

# 2025–2026 EDITION HIGHLIGHTS

## **Section 5:7**

New discussion addressing potential downsides of filing a counterclaim in cases involving subject matter such as employment or housing law, where the plaintiff’s lawsuit is considered legally protected activity for which retaliation is prohibited.

## **Section 18:4**

New discussion on pursuing age discrimination claims for employees with severance offers “on the table” and implications of contingency fee arrangements in these situations.

## **Section 18:4**

Brief discussion of recent Sixth Circuit decision suggesting that an employer’s failure to follow its own policy, while not enough on its own to establish pretext, can be considered as part of the constellation of evidence of age discrimination. See *Kean v. Brinker International, Inc.*, 140 F.4th 759 (6th Cir. 2025)

## **Section 18:5**

Brief discussion about federal circuit split regarding the traditional two-step procedure in granting preliminary certification of FLSA and ADEA collective actions, and recent Ninth Circuit case upholding this procedure. See *Harrington v. Cracker Barrel Old Country Store, Inc.*, 142 F.4th 678 (9th Cir. 2025)

## **Section 21:1**

Brief discussion of recent Supreme Court case holding that majority-group plaintiffs are not required to meet a

heightened evidentiary standard of showing “background circumstances” to establish a prima facie case at the first step of the McDonnell Douglas framework. See *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 145 S.Ct. 1540 (2025)

**Section 21:1**

New discussion addressing the potential impact of a plaintiff who fails to disclose the existence of their legal claim(s) as an asset in an active bankruptcy proceeding.

**Section 21:6**

New discussion about pitfalls of an employer providing potentially inaccurate information in response to an administrative charge, which could lead to a strong defense being compromised based on the pretext analysis.

**Section 21:12**

New discussion about potential benefits of private mediation in higher value wrongful discharge cases.

**Section 21:17**

New discussion about federal rule allowing a prevailing party in federal court to recover costs (not attorneys’ fees) and the discretion courts have in imposing costs on employment civil rights plaintiffs.