

EXAMPLES & EXPLANATIONS

# Employment Discrimination

Second Edition

**Joel Wm. Friedman**



**Wolters Kluwer**  
Law & Business

# Employment Discrimination

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*Second Edition*

**Joel Wm. Friedman**

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& Jurisdiction  
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**Wolters Kluwer**  
Law & Business

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*To Viviane, Alexa,  
Chloe, & Max ("The Man")*

# Preface

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Employment discrimination is a subject that nearly everyone is exposed to, directly or indirectly, on a frequent basis. Whether it is from personal knowledge, experiences shared by friends or relatives, or the myriad stories that appear on television and in newspapers, magazines, and other media, there is virtually universal familiarity with this topic. But unlike members of the general public, lawyers and law students are trained to analyze these scenarios through the prism of established legal doctrine. A law school course focusing on employment discrimination, at its most general level of abstraction, examines the extent to which the government should play, and critically assesses the manner in which the government has decided to play, a role in mediating two conflicting principles of public policy; i.e., the traditional, common-law based protection of private property rights and a longstanding commitment to preserving and enforcing civil rights.

Over the years, the ways in which law schools cover the area of labor and employment law have evolved. Nearly all schools have at least one course in this area and most have more than one. The entire area is composed of three distinct subjects: (1) labor law, which addresses issues concerning the relationship between workers, their employers, and unions; (2) employment discrimination, which focuses solely on issue of job-based discrimination; and (3) employment law, which deals with those employment-related issues, both statutory and common law, that fall outside the parameters of the first two subjects. The manner in which these three areas are covered varies from school to school. Sometimes two or more of these subjects are combined in one course. Most commonly, however, each subject is addressed separately in a stand-alone course. This book focuses exclusively on employment discrimination law and is intended for use by students who are taking either a course entirely devoted to this subject or a course in which it is an important component.

Whether a law school course focuses entirely or partially on employment discrimination law, the predominant source of legal doctrine in this area is federal legislation. Beginning primarily in the early 1960s (with one important mid-nineteenth-century exception), Congress has chosen to attack the issue of employment discrimination through the enactment of several statutes, each of which addresses a particular form or forms of job bias. Over the past nearly half-century, the courts, and particularly the U.S. Supreme Court, have developed a large body of jurisprudence that interprets



## Preface

the substantive, remedial, and procedural provisions of these enactments. As you will see, much of that case law, particularly in the area of defining how the parties prove and defend against claims of discrimination, is applicable to claims filed under several of these statutes. In response to this development, and consistently with the manner in which these issues are handled in most employment discrimination law casebooks, the initial chapters of this book examine these issues collectively. But there are also many important issues that are treated differently under statutes such as Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, and the Americans with Disabilities Act. Accordingly, the subsequent chapters are organized on a statute-by-statute basis.

Where the employer is a governmental entity, grievants also have the possibility of asserting constitutional claims. And so, where appropriate, the constitutional issues, primarily raised under the Fifth (for federal employers) and Fourteenth (for nonfederal public employers) Amendment guarantees of equal protection and due process, are also discussed. Finally, state law also has a role to play since every state has some form of antidiscrimination statute that encompasses employment-related claims. These are also examined, particularly as they relate to the procedure for bringing employment discrimination claims.

In every chapter of the book, I have attempted to synthesize and explain all of the issues that are commonly examined in a course dealing with employment discrimination law. This includes a detailed parsing of the applicable statutory text as well as careful summaries and analyses of the relevant case law. But, as you know, the key to success on a law school exam is the ability to spot the legal issues raised in a factual hypothetical, to succinctly state the governing legal principle(s), and to accurately and persuasively apply the applicable doctrine to the relevant facts. To aid you in improving your skill in these areas, I have provided an extensive collection of sample questions in every chapter and subchapter of the book that are expressly designed to accomplish that objective. Like you, I was frequently frustrated by the endless list of unanswered questions in casebooks that provide no insight into solving these problems other than a string of citations to cases I had neither the time nor the inclination to read. So, after each set of questions I have written detailed explanations that will focus your attention on the relevant legal issue, provide the governing legal principle, and explain how that doctrine should apply to those facts. To that end, I have fashioned questions of varying level of difficulty and complexity. Some are fairly straightforward, to make sure that you understand the basics. Others are more nuanced and are designed to encourage you to identify the key legal issue at stake and to apply your knowledge of the relevant legal doctrine to a challenging factual pattern in the way that replicates the type of questions you will find on a final exam. But these questions will only help you improve your skills if you

## Preface

take the time to read them carefully and to give them your full attention. If you approach them with the care you devote to your final exam, I am confident that your efforts will be rewarded with increasing confidence in approaching exam questions as well as an enhanced ability at the skills you need for success on the final examination.

I look forward to hearing from you if you have any suggestions, concerns, or corrections for future editions. You can email me at [jfriedman@tulane.edu](mailto:jfriedman@tulane.edu). In the meantime, I wish you the best of luck in this and all of your other courses.

September 2013

*Joel Wm. Friedman*

# Employment Discrimination

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EXAMPLES & EXPLANATIONS

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