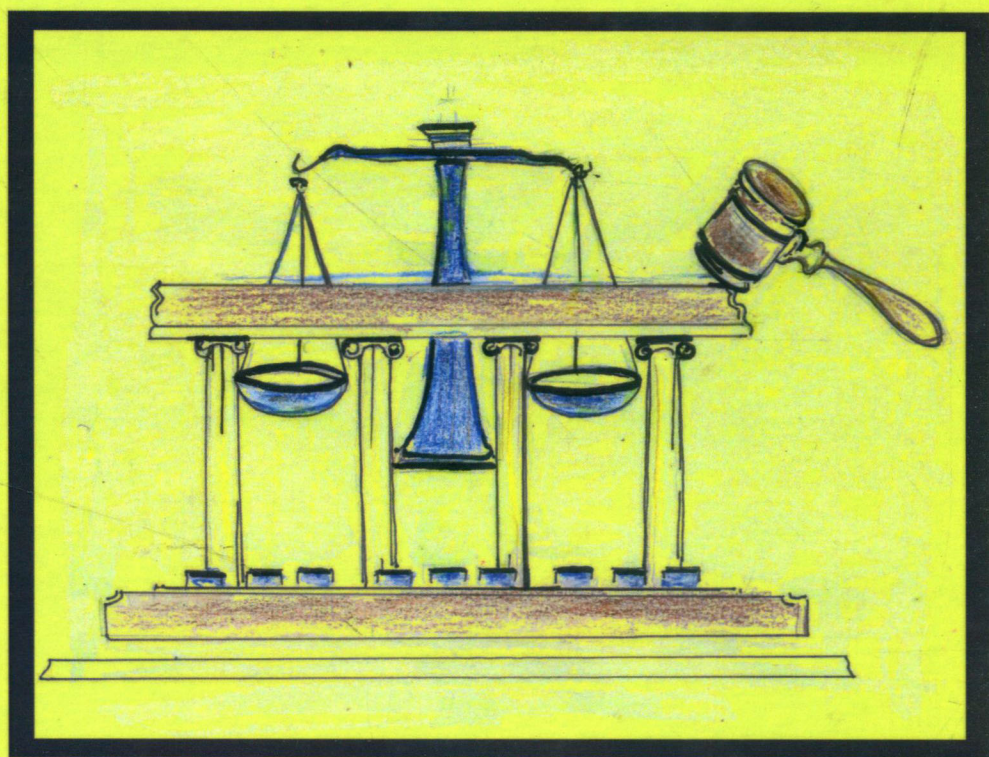


# EEO LAW

and Personnel Practices

Third Edition



Arthur Gutman, Laura L. Koppes,  
and Stephen J. Vodanovich

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## **and Personnel Practices**

### **Third Edition**

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# **EEO LAW**

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### Third Edition

To Valerie, Phillip, Jennie Rae, and in memory of my parents. To the memory of Frank J. Landy for teaching me so much about the law and the profession, and for being a great friend.

—**Arthur Gutman**

To my husband, Kim Robert Bryan, for his patience, support, and encouragement; to my sister, Kathleen Ray, for her love and strength; and to my mother, Dolores Koppes, whose concern, compassion, humor, and sacrifices give me strength and perseverance. To Frank J. Landy for his mentorship and inspiration that helped me see my potential.

—**Laura L. Koppes**

To my wife, Donna, for her loving support and encouragement, and for my parents, whose caring, hard work, and sacrifices gave me opportunities they never had.

—**Stephen J. Vodanovich**

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# Foreword

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EEO law is in a constant state of flux; much can happen in a decade. New laws are written, old laws are amended, district and Circuit Courts agree on some points and disagree on others, and the Supreme Court endorses new burdens and standards. Technological advances, scientific progress, and political ideology can also have a drastic effect on how EEO enforcement agencies like the Equal Employment Opportunity Commission (EEOC) and Office of Federal Contract Compliance Programs (OFCCP) go about their daily business. In essence, the EEO context in the United States is always changing, and this has implications for how organizations operate. Given this reality, the need for a comprehensive and current EEO text book is obvious.

As I sit down to write this foreword, organizations from all over the country are trying to understand the implications of the *Ledbetter Fair Pay Act*, demystify the consequences of the Supreme Court ruling in *Ricci v. Destefano*, and understand why charges of *employer retaliation* are now the most frequent type of charge made to EEOC. Fortunately, we now have one updated source for a comprehensive legal and practical treatment of these issues. An update to *EEO Law and Personnel Practices* is a highly anticipated resource for scientists, practitioners, lawyers, and others involved in the practice and teaching of human resource management.

It is an honor to write the foreword to a book that, in its previous edition, is more worn from use than any other book in my collection. In its second edition, *EEO Law and Personnel Practices* offered an intuitive framework for thinking about where personnel selection and EEO law intersect. The book provided an encyclopedic perspective to practical EEO guidance, offered a complete history of EEO law, and helped me (and many others) through the EEO portion of comprehensive exams in graduate school.

Speaking of graduate school, I first “cold called” Art via email in my second year of graduate school when I was trying to understand the *Grutter* and *Gratz* rulings. As with most second-year graduate students, I had no idea what I was talking or asking about, but I had the feeling that *Grutter* and *Gratz* were

important. I did not expect a response, but I figured it could not hurt to take a chance on communicating with one of the few people who could get his head around those rulings. Art made the mistake of actually responding to my email! This tells you a lot about Art; he is willing to take the time and effort to share his expertise with total strangers and without any consideration of what is in it for him. Once my questions started making more sense, Art was more than willing to provide mentorship, and I am a better researcher, consultant, and writer because I have worked with him.

When Art was considering a revision to the book, he realized that talented co-authors could improve the final product in a number of ways. Talented co-authors are exactly what he found in Laura L. Koppes and Stephen J. Vodanovich. The authors expertly present legal concepts, societal themes, and political influence in describing the development of EEO law to present day. The same user-friendly structure (six dimensions for EEO law) is used to deconstruct complex and technical information. When this book is read in its entirety, an understanding of these dimensions allows the reader to “see the forest through the trees.” This structure also allows the reader to find immediate answers to functional EEO questions like who is covered by law, what practices are covered by law, what are the appropriate remedies, and how judicial scenarios progress. A series of tables in each chapter deconstructs this technical information in intuitive ways.

I use this edition as the primary text for a legal issues course that I teach, and I expect that many academics will do the same. The book should offer potential thesis and dissertation topics in the way of archival case law research and/or policy capturing judge/jury decision-making processes. Content from this book should also find its way onto many comprehensive exams across multiple disciplines. I also expect that this book will be referenced constantly by internal and external human resource management practitioners as a seminal EEO source, and will have already done a substantial amount of work for lawyers who need a case law review. It is only a matter of time until this edition is more worn from use than any other book in all of our collections.

**Eric M. Dunleavy**  
*DCI Consulting Group*  
*Washington, DC*



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# Preface

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Ten years have passed since the second edition of *EEO Law and Personnel Practices*. That edition ended with the 1999–2000 Supreme Court Calendar, and this edition ends with the 2009–2010 Supreme Court Calendar. In between, there have been dynamic developments in the law, science, and practice of personnel selection. More than 30 major Supreme Court rulings affecting employment law have been rendered that merit inclusion into the new text, as well as at least 250 lower court rulings. There are several topics within major headings that require additional coverage, most notably, adverse impact, racial and sexual harassment, diversity in the workplace, retaliation, disability, and so on. Consequently, the content is freshened and expanded.

This third edition accomplishes what the previous edition did 10 years ago: it offers a current, comprehensive, and encyclopedic source for Equal Employment Opportunity (EEO) statutes and case law related to personnel practices. More specifically, the goal of this edition is twofold. One is to provide a method for understanding major EEO laws. The second is to integrate these laws with personnel selection practices relating to terms and conditions of employment (hiring, training, promotion, termination, harassment, etc.).

To accomplish the first goal, the US legal system is reviewed, as is the history of EEO law in the United States, with particular emphasis on Title VII of the Civil Rights Act of 1964. The organizing scheme and resulting chapter sequence is the same as in the second edition for Chapters 1 through 8: Title VII (Chapters 2 and 3), Constitutional Claims under the 5th, 13th, and 14th amendments (Chapter 4), the Equal Pay Act of 1973 (Chapter 5), the Age Discrimination in Employment Act of 1967 (Chapter 6), Affirmative Action (Chapter 7), and the Americans with Disabilities Act, including precursor statutes in the Rehabilitation Act of 1975 (Chapter 8). This sequence is common in major law text and handbooks, and for a good reason. Some key laws preceded Title VII (e.g., constitutional amendments, the Equal Pay Act); however, Title VII is the broadest law. The overlapping and complimentary features of the earlier laws are easier to understand in comparison with Title VII.



The second goal is addressed in two ways. First, the main core of the book involves federal case law (more than 700 cases are covered). The vast majority of cases focus on substantive issues relating to terms and conditions of employment whereas some focus on procedural technicalities. The substantive cases expose what is properly or improperly done by employers in relation to hiring, training, promotion, termination, and so on. Second, Chapters 2 through 8 have compliance and practice sections focusing on some major implications of the cases for human resources management.

Structurally, this edition maintains a major feature of the previous edition. Each law is presented in terms of six dimensions: (1) protected classes (Who has rights?); (2) covered entities (Who has duties?); (3) covered practices (Which practices are prohibited?); (4) administrative procedures (How do claims reach court?); (5) remedies (What are the penalties for breaking the law?); and (6) judicial scenarios (How are claims decided at trial?). The purpose of these dimensions is to untangle complex, technical, overlapping, and complementary features of the EEO laws as a group. Several of these laws protect the same classes but never in exactly the same way. Other features include: (1) tables that outline the six dimensions for each law and the key cases associated with the major topics, and (2) summaries within each section (starting with Chapter 2) following every major heading.

What is new in this third edition? As expected, a substantial amount of new content is covered, with particular emphasis on statutory amendments and case law. For example, recent topics include compensation (e.g., the *Ledbetter* Supreme Court ruling and *Fair Pay Act*), the *Americans with Disabilities Amendments Act* (ADAAA), retaliation (e.g., the Supreme Court ruling in *BNSF v. White*), and the intersection of disparate treatment and adverse impact that was a key element in the controversial ruling in *Ricci v. Destefano*. In addition, Chapter 7 on affirmative action covers the *Grutter*, *Gratz*, and *Parents* Supreme Court rulings, and includes recent enforcement by the Office of Federal Contract Compliance, which is an agency whose enforcement has increased in frequency and scope regarding personnel practices in the last decade. A new chapter (Chapter 9) was added on the topic of employer retaliation, which has greatly increased in frequency and relevance since the last edition.

This edition includes new and improved sections on *issues for compliance*. The purpose of these sections is to provide recommendations for maintaining compliance with the laws with particular attention to focal themes. For example, avoiding passive recruitment, reducing adverse impact via test development, keeping Internet applicant records, and interpreting the Uniform Guidelines on Employee Selection Procedures are presented as issues of compliance. This section balances well with new sections on *implications for practice*. These sections highlight practical implications of the laws, and are written in a nontechnical style. Suggestions from best practices and findings from a sampling of the

scientific research are presented. For example, practical issues like balancing diversity and job relatedness, using job evaluation to justify compensation, and developing sexual harassment compliant processes are discussed.

Most exciting for this edition is the pedagogy, which is a mixture of some old and some new things. As in the past, we tried to limit the “legalese,” explaining necessary terms and phrases in the text and listing commonly used acronyms inside the front cover. We have used endnotes to provide additional explanations or clarifications. All references are listed at the end of the book including cases, books, and journal articles, commonly cited laws. We included introductory paragraphs designed to prepare the reader for the major chapter headings and added extra tables to highlight key cases, legal scenarios, and key topics. As mentioned earlier, Chapters 2 through 8 close with discussions of compliance issues and implications for practice, including references from relevant science and practice literature. These chapters now close with a section of key summary points and discussion questions.

Among those things new, a major pedagogical change is the creation of instructional materials by Elizabeth (Betsy) Shoenfelt, an Industrial/Organizational Psychologist on the faculty at Western Kentucky University. These web-based materials should facilitate the instruction and learning of the material and are available to all teachers who adopt the book. Comprehensive PowerPoint presentations for each chapter summarize key material. Answers are provided for the discussion questions found at the end of each chapter. In addition, short-answer questions for each chapter may be used as take-home or open-book tests that can be distributed prior to class to encourage students to prepare for class and to help them focus their studying. Multiple-choice test items for the introduction and overview in Chapter 1 could also serve as items for a final exam.

Finally, a key development is a free, supplemental web site available at <http://uwf.edu/cap/eeolaw/>. This site provides a central location to access legal information (e.g., links to full-text versions of court cases, laws, regulations, guidelines) too vast to contain in the printed text. Links to discussions and reviews of legal material will also be provided, most notably to the column “On the Legal Front” published in the *Industrial-Organizational Psychologist* (TIP). Importantly, the site will provide updates to the ever-changing field of employment law as they emerge. A glossary of legal terms should prove useful to instructors and students and will be available on both the book and supplemental websites.

Similar to the second edition, the intended audience includes professors, human resource practitioners, consultants, and students in industrial-organizational psychology, and management. Like many authors, we “Googled” the second edition. We found evidence of its presence for each of these audiences. There are graduate courses in psychology and management at major universities that use this book. Additionally, we have seen it in training courses for HR managers at

large companies. It has been cited routinely in articles and book chapters on legal issues. It has been used by lawyers, and sits in every major law school library in the United States (and in other countries). This third edition continues to be designed for nonlegal students and practitioners by sampling key issues from the law and the science of personnel selection. It does not, nor is it designed, to exhaust either domain.

Before we conclude, we want to reiterate a few points originally made in the first and second editions. First, our personal goal is to preempt the need for litigation. With forethought, we can avoid workplace discrimination, and simultaneously, build a more effective workforce and work environment. Second, many of the legal and personnel issues discussed in this book have commonsense applications. Many of these issues remain complex, hence, we emphasize the need to *seek legal advice from attorneys* and *consult with experts in the field of personnel selection*. None of the information provided in this text is to be interpreted as legal advice.

A number of individuals have helped us with this third edition. We have enjoyed working with the one of the best editors in the business, Anne Duffy. We appreciate feedback from our graduate students in the Industrial and Organizational Psychology programs at Florida Tech and the University of West Florida. We are particularly indebted to Betsy Grozman, who performed editorial functions and searches related to each chapter, the references, and the case law citations.

As with the previous two editions, this book is a beginning, carrying with it the implication and the inspiration, to read further and to stay updated. We hope you will gain a deeper understanding and appreciation of EEO laws and personnel practices. If we all try harder to educate our selves and others, perhaps we can nurture work climates where these laws are not needed.

**Arthur Gutman**  
**Laura L. Koppes**  
**Stephen J. Vodanovich**

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