

# Highlights of the October 2025 Edition

*Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts, Second Edition*, written by Judge Charles R. Richey and updated by the Publisher's Editorial Staff, offers extensive analysis of federal employment and civil rights statute on which the bench and bar rely in discrimination cases. Along with highlights of decisions by the U.S. Supreme Court, federal circuit courts and district courts, there are sample forms, checklists, charts, and proven-in-court management techniques that help both prosecution and defense handle claims and defenses with more precision and resolve.

The October 2025 edition includes updated cases, statutes, and regulations in both the chapters and appendices. Among the materials update in this edition are:

- **§ 1:48. Claim of retaliation under Title VII—Opposition to practices towards another employee:** An employee who reports discrimination in answering an employer's questions opposes discrimination.
- **§ 1:61. Discrimination based on religion under Title VII—Establishing need for accommodation—Employer's obligation to accommodate:** "Undue" means that the requisite burden must rise to an excessive or unjustifiable level.
- **§ 1:87. Gender discrimination under Title VII—Prima facie requirements—Reverse discrimination:** In 2025, the U.S. Supreme Court, in a unanimous opinion, held that majority-group plaintiffs are not required to meet heightened evidentiary standard of showing "background circumstances" to establish prima facie case at first step of the *McDonnell Douglas* framework.
- **§ 1:89. Gender discrimination under Title VII—Burden-shifting:** In a Title VII failure-to-promote case based on gender, the employer's genuine belief that another candidate's vision for the organization or skillset makes them better suited for the job, compared to the plaintiff, is a legitimate, nondiscriminatory hiring rationale.
- **§ 1:89. Gender discrimination under Title VII—Burden-shifting:** An employer's divergence from its standard hiring practices can establish, or at least be evidence of, pretext.
- **§ 1:94. Sexual orientation discrimination under Title VII—Reverse discrimination:** In 2025, the U.S. Supreme

Court, in a unanimous opinion, held that majority-group plaintiffs are not required to meet heightened evidentiary standard of showing “background circumstances” to establish prima facie case at first step of the *McDonnell Douglas* framework.

- **§ 1:110. Reverse discrimination under Title VII—A survey of case law:** In 2025, the U.S. Supreme Court, in a unanimous opinion, held that majority-group plaintiffs are not required to meet heightened evidentiary standard of showing “background circumstances” to establish prima facie case at first step of the *McDonnell Douglas* framework.
- **§ 1:205. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—Plaintiff’s initial burden of proof—*McDonnell Douglas* test:** Title VII disparate treatment cases can be brought against unions by union members.
- **§ 1:207. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—Plaintiff’s initial burden of proof—Reverse discrimination case:** In 2025, the U.S. Supreme Court, in a unanimous opinion, held that majority-group plaintiffs are not required to meet heightened evidentiary standard of showing “background circumstances” to establish prima facie case at first step of the *McDonnell Douglas* framework.
- **§ 1:208. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—Plaintiff’s initial burden of proof—Hostile work environment case [New]:** Comments that are less severe but more frequent may constitute an actionable detriment to the employee’s working conditions.
- **§ 1:210. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—“Shift of burden” of production to defendant—Pretext of proffered reason:** Similarly situated employees must be directly comparable to the plaintiff in all material respects.
- **§ 1:213. Assessment of evidence in Title VII suits—Steps to establish Title VII retaliation claims:** Making complaints to management about workplace discrimination qualifies as “protected activity” under the first element of a prima facie case of retaliation under the *McDonnell Douglas* framework.
- **§ 1:213. Assessment of evidence in Title VII suits—Steps to establish Title VII retaliation claims:** An employer’s failure to investigate a complaint of discrimination altogether is not, without more, a materially adverse action that supports a claim of retaliation under Title VII.

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- **§ 2:25. Burden of proof under the EPA—Equal skill, effort, and responsibility—Equal skill [New]:** In determining whether employees possess equal skill for purposes of an EPA claim, courts consider such factors as experience, training, education, and ability, measured in terms of the performance requirements of the job.
- **§ 3:2. Conduct prohibited by the ADEA:** The Seventh Circuit has also held that constructive discharge amounts to an adverse employment action under the ADEA.
- **§ 3:80. Preclusion by Railway Labor Act [New]:** The fact that reference to a CBA is necessary to resolve an ADEA claim does not require a finding or preemption or preclusion under the RLA.
- **§ 3:89. Assessment of evidence—Allocation of proof under the ADEA:** Federal-sector employees are not required to establish but-for causation for an employer’s allegedly discriminatory action, but must show only that protected characteristic played any part in employer’s decision-making process when employer engaged in challenged action.
- **§ 3:110. Prima facie case of discrimination under the ADEA—Specific incidents of discriminatory conduct:** Removing benefits from senior employees does not always mean that an employer has committed age discrimination.
- **§ 3:112. Prima facie case of discrimination under the ADEA—Specific incidents of discriminatory conduct—Constructive discharge:** An employer’s decision to place an employee on a performance action plan, absent any reduction in pay or the imposition of other adverse employment conditions, on its own, is not sufficient to establish constructive discharge under the ADEA.
- **§ 4:28. Burdens of proof in a Section 1981 action:** The D.C. Circuit has explained that a plaintiff proceeding on only a comparator theory must plead enough facts about those comparators and the relevant context to allow a plausible inference that he was treated differently because of his race.
- **§ 4:29. Burdens of proof in a Section 1981 action—Hostile work environment:** Physical altercations can contribute to a hostile work environment under Section 1981, even when not specifically accompanied by discriminatory remarks.
- **§ 4:30. Burdens of proof in a Section 1981 action—Retaliation:** Making complaints to management about workplace discrimination qualifies as “protected activity” under the anti-retaliation provisions of Section 1981.
- **§ 4:68. Immunity from suit under Section 1983 for government entities:** Where the municipality or local government department acts as an arm of the state, Eleventh Amendment immunity will prevent suits under Section 1983.

- **§ 5:2. The First Amendment:** The First Amendment generally does not permit the “heckler’s veto”—allowing the public, with the government’s help, to shout down unpopular ideas that stir anger.
- **§ 5:29. The Fourteenth Amendment:** Where a plaintiff alleges a violation of the Equal Protection Clause relating to expressive conduct, the court employs essentially the same analysis as it would in a case alleging only content or viewpoint discrimination under the First Amendment.
- **§ 5:46. Immunity from suits under the Constitution—Qualified immunity [Retitled]:** For a right to be clearly established for qualified immunity to apply, existing precedent must have placed the statutory or constitutional question beyond debate.
- **§ 5:49. Constitutional amendments in employment discrimination context—First Amendment:** For a public employer’s interest in a smoothly running office to outweigh an employee’s First Amendment right, the employer must demonstrate an actual, material, and substantial disruption, or a reasonable predictions of such disruption in the workplace.
- **§ 5:58. Constitutional amendments in employment discrimination context—Fourteenth Amendment:** A state actor violates the Fourteenth Amendment’s Equal Protection Clause by creating a hostile work environment.
- **§ 5:59. Burden of proof for suits under the Constitution:** Narrow tailoring, as required to survive strict scrutiny, requires the government to show that measures less restrictive of the First Amendment activity could not address its interest.
- **§ 6:18. ADA coverage—Former employees:** In 2025, the U.S. Supreme Court held that ADA Title I does not reach discrimination against retirees who neither hold nor desire a job whose essential tasks they can perform with reasonable accommodation.
- **§ 6:29. Administrative remedies under the ADA:** Where a class action is filed, which incorporates the claims which an individual plaintiff would assert, the statute of limitations for the individual plaintiff’s claim is suspended.
- **§ 6:40. Individual with a disability under the ADA—Definition of disability:** Medical evidence is not always necessary to prove that an impairment constitutes a “substantial limitation” on a major life activity.
- **§ 6:55. Qualified individual with a disability under the ADA—Threat to others or to self [Retitled]:** In some situations, an individual might pose a threat to themselves and to others in the position, making them fail the “qualified individual” requirement.
- **§ 6:56. Qualified individual with a disability under the ADA—Reasonable accommodation:** In 2025, as a

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matter of first impression, the Second Circuit held that an employee with a disability is qualified to receive a reasonable accommodation under the ADA even if the employee can perform their essential job functions without an accommodation.

- **§ 6:59. Qualified individual with a disability under the ADA—Reasonable accommodation—Reassignment:** If the employee notifies the employer of this willingness to transfer, the employer must try to find an open position that the employee could perform.
- **§ 6:70. Qualified individual with a disability under the ADA—Reasonable accommodation—Interactive process [New]:** Neither the ADA nor the caselaw require that, when an employee requests a reasonable accommodation, the employer must move with maximum speed to complete the interactive process and preempt any possible concerns.
- **§ 6:73. Disparate treatment under the ADA—Particular cases:** Terminating an employee for workplace misconduct, even misconduct related to a disability, is not discrimination on the basis of disability under the ADA.
- **§ 6:78. Hostile work environment harassment claims under the ADA:** A disagreement with an employer over terms of employment or an accommodation does not amount to harassment for purposes of an ADA hostile work environment claim.
- **§ 6:83. Employer defenses under the ADA—Defense to disparate treatment claim:** An employer is not required by the ADA to ignore an employee's blatant and persistent misconduct, even where that behavior is potentially tied to a medical condition.
- **§ 6:231. Genetic Information Nondiscrimination Act of 2008—Case law:** Family vaccine history does not constitute genetic information under GINA.
- **§ 9:23. Employer under the FMLA:** The FMLA borrows the economic reality test from the FLSA for determining whether an individual is an employer under the FMLA.
- **§ 9:67. Claims under the FMLA—Claim of retaliation or interference:** At their core, FMLA retaliation claims are about discrimination—situations in which an employer treats an employee differently because of a request for a statutory benefit.
- **§ 9:70. Prima facie case of retaliation or interference under the FMLA—FMLA retaliation claim:** Direct evidence of retaliatory intent is rare, because it requires a specific link to the challenged decision.
- **§ 9:73. Prima facie case of retaliation or interference under the FMLA—FMLA retaliation claim—Employer's right to terminate:** When a violation of company policy was a problem before the employee engaged in FMLA

protected activity, the violation both undercuts the significance of the temporal proximity and provides an explanation for it other than a retaliatory motive.

- **§ 9:85. Pretext under the FMLA—FMLA retaliation claim:** The cat's paw theory of liability applies to FMLA retaliation claims.
- **§ 10:41. Wrongful termination acts and/or provisions—Fair Labor Standards Act—Retaliation:** When considering whether there is an employee-employer relationship under the FLSA, the court applies the economic reality test.
- **§ 10:41. Wrongful termination acts and/or provisions—Fair Labor Standards Act—Retaliation:** An informal complaint to the employer may constitute protected activity protected by the FLSA's anti-retaliation provision, but not "every abstract grumbling or vague expression of discontent" will result in an actionable complaint.