

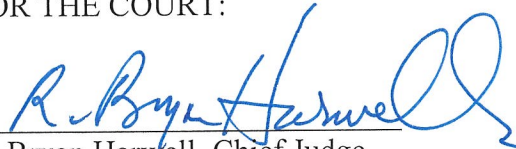
Consistent with Local Rule 16.02, the parties may request an initial case management conference to discuss discovery procedures or any other matters that will contribute to the prompt and fair disposition of the case. *See* Part 4 of the Discovery Protocols.

Evaluation of Discovery Protocols

As indicated above, use of Initial Discovery Protocols for Employment Cases is being implemented as a pilot program in the Charleston Division to determine if the protocols should be adopted for use throughout the District. At the end of the pilot program the court will evaluate the effectiveness of the Discovery Protocols, including input from practitioners who have participated in the pilot program, and make its determination. If, after the initial period, the court determines additional time is required for evaluation, the pilot program may be extended.

ORDERED this 9 day of August 2021.

FOR THE COURT:



R. Bryan Harwell, Chief Judge
United States District Court
District of South Carolina

Florence, South Carolina

EXHIBIT A
INITIAL DISCOVERY PROTOCOLS FOR EMPLOYMENT CASES
ALLEGING ADVERSE ACTION

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. The Initial Discovery Protocols for Employment Cases Alleging Adverse Action is a proposal designed to be implemented in employment cases in the United States District Court for the District of South Carolina.
- b. These Initial Discovery Protocols are available for all employment cases except:
 - i. Class actions;
 - ii. Cases in which the allegations involve violations of the Employee Retirement Income Security Act (ERISA).
 - iii. A *pro se* action brought by a plaintiff.
- c. The Initial Discovery Protocols are not intended to preclude or to modify the rights of any party for discovery as provided by the Federal Rules of Civil Procedure (F.R.C.P.) and other applicable local rules, but they are intended to supersede the parties' obligations to make initial disclosures pursuant to F.R.C.P. 26(a)(1) and the information under Local Civil Rule 26.03 (DSC). The purpose of the Initial Discovery Protocols is to encourage parties and their counsel to exchange the most relevant information and documents early in the case, to assist in framing the issues to be resolved and to plan for more efficient and targeted discovery.

(2) Definitions. The following definitions apply to cases proceeding under the Initial Discovery Protocols.

- a. **Concerning.** The term "concerning" means referring to, describing, evidencing, or constituting.
- b. **Document.** The terms "document" and "documents" are defined to be synonymous in meaning and equal in scope to the terms "documents" as used in F.R.C.P. 34(a), except electronically stored information that requires identification, collection, and search protocols is exempted from the initial information exchange.

- c. **Identify (Documents).** When referring to documents, to "identify" means to give, to the extent known: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) the author(s), according to the document; and (v) the person(s) to whom, according to the document, the document (or a copy) was to have been sent; or, alternatively, to produce the document.
- d. **Identify (Persons).** When referring to natural persons, to "identify" means to give the person's: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to the plaintiff or defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(3) Instructions.

- a. For this Initial Discovery, the relevant time period begins three years before the date of the adverse action, unless otherwise specified.
- b. This Initial Discovery is not subject to objections except upon the grounds set forth in F.R.C.P. 26(b)(2)(B).
- c. The Initial Discovery obligations do not encompass electronically stored information that requires identification, collection, and search protocols, but if such discovery is anticipated, the parties should be prepared to discuss a protocol to identify, search and collect electronically stored information at the Initial Case Management Conference (provided the parties request a conference, pursuant to Part 4 below).
- d. If a partial or incomplete answer or production is provided, the responding party shall state the reason that the answer or production is partial or incomplete.
- e. This Initial Discovery is subject to F.R.C.P. 26(e) regarding supplementation and F.R.C.P. 26(g) regarding certification of responses.
- f. This Initial Discovery is subject to F.R.C.P. 34(b)(2)(E) regarding form of production.
- g. The Initial Discovery is stayed pending ruling on a motion to dismiss the entire case. A partial motion to dismiss will not stay Initial Discovery.

PART 2: PRODUCTION BY PLAINTIFF.

(1) Timing.

- a. The plaintiff's Initial Discovery shall be provided within 30 days after the defendant has submitted an answer or partial motion to dismiss or received a ruling denying a motion to dismiss the entire case, unless the court rules otherwise.

(2) Documents that Plaintiff must produce to Defendant

- a. All communications concerning the factual allegations or claims at issue in this lawsuit between the plaintiff and the defendant.
- b. Claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. Documents concerning the terms and conditions of the employment relationship at issue in this lawsuit.
- e. Diary, journal, and calendar entries maintained by the plaintiff concerning the factual allegations or claims at issue in this lawsuit.
- f. The plaintiff's current resume(s).
- g. Documents in the possession of the plaintiff concerning claims for unemployment benefits, unless production is prohibited by applicable law.
- h. Documents concerning: (i) communications with potential employers; (ii) job search efforts; and (iii) offer(s) of employment, job description(s), and income and benefits of subsequent employment. The defendant shall not subpoena a prospective or current employer to discover information about the plaintiff's claims without first providing the plaintiff 30 days' written notice and an opportunity to file a motion for a protective order or a motion to quash such subpoena. If such motion is filed, the subpoena will not be served until the motion is ruled upon.
- i. Documents concerning the termination of any employment subsequent to employment with the defendant.

- j. Any other document(s) upon which the plaintiff relies to support the plaintiff's claims.

(3) Information that Plaintiff must produce to Defendant

- a. Identify persons the plaintiff believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- b. Describe the categories of damages the plaintiff claims.
- c. State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action, whether any application has been granted, and the nature of the award, if any. Identify any document concerning any such application.

PART 3: PRODUCTION BY DEFENDANT.

(1) Timing.

- a. The defendant's Initial Discovery shall be provided within 30 days after the defendant has submitted a responsive pleading or received a ruling on a motion to dismiss, unless the court rules otherwise.

(2) Documents that Defendant must produce to Plaintiff.

- a. All communications concerning the factual allegations or claims at issue in this lawsuit among or between:
 - i. The plaintiff and the defendant;
 - ii. The plaintiff's manager(s), and/or supervisor(s), and/or the defendant's human resources representative(s).
- b. Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. The plaintiff's personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff's supervisor(s), manager(s), or the defendant's human resources representative(s), irrespective of the relevant time period.

- e. The plaintiff's performance evaluations and formal discipline.
- f. Documents relied upon to make the employment decision(s) at issue in this lawsuit.
- g. Workplace policies, procedures or guidelines relevant to the adverse action in effect at the time of the adverse action. Depending upon the case, those may include policies or guidelines that address:
 - i. Discipline;
 - ii. Termination of employment;
 - iii. Promotion;
 - iv. Discrimination;
 - v. Performance reviews or evaluations;
 - vi. Misconduct;
 - vii. Retaliation; and
 - viii. Nature of the employment relationship.
- h. The table of contents and index of any employee handbook, code of conduct, or policies and procedures manual in effect at the time of the adverse action.
- i. Job description(s) for the position(s) that the plaintiff held.
- j. Documents showing the plaintiff's compensation and benefits. Those normally include retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation.
- k. Agreements between the plaintiff and the defendant to waive jury trial rights or to arbitrate disputes.
- l. Documents concerning investigation(s) of any complaint(s) about the plaintiff or made by the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not otherwise privileged.
- m. Documents in the possession of the defendant and/or the defendant's agent(s) concerning claims for unemployment benefits unless production is prohibited by applicable law.

- n. Any other document(s) upon which the defendant relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the adverse action.

(3) Information that Defendant must produce to Plaintiff.

- a. Identify the plaintiff's supervisor(s) and/or manager(s).
- b. Identify person(s) presently known to the defendant who were involved in making the decision to take the adverse action.
- c. Identify persons the defendant believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- d. State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action. State whether the defendant has provided information to any third party concerning the application(s). Identify any documents concerning any such application or any such information provided to a third party.

PART 4: CASE MANAGEMENT CONFERENCE

- a. Content. In cases governed by these Initial Discovery Protocols, if requested by the parties, an initial case management conference will be conducted among the court and attorneys to discuss narrowing of the issues, the extent of pretrial preparation, discovery procedures, the early disposition of controlling questions of law, the probable extent of provable damages, the possibility of settlement, alternative dispute resolution options, and any other matters that will contribute to prompt and fair disposition of the case. This is consistent with Local Civil Rule 16.02 which provides that a scheduling conference will be conducted only if requested by the parties.
- b. Timing. Any request for a case management conference should be made within 45 days after the last served defendant has submitted an answer or partial motion to dismiss or received a ruling denying a motion to dismiss the entire case, unless the court rules otherwise.
- c. Attendance. Lead trial counsel shall attend the conference in person. Lead trial counsel must be prepared to discuss settlement of the case in detail. Clients should not attend in person but should be available by telephone.

PART 5: OBJECTIONS TO WRITTEN DISCOVERY

Objections to written discovery should only be filed with the court after the parties have exhausted their best efforts to resolve any such dispute in accordance with the Federal Rules of Civil Procedure, the Local Civil Rules for the District of South Carolina, and this court's practice. See e.g., *Curtis and Brooks v. Time Warner Entertainment-Advance/Newhouse Partnership*, C/A No. 3:12-cv-2370-JFA, Docket No. 77.