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**EMPLOYMENT  
DISCRIMINATION**  
Procedure, Principles,  
and Practice



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ASPEN CASEBOOK SERIES

# Employment Discrimination

*Procedure, Principles, and Practice*

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Professor of Law  
University of South Carolina School of Law



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# Employment Discrimination

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*I dedicate this book to my children, my wife, and my parents. Joseph and Mary Elizabeth – you have brought so much happiness to my life. Megan – thank you for your endless support and for being my best friend. Mom and Dad – thank you for all of your love and guidance over the years.*

*—J.A.S.*

## ■ PREFACE

This book seeks to provide a new approach to teaching employment discrimination law. My goal with this text is to fill a void in the academic book market: offering a procedural-based approach to employment discrimination doctrine. Employment discrimination cuts across traditional subject matter boundaries, and cannot be considered a completely distinct area of the law. Indeed, business law, contract law, and tort law all play important roles in this field. Most notably, however, civil procedure is inextricably intertwined with employment questions. This is particularly true as the major focus of employment discrimination law has shifted from whether (and how) the field should exist to how cases are actually litigated in the courts. Unfortunately, the textbooks currently available often fail to address this important shift in the area. Students thus frequently struggle with the basic principles of employment discrimination law as they are unable to see how the theory explained in the text is actually applied by advocates and the courts. Procedure is therefore too often omitted from a law student's introduction to employment discrimination, a result that leaves them without a complete understanding of the area and without the necessary tools to practice in this growing field.

This book does, in many ways, take a traditional approach to employment discrimination law, addressing the core statutory and regulatory provisions in the field. The book explores the federal protections found in Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Equal Pay Act, which combine to prohibit discrimination on the basis of race, color, sex, national origin, religion, age and disability. Beyond this traditional approach, however, this book integrates procedural issues throughout. By examining actual cases that have been litigated in the courts, this text highlights those core procedural issues and questions facing the courts and litigants. This book also offers a detailed review of the administrative process.

Similarly, the book explores those Supreme Court cases that have arisen outside of the employment arena, but have nonetheless redefined workplace litigation. While these cases are of substantial importance to the discrimination field, they are too often omitted from instructional materials simply because they did not originate in the employment context. For example, the Supreme Court's controversial pleading decisions in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* have had a profound effect on the way plaintiffs allege discrimination claims. And, the Court's decisions in *Exxon Shipping Co. v. Baker* and *Philip Morris USA v. Williams* have altered the way that damages are calculated for civil rights claims, despite the fact that these cases arose outside of the employment context. Again, these cases all address procedural issues that change the way workplace cases are litigated, and this text highlights how these cases fit into the overall scheme of employment litigation.



Also, unlike any other major text in this area, this book includes a chapter on “best practices” in the industry. This chapter examines some of the best ways to address discrimination in the workplace—from a practical and legal perspective. Among other issues, this section examines the proper training and complaint procedures that employers should have in place. It explores policies and procedures for responding to employee reference requests. It looks at emerging trends in the workplace for policies related to email, social media and other technology. And it looks at problems employers face that are not necessarily addressed by statute—including employee bullying. It also examines how to discipline employees who have gone astray of company policies, and how to document these types of corrective measures. This section thus goes beyond the law on the books, and discusses the best ways for management and employees to address everyday workplace problems.

Additionally, this book provides a number of practical elements that will help students comprehend this complex material. In particular, this text integrates the following features into the material:

***Interactive Problems.*** Each chapter begins with a hypothetical interactive problem that introduces the students to the area of the law that is being addressed. The problem can be used by the instructor to explore many of the issues that arise in the particular area that is discussed. The problem can also be used as a group activity to allow students to work together when formulating their opinions on the topic. Throughout the chapter, the interactive problem is revisited multiple times with differing facts that will help the students focus on different areas of the particular statute that is being addressed. These problems thus bring to life the material for the students, and give them an opportunity to work through the many different issues of employment discrimination law in a much more practical way.

***Practice and Procedural Tips.*** This book contains dozens of specific practice and procedural tips for the students. The tips cover all areas of employment discrimination law—from practical suggestions on filing a charge and complaint of discrimination to ways of avoiding potential retaliation claims. These helpful hints in the area take a much more practical view of the topic of employment discrimination. These tips allow students to get a sense of the potential issues that can arise in this field, and provide guidance on how to address these concerns.

***Class Exercises.*** This text includes numerous class exercises that the instructor can use to help emphasize the materials in the course. These exercises vary in their content and include such topics as drafting a hypothetical complaint of discrimination, writing a motion for summary judgment in a discrimination case, and formulating an anti-harassment policy. These exercises are often meant to be performed in a group setting, and will help students become more comfortable with the employment discrimination field.

***Newsworthies.*** This book also attempts to remain current with the changing field of employment discrimination law. In its efforts to be timely, this text thus includes several current news stories in each chapter that relate to the particular area of employment law that is being addressed. These news stories will help engage the students with some of the “hot topics” of the area that are currently in the media.

***Historical Notes.*** This text further raises many historical notes that address the evolution of employment discrimination law. This field has a rich and interesting history that is explored in these notes, which help bring some context to

the issues being addressed. While the goal of the text is to focus on many of the modern developments and procedural twists currently dominating the area, it is impossible to discuss the field of employment discrimination law without providing an overview of its origins.

*Summary Graphs and Charts.* This text provides a number of graphs and charts that help summarize the particular topics being addressed. For example, this text provides a breakdown of how to impute claims of harassment to an employer in a graphical format. Another chart displays the differential in damages between Title VII and ADEA claims. Yet another graph summarizes the potential claims that can be brought by individuals with disabilities. Students often find this type of visual summary to be extremely helpful when learning the material.

*Best Practices Chapter.* This employment discrimination book is completely unique in including an entire chapter on the “best practices” in the field. This chapter contemplates some of the best ways for employers to address common workplace issues. And, this chapter explores these issues from the worker’s perspective, examining the potential pitfalls plaintiffs often face when pursuing workplace claims.

*Chapter-in-Review.* Each chapter begins with an introduction to the material, and ends with a review of the materials that were addressed. This review allows the instructor to make certain that she has covered all of the relevant materials in each chapter. More importantly, however, it allows students the opportunity to review and verify that they have understood the materials addressed in that section.

These various elements of the book all work together to allow students to better understand the topic of employment discrimination law. Through the use of interactive problems, current events, practice and procedural tips, and visual reviews, this text takes a unique approach to this material. The book is designed to have both a theoretical and practical perspective. Both are necessary to gain a full understanding of this critical topic.

I have greatly enjoyed putting together these materials in a new and unique way. I have dedicated the course of my career exclusively to employment discrimination law, and have a true love for this field. Employment claims have a human element that is absent from many other areas of the law. We often define who we are by what we do for a living. And, for better or worse, we often judge others by their jobs. For that reason, employment issues cut to the core of who we are as individuals. I hope that you will enjoy using and learning the materials presented here as much as I have enjoyed preparing them.

Joseph Alan Seiner  
Columbia, South Carolina  
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—J.A.S.