

LESSONS IN LOSING:
RACE DISCRIMINATION IN EMPLOYMENT

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ABSTRACT

This Article provides what has been absent from the scholarship: a comprehensive, national examination of race and national origin employment discrimination lawsuits. Through empirical studies of 661 such cases, it discovers something previously not reported. While employment discrimination litigation is widely known for its lopsided outcomes – defendants overwhelmingly prevail – it turns out that race and national origin cases are even harder for plaintiffs to win in federal district court than other types of employment discrimination claims. In revealing that race and national origin cases are harder for plaintiffs to settle and easier for defendants to win on a pretrial motion, this Article identifies what it terms an “anti-plaintiff ideology” in race and national origin litigation. Through an examination of this anti-plaintiff ideology, the author attempts to shift the current debate over judicial decision making in employment discrimination litigation to one recognizing that courts do more than defer to defendants in race and national origin cases. Instead, courts appear to have an anti-plaintiff mind set.

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