

Highlights to the 2025-4 Update

This release, issued in December 2025, continues the *Guide to Employment Law and Regulation*, 2d's coverage of federal and state employment laws for both human resource professionals and employment attorneys. New material in this update includes:

- **Reverse discrimination:** The United States Supreme Court resolved a split among the circuit courts regarding the background circumstances test and held that majority-group plaintiffs alleging reverse discrimination are not required to meet a heightened evidentiary standard of showing background circumstances to support the suspicion that a defendant was the unusual employer who discriminates against the majority to satisfy the plaintiffs' burden of establishing a prima facie case of disparate treatment. *Ames v. Ohio Department of Youth Services*, 605 U.S. 303, 145 S. Ct. 1540, 221 L. Ed. 2d 929 (2025). See §§ 2:63, 2:66.50.
- **ADA coverage of retired individuals:** The United States Supreme Court held that to prevail under Title I of the ADA, a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination.[80.10] The Court considered the question of whether a retired employee who does not hold or seek a job is a "qualified individual." The court concluded that the ADA covers only those who hold or seek a job when the allegedly discriminatory act occurs. Accordingly, it held that a retired firefighter who claimed her employer violated the ADA by providing different health-insurance benefits to those who retire with 25 years of service and those who retire due to disability was not a "qualified individual" under Title I of the ADA, because she no longer held or sought a job with the defendant. *Stanley v. City of Sanford, Florida*, 606 U.S. 46, 145 S. Ct. 2058, 222 L. Ed. 2d 331 (2025). See § 3:3.
- **Good faith:** A brief or incomplete consultation with a lawyer regarding FLSA conformity does not satisfy the standards of the good faith defense, according to the Fourth Circuit. The court explained that the FLSA's reasonableness standard is in place to prevent such a façade—one which could allow a phone call to a lawyer to justify a good faith defense. *Chavez-Deremer v. Medical Staffing of America, LLC*, 147 F.4th 371 (4th Cir. 2025). See § 14:3.
- **Concerted activity:** Substantial evidence supported the NLRB's finding that an employee of a plastics manufacturer sought to bring truly group complaints to the attention of management when he raised concerns about COVID-19 pandemic safety measures, and his actions constituted "concerted activity" that was protected by the NLRA, regardless of whether group action resulted from the employee's complaints. Evidence showed that the employee raised concerns at an all-hands meeting, that several others agreed

that the manufacturer was not an essential business permitted to remain open, that the employee had convinced a coworker to also speak to management about workplace safety, and that the employee had raised the same issues in a one-on-one conversation with the employer's chief operating officer, as an extension of his effort to raise a group concern. *Miller Plastic Products Inc v. National Labor Relations Board*, 141 F.4th 492 (3d Cir. 2025). See § 17:69.

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HIGHLIGHTS

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