

EQUAL

EMPLOYMENT

OPPORTUNITY

2012 COMPLIANCE GUIDE

John F. Buckley



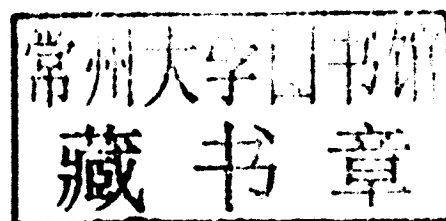
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Equal Employment Opportunity 2012 Compliance Guide

by John F. Buckley

This comprehensive, easy-to-use sourcebook examines all the major administrative and judicial decisions, interpretive memoranda, and other publications of the EEOC, providing compliance advice and the text of the most important of these publications. It also supplies vital information on the use of EEOC regulations by the states. This valuable reference is designed to meet the needs of both employment law attorneys and human resources professionals by presenting thorough EEO coverage that mirrors the continuity existing between EEO claims avoidance strategy and EEO litigation strategy.

Highlights of the 2012 Compliance Guide

Equal Employment Opportunity 2012 Compliance Guide brings the practitioner up to date on statutory, regulatory, and case law developments to this ever-changing area. Highlights include:

- *EEOC charge filings*: Coverage of private sector employment discrimination charges filed with the EEOC during FY 2010, with a breakdown by type of discrimination alleged. The total of 99,922 private sector filings was up significantly from the prior year's total of 93,277 and all categories of charge filings showed an increase. For the first time, allegations of retaliation (36,258—up 7.8%) outnumbered those of race discrimination (35,890—up 6.8% percent), which had been the most frequently filed charge since the EEOC became operational in 1965. [See Chapter 1.]
- *Recent Supreme Court cases*: Analysis of recent Supreme Court decisions, including a Title VII class action alleging widespread sex discrimination by the nation's largest retailer (*Wal-Mart Stores, Inc. v. Dukes*) and a case brought under the USERRA involving the "cat's paw" theory of liability (*Staub v. Proctor Hospital*). [See Chapter 1.]
- *The Patient Protection and Affordable Care Act of 2010 (PPACA)*: Examination of the PPACA, which contains extensive health care reform provisions, including a mandate that will eventually require all individuals to obtain a minimum level of health insurance coverage. The Act also imposes many requirements that will impact employers regardless of whether they provide health insurance to employees. Recent federal court challenges to the PPACA are also discussed, as the issue of the Act's constitutionality works its way to the Supreme Court. [See Chapter 1.]
- *Race discrimination*: Discussion of a Seventh Circuit case, *Vance v. Ball State University*, holding that although the employer had not been completely successful in eradicating the racially hostile conduct of the employee's co-workers, its prompt efforts to counteract such conduct, which were reasonably successful, absolved it of Title VII liability. [See Chapter 6.]



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- *National origin discrimination*: Examination of a Second Circuit case, *El Sayed v. Hilton Hotels Corp.*, in which an employee of Egyptian descent was discharged three weeks after complaining about being called “Terrorist Muslim Taliban” by co-workers. The evidence showed, however, that the employee had been discharged for making material misrepresentations on his employment application, and thus his Title VII discrimination claim was unsuccessful. [See Chapter 6.]
- *Retaliation*: Discussion of an Eighth Circuit case, *Pye v. Nu Aire, Inc.*, in which the employee successfully established a causal link between his protected conduct of filing an internal discrimination complaint and his termination with evidence of the employer’s stated reason for his termination—that the employee was attempting to obtain a promotion through “intimidation”—and the temporal proximity (six days) between the protected conduct and the termination. [See Chapter 9.]

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To Lori, Taylor, and Jack, my loving and supportive family.
—John F. Buckley IV

About the Authors

John F. Buckley IV is a senior attorney in the Public Law section of the National Legal Research Group, where he specializes in civil rights and employment discrimination; in this capacity, he has advised attorneys throughout the country on legal issues related to equal employment. Mr. Buckley is editor and contributing author of *State by State Guide to Human Resources Law* (Aspen Publishers) and coauthor of *Defense of Equal Employment Claims* (2d ed. West 1995). Mr. Buckley received his Bachelor of Arts in History from the University of North Carolina at Chapel Hill and his J.D. from the University of North Carolina School of Law, where he was a member of the Board of Editors of the Law Review.

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The authors wish to acknowledge the assistance of the editorial staff at Aspen for their hard work and valuable input. Thanks also to Barbara Deetz, for her contribution to the interview material.

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Preface

Equal Employment Opportunity Compliance Guide is designed to be a comprehensive, authoritative guide for human resources professionals, corporate counsel, and other professionals charged with ensuring compliance with EEO laws. The Guide provides practical recommendations for developing and implementing EEO policies and guidance on how to deal with workplace situations involving specific EEO issues as they arise. In addition, *Equal Employment Opportunity Compliance Guide* provides detailed guidance on how to handle discrimination claims and how to effectively respond to discrimination charges. By recognizing the intertwining roles of corporate counsel advising and litigating on behalf of employers on EEO issues and the human resources professional creating and implementing EEO policies to prevent litigation, the Guide provides the continuity of coverage necessary to fully protect employers from costly and time-consuming litigation.

The Guide is organized to correspond with the Equal Employment Opportunity Commission's regulations, guidelines, and other interpretive documents. Each chapter contains a detailed explanation of the guidelines and a discussion of judicial decisions applying or rejecting particular provisions of the guidelines. The chapters also contain the following features:

- Compliance notes designed to alert counsel and human resources professionals to potential pitfalls and how to avoid them;
- Case examples showing how the guidelines have been applied in actual workplace situations;
- EEOC examples showing how the EEOC will apply the guidelines in hypothetical situations designed to mirror commonly encountered workplace issues; and
- State Law Alerts designed to provide information regarding important parallel state EEO laws.

In addition, the following elements, referred to in the text where appropriate, can be found on the CD-ROM:

- Full text of the applicable EEOC regulations and guidelines with integrated annotations and editor's notes discussing how the regulations have been applied by the courts to particular situations; and
- Full text of key EEOC interpretive guides and other documents that provide insight into how the EEOC will investigate and analyze charges of discrimination brought before that agency.

Many chapters also contain tables designed to present important compliance information in a quick-reference form and sample policies for use in creating and implementing a successful compliance and claims-avoidance strategy. Finally, the Guide provides detailed guidance,

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including sample forms and documents, on how to handle complaints of discrimination and how to avoid retaliation.

These features combine to provide a unique resource to human resources professionals and employment law counsel.