



## Beyond Damages: Unconventional Experts In Employment Cases

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## General Rules of Admissibility

- (1) Expert must be qualified
- (2) Opinions must be based on
  - (a) sufficient facts & data; and
  - (b) reliable application of reliable methodology
- (3) Opinion must be helpful to jury
  - i.e.—tell them something they don't already know




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## Employment Experts -- The Usual Suspects

Labor Economist
Attorney's fees expert
Other side's fee expert
Psychologist

Vocational Expert



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## Beyond the Ordinary

- Human Resources
- Discrimination/Harassment
  - Psychology
  - Statistics
- ADA
- FMLA

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## HR Experts

- HR Experts = Qualified legal experts?
- Sometimes yes, sometimes no
- Typical dispute: Does the jury really need an expert to understand HR issues?

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## Expert HR Testimony Excluded – *Miller v. UPS*

- HR interview uncovers suspected dishonesty that leads to plaintiff's termination
- Proposed testimony:
  - Company investigation was “not sufficient” nor compliant with “recognized management practices”
- Holding: Not helpful or necessary
  - “Virtually all judges and jurors have been employees or employers themselves”

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## Title search: Beyond Damages: Unconventional Experts in Employment Cases

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[2016 Labor & Employment Law eConference](#)

First appeared as part of the conference materials for the  
23<sup>rd</sup> Annual Labor and Employment Law Conference session  
"Using Experts in Employment Cases"