (62%)
- Disability (50%)
- Sex (28%)
- Age (20%)
- Race (18%)

Top 7 Problematic Trends to Watch

Social Movements: The #MeToo movement has contributed to a substantial rise in sexual assault/harassment lawsuits

- The “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act” became law on March 3, 2022.
 - This law allows employees who come forward with sexual assault or sexual harassment allegations the option to take such claims to court, even if they had previously agreed to arbitrate these disputes before the claims arose.
 - This significantly increases the potential for employment litigation and related EPL claims.

Trends to Watch 2: Retaliation

Retaliation - Employer taking inappropriate actions against an employee for exercising their rights.

- According to the EEOC, retaliation has repeatedly been the top cause of employment claims and litigation the past few years.
- In fact, more than half of all employment charges filed with the EEOC involve retaliation.
- Allegations of retaliation associated with racial discrimination and harassment have the highest median severity at \$185,000.
- Public administration sector accounts for more than one-third (37%) EPL claims.

Trends to Watch 3: COVID-Related

COVID-Related Claims – The government's response to the pandemic forced many employers to make workplace changes.

- Common concerns listed in these EPL lawsuits include:
 - Employers failed to make reasonable accommodations for employees amid return-to-office plans
 - Allegations of workplace discrimination and adverse employment outcomes after employees opted-out of vaccination requirements for health or religious reasons.

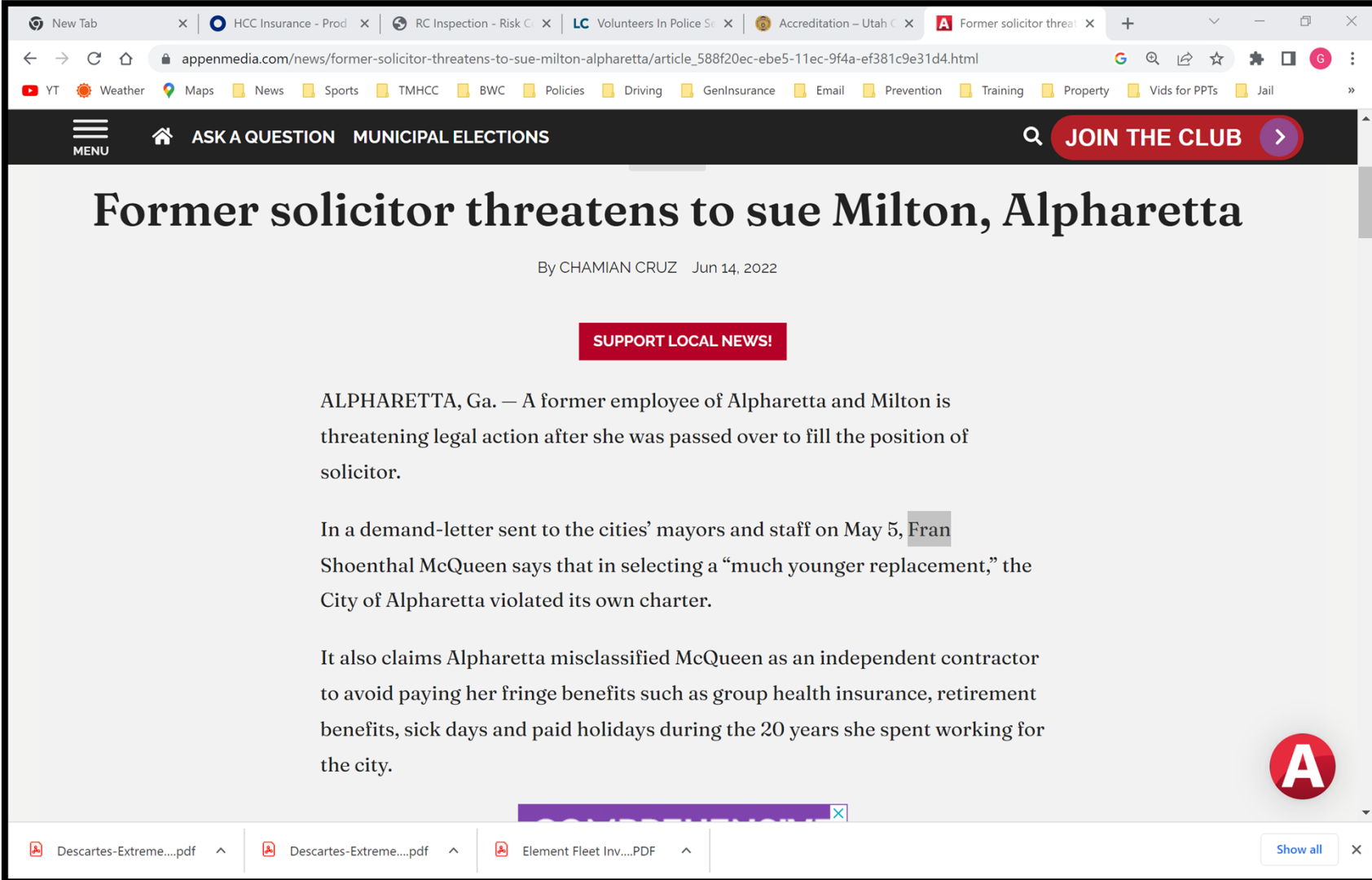
Trends to Watch 4: Age Discrimination



Age Discrimination: Age discrimination-related losses are increasing.

- The number of EEOC charges related to age discrimination doubled over the past 20 years
- That trend is expected to continue with an aging public workforce
- Loss data shows that the median claim cost is also increasing, from \$110,000 in 2015 to \$250,000 in 2020

Age Discrimination



The screenshot shows a web browser with multiple tabs open. The active tab displays a news article on the website appenmedia.com. The article title is "Former solicitor threatens to sue Milton, Alpharetta" by CHAMIAN CRUZ, dated Jun 14, 2022. The article text discusses a former employee of Alpharetta and Milton threatening legal action after being passed over for a solicitor position. A red button labeled "SUPPORT LOCAL NEWS!" is visible. The browser's address bar shows the URL: appenmedia.com/news/former-solicitor-threatens-to-sue-milton-alpharetta/article_588f20ec-ebe5-11ec-9f4a-ef381c9e31d4.html. The browser's taskbar at the bottom shows several open PDF files.

New Tab | HCC Insurance - Prod | RC Inspection - Risk | LC Volunteers In Police Se | Accreditation - Utah | Former solicitor threat

appenmedia.com/news/former-solicitor-threatens-to-sue-milton-alpharetta/article_588f20ec-ebe5-11ec-9f4a-ef381c9e31d4.html

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Former solicitor threatens to sue Milton, Alpharetta

By CHAMIAN CRUZ Jun 14, 2022

SUPPORT LOCAL NEWS!

ALPHARETTA, Ga. — A former employee of Alpharetta and Milton is threatening legal action after she was passed over to fill the position of solicitor.

In a demand-letter sent to the cities' mayors and staff on May 5, Fran Shoenthal McQueen says that in selecting a "much younger replacement," the City of Alpharetta violated its own charter.

It also claims Alpharetta misclassified McQueen as an independent contractor to avoid paying her fringe benefits such as group health insurance, retirement benefits, sick days and paid holidays during the 20 years she spent working for the city.


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Trends to Watch 5: Social Inflation

Social Inflation: One of the chief emerging risks facing insurers and their policy holders.

- Changes in underlying beliefs about the appropriateness of filing lawsuits and expectations of higher compensation.
- Legislative rollbacks of tort reforms and retroactive extensions of statutes of limitations.
- Increased attorney advertising and attorney involvement in liability claims.
- “Nuclear” jury verdicts, reflecting an increase in juries’ sympathy toward plaintiffs and in their willingness to punish those who cause harm to others
- Nationalization of local news via “traditional” news outlets and social media that normalize extreme verdicts shape public opinion.


Nuclear Verdict

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WILLIAMSON COUNTY

‘Shocking verdict’: City of Hutto to appeal verdict on \$12.5M city manager lawsuit

by: [Julianna Russ](#)
Posted: Mar 5, 2023 / 01:23 PM CST
Updated: Mar 5, 2023 / 01:23 PM CST



Jones was set to leave Hutto as city manager on Dec. 31, 2019 with a \$400,000 buy out and consulting contract.

SHARE    ...

AUSTIN (KXAN) – The City of Hutto said it was in the process of appealing a verdict in a federal lawsuit that granted its former city manager, Odis Jones, a multi-million-dollar award.


According to a release, Jones brought a federal suit against the city over the City Council’s unanimous vote in December 2020 to rescind a severance agreement with Jones for \$412,000.

Former Hutto City Manager sues city leaders for racial discrimination and breach of contract


“Thursday’s jury verdict in Austin included a potential award of up to \$12.5 million in damages to Jones, who claims Council rescinded his severance payment because he is Black,” the city said.

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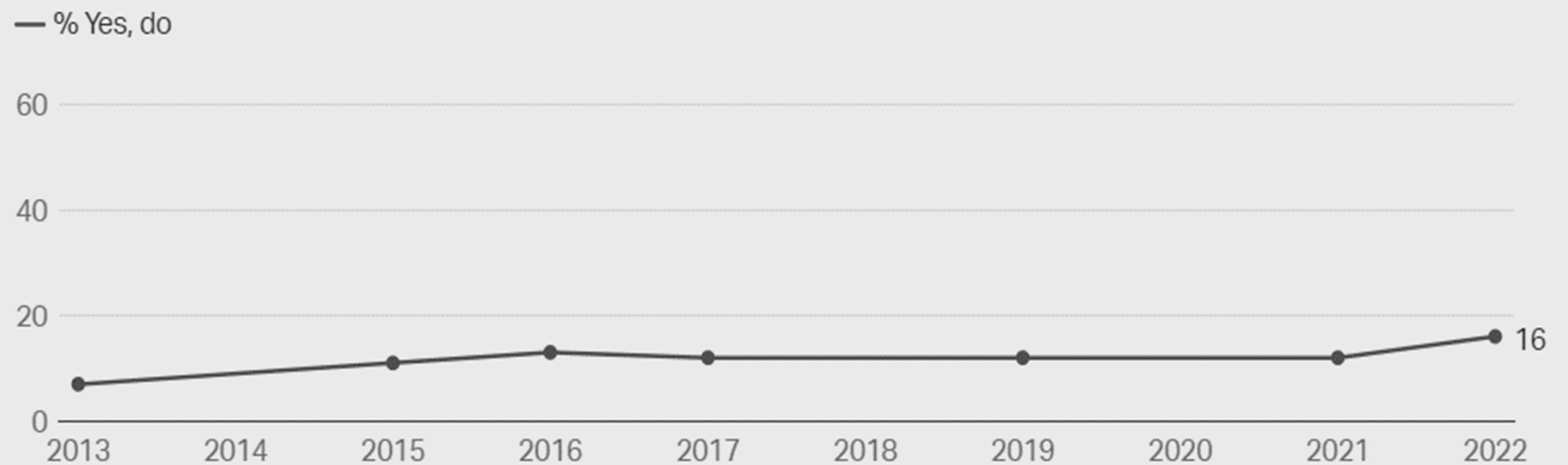
Trends to Watch 6: Drugs

Marijuana and Psychedelics: Use is increasing as more states legalize its medical and recreational use. Other than alcohol, marijuana is the most frequently reported drug found in post-crash testing.

- Develop a comprehensive marijuana policy that accounts for current laws.
- The best marijuana policies will:
 - Prohibit workers using marijuana in any form while at work.
 - Prohibit workers from being under the influence of marijuana when they report for work.

Americans Who Report Smoking Marijuana, 2013-2022

Keeping in mind that all of your answers in this survey are confidential, do you, yourself, smoke marijuana?

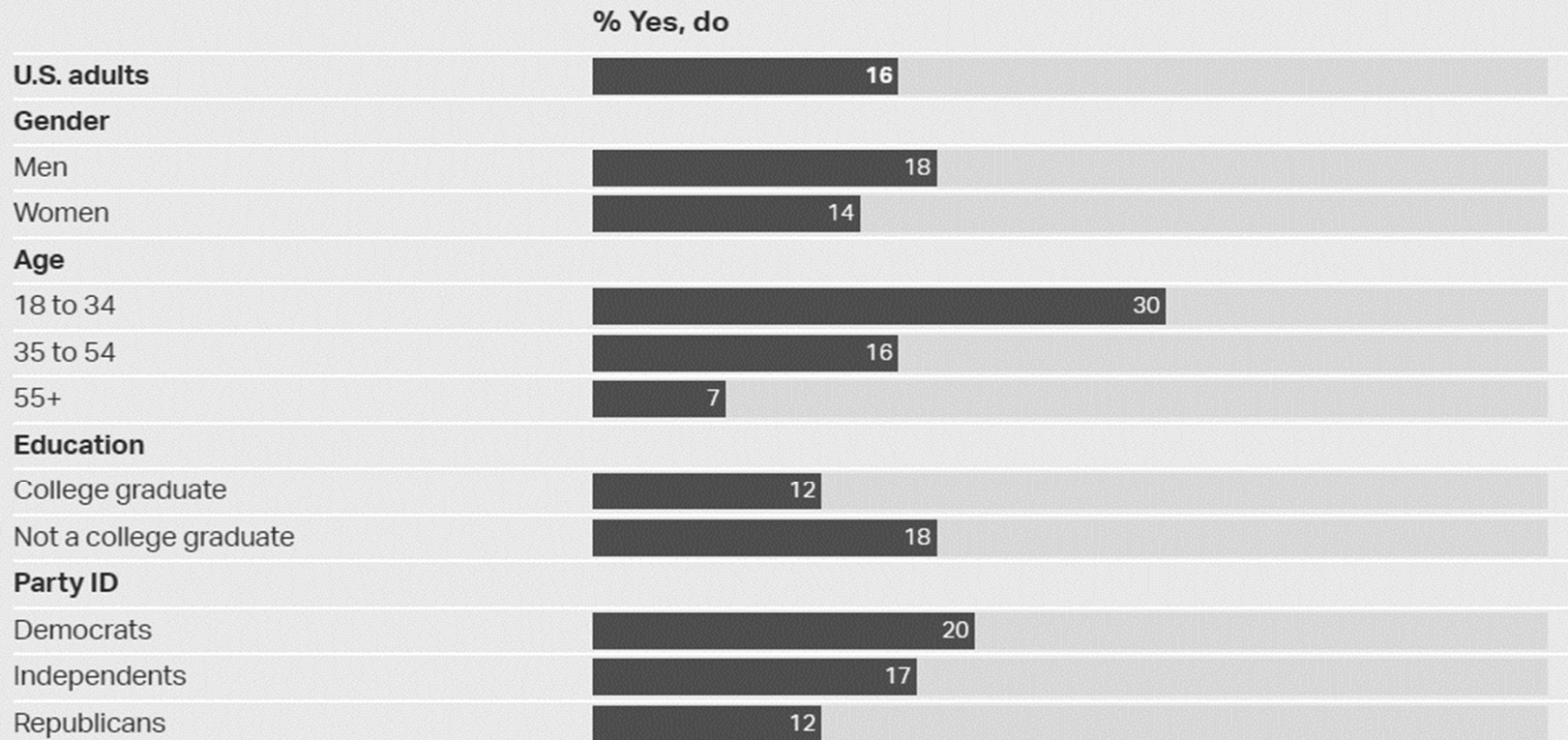


[Get the data](#) • [Download image](#)

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Americans Who Report Smoking Marijuana, by Subgroup

Keeping in mind that all of your answers in this survey are confidential, do you, yourself, smoke marijuana?



JULY 5-26, 2022 • Get the data • Download image

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Trends to Watch 7: Public Safety

Increasing EPL Claims in Public Safety: Many entities have a “hands-off” approach with public safety HR issues.

- **Important Reminders:**
 - **Don't** allow public safety to have separate rules. It will come back to haunt you!
 - Have 1 employee handbook for **ALL** departments
 - **Don't** allow public safety departments to have individual HR policies
 - **Don't** presume the chief knows anything about HR or employment law.

A Real-World Case and What Not to Do!

Now What?

The Essential Steps to Protect Your Organization and Municipality

Do you have legal counsel versed in employment law?

Is your hiring process sound? Do you know the 4 easy-to-implement steps to effective hiring? Do you complete pre- and post-hire multistate background checks?

Are your handbook policies and procedures up-to-date and legally compliant?

Has ALL your personnel received updated training?

Do you have a secure method of receiving and investigating all complaints?

Let the Experts Guide You!

Timely HR Advice

Unlimited advice via telephone and email

Real-time response: 14,000 calls/year

Verbal and written guidance

Attorney oversight

Training

Online courses for managers and employees

Harassment/discrimination/bullying

Hiring/termination/retaliation

Americans with Disabilities Act

Legal Updates and Webinars

Monthly newsletters

Quarterly Webinars

Focus on Public Sector challenges

Online Knowledge Center

24/7 access to thousands of resources

Employee Handbook with key state policies – Available to download

Step-by-step guidance for critical HR processes

Red Flags checklists to avoid wrongful termination

Fundamental Key Handbook Policies

Equal
Employment
Opportunity

Prohibition Against
Discrimination/
Harassment

Complaint
Reporting
Procedure

Federal Family and
Medical Leave Act

Workplace
Violence

Workplace Safety

Paid Sick Leave

Genetic
Information Non-
Discrimination Act

The Importance of the Employee Complaint Hotline

24/7 access and your employees will always speak with a live person

Provides potential legal defense and/or mitigation of damages

Reporting can be anonymous

We intake the information and report it to your designated contact for investigation

Improves employee morale

“No lose” benefit

Encourages employee reporting

Early notification of potential problems = quick resolution and an opportunity to prevent escalation

Thank you!

Questions?

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