

Table of Contents

Volume 1

PART I. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964— CHECKLISTS

CHAPTER 1. TITLE VII—IN GENERAL

- § 1:1 Statutory requirements
- § 1:2 Forms of discrimination
- § 1:3 Statutory defenses
- § 1:4 Enforcement process
- § 1:5 Other federal claims to consider

CHAPTER 2. TITLE VII—COVERAGE

- § 2:1 Employers
- § 2:2 Labor organizations or unions
- § 2:3 Employment agencies
- § 2:4 Miscellaneous

CHAPTER 3. TITLE VII—PROCEDURE

- § 3:1 Charge affidavit
- § 3:2 Equal Employment Opportunity Commission investigation
- § 3:3 EEOC reasonable cause determination
- § 3:4 EEOC litigation or conciliation
- § 3:5 Pattern or practice governmental litigation
- § 3:6 Statute of limitations
- § 3:7 Venue and forum
- § 3:8 Employer declaratory action
- § 3:9 Pleading
- § 3:10 Appointment of counsel
- § 3:11 Class actions
- § 3:12 Discovery—Rule based
- § 3:13 —Freedom of Information Act (FOIA)
- § 3:14 Summary judgment
- § 3:15 Summary trials and minitrials
- § 3:16 Role of jury
- § 3:17 Role of magistrate

§ 3:18 Appellate review

CHAPTER 4. TITLE VII—PROOF GENERALLY

- § 4:1 Intentional discrimination
- § 4:2 —Direct evidence
- § 4:3 —Circumstantial evidence
- § 4:4 — —Legitimate nondiscriminatory reason
- § 4:5 — —Articulated reason pretextual
- § 4:6 — —Alternative approach
- § 4:7 Impact discrimination—Generally
- § 4:8 —Alleging precise employment practice
- § 4:9 —Significant disparate impact on protected group
- § 4:10 —Business justification
- § 4:11 —Inadequacy of business justification
- § 4:12 Evidentiary Issues
- § 4:13 Defenses
- § 4:14 —Bona fide occupational qualification (BFOQ)
- § 4:15 —Bona fide seniority system
- § 4:16 —Release and waiver, conciliation agreement, or consent decree
- § 4:17 —Resignation or constructive discharge
- § 4:18 —Claim or issue preclusion
- § 4:19 —Affirmative action program (AAP)
- § 4:20 —Grievance/arbitration process
- § 4:21 —Other

CHAPTER 5. TITLE VII—RACE, COLOR, AND NATIONAL ORIGIN DISCRIMINATION

§ 5:1 In general

CHAPTER 6. TITLE VII—SEX DISCRIMINATION

- § 6:1 Defining “sex”
- § 6:2 Sexual harassment
- § 6:3 —Quid pro quo
- § 6:4 —Hostile environment
- § 6:5 —Vicarious liability of employer
- § 6:6 Fetal protection
- § 6:7 Pension and employee welfare benefits
- § 6:8 Pay discrimination and comparable worth
- § 6:9 Defenses
- § 6:10 Grooming standards

TABLE OF CONTENTS

**CHAPTER 7. TITLE VII—RELIGIOUS
DISCRIMINATION**

- § 7:1 Nature of discrimination
- § 7:2 Specific practices

CHAPTER 8. TITLE VII—RETALIATION

- § 8:1 Scope of protection
- § 8:2 Burden of proof

**CHAPTER 9. TITLE VII—FEDERAL
EMPLOYEES**

- § 9:1 Exclusivity
- § 9:2 Exhaustion of administrative process
- § 9:3 Statute of limitations
- § 9:4 Jurisdictional requirement

CHAPTER 10. TITLE VII—REMEDIES

- § 10:1 Equitable relief
- § 10:2 —Injunctions
- § 10:3 —Reinstatement
- § 10:4 —Back pay
- § 10:5 —Fringe benefits
- § 10:6 —Front pay and interest
- § 10:7 Damages

**CHAPTER 11. TITLE VII—Retroactivity of
Civil Rights Act of 1991**

- § 11:1 Effective date

CHAPTER 12. TITLE VII—FORMS

- § 12:1 Complaint
- § 12:2 Answers, defenses and affirmative defenses
- § 12:3 Agreed protective order
- § 12:4 Plaintiff's first request for production of documents
- § 12:5 Plaintiff's first set of interrogatories to defendant
- § 12:6 Defendant's first request for production of documents
- § 12:7 Defendant's first set of interrogatories to plaintiff
- § 12:8 Request for admissions

PART II. RECONSTRUCTION ERA CIVIL RIGHTS ACTS— CHECKLISTS

CHAPTER 13. RECONSTRUCTION ERA CIVIL RIGHTS ACTS—IN GENERAL

- § 13:1 Applicability to employers
- § 13:2 Contrast with other remedies
- § 13:3 Type of employment action covered
- § 13:4 Other requirements

CHAPTER 14. RECONSTRUCTION ERA CIVIL RIGHTS ACTS—SECTION 1981

- § 14:1 Effect of *Patterson v. McLean Credit Union*
- § 14:2 Relationship to Title VII
- § 14:3 Litigation

CHAPTER 15. RECONSTRUCTION ERA CIVIL RIGHTS ACTS—SECTION 1983

- § 15:1 Party defendant
- § 15:2 Federal government
- § 15:3 States and territories
- § 15:4 Individual state officers
- § 15:5 Nonstate level of government: Local or municipal, county, regional, or consortium
- § 15:6 State action
- § 15:7 Mental state of defendant
- § 15:8 Procedural and substantive due process protections
- § 15:9 Free speech
- § 15:10 Freedom of religion
- § 15:11 Freedom of association
- § 15:12 Retaliation
- § 15:13 Equal protection
- § 15:14 Affirmative action
- § 15:15 Federal laws
- § 15:16 Remedies
- § 15:17 Litigation
- § 15:18 Subject matter jurisdiction
- § 15:19 Exhaustion of state remedies
- § 15:20 Statute of limitations
- § 15:21 Collateral estoppel and res judicata
- § 15:22 Qualified immunity
- § 15:23 Absolute immunity from damages
- § 15:24 Special pleading requirements

TABLE OF CONTENTS

- § 15:25 Standing
- § 15:26 Preliminary injunctive relief
- § 15:27 Jury practice

**CHAPTER 16. RECONSTRUCTION ERA
CIVIL RIGHTS ACTS—SECTION 1985**

- § 16:1 In general

**CHAPTER 17. RECONSTRUCTION ERA
CIVIL RIGHTS ACTS— Section 1986**

- § 17:1 In general

**CHAPTER 18. RECONSTRUCTION ERA
CIVIL RIGHTS ACTS—FORMS**

- § 18:1 Complaint in 42 U.S.C.A. § 1983 action
- § 18:2 Answer to 42 U.S.C.A. § 1983 complaint
- § 18:3 Agreed protective order
- § 18:4 Plaintiff's first request for production of documents
- § 18:5 Plaintiff's first set of interrogatories to defendant
- § 18:6 Defendant's first request for production of documents
- § 18:7 Defendant's first set of interrogatories to plaintiff
- § 18:8 Request for admissions

Volume 2

**PART III. AGE DISCRIMINATION IN
EMPLOYMENT ACT (ADEA)—
CHECKLISTS**

CHAPTER 19. ADEA—IN GENERAL

- § 19:1 Nonfederal plaintiff
- § 19:2 Defendant

CHAPTER 20. ADEA—COVERAGE

- § 20:1 Private employers
- § 20:2 Public employers
- § 20:3 Foreign employment
- § 20:4 Labor organizations
- § 20:5 Age of 40 or over
- § 20:6 Prohibited age-related employer practices
- § 20:7 Prohibited age-related employment agency practices
- § 20:8 Prohibited age-related labor organization practices

§ 20:9 Protected age-related practices

CHAPTER 21. ADEA—PROCEDURE

- § 21:1 Forum
- § 21:2 Type of actions
- § 21:3 Filing a charge
- § 21:4 Administrative process
- § 21:5 Statute of limitations
- § 21:6 Jury trial
- § 21:7 Remedies
- § 21:8 Liquidated damages
- § 21:9 Equitable relief
- § 21:10 Federal employees procedure
- § 21:11 Discovery
- § 21:12 Summary judgment motion
- § 21:13 Motion for judgment notwithstanding the verdict or
for judgment as a matter of law
- § 21:14 Motion for a new trial
- § 21:15 Attorneys fees

CHAPTER 22. ADEA—SUBSTANTIVE LAW

- § 22:1 Potential related claims
- § 22:2 Major types of ADEA violations
- § 22:3 Methods of proving ADEA violations
- § 22:4 —Direct evidence
- § 22:5 —Circumstantial evidence
- § 22:6 — —Prima facie case
- § 22:7 — —Rebuttal by employer
- § 22:8 — —Burden of proof
- § 22:9 —Disparate impact
- § 22:10 —Retaliation
- § 22:11 Affirmative defenses
- § 22:12 —BFOQ
- § 22:13 —Good cause
- § 22:14 —Waiver and settlement
- § 22:15 Res judicata and collateral estoppel
- § 22:16 —Other

CHAPTER 23. ADEA—PLAINTIFF INTERVIEWS

- § 23:1 In general
- § 23:2 Client interview
- § 23:3 Opinion or advice letter
- § 23:4 Representation agreement

TABLE OF CONTENTS

CHAPTER 24. ADEA—DEFENDANT INTERVIEWS

§ 24:1 In general

CHAPTER 25. ADEA—SEVERANCE PACKAGE

§ 25:1 In general
§ 25:2 Outplacement service
§ 25:3 Reference process
§ 25:4 Expungement of negative comments
§ 25:5 COBRA continuation benefits
§ 25:6 Unemployment compensation
§ 25:7 Supplies and equipment
§ 25:8 Consultation agreement
§ 25:9 Monetary amount
§ 25:10 Non-compete clause
§ 25:11 Confidentiality
§ 25:12 Release

CHAPTER 26. ADEA—FORMS

§ 26:1 Sample waiver letter to employee
§ 26:2 Charge of discrimination
§ 26:3 Complaint and jury demand
§ 26:4 Answer, defenses, and affirmative defenses
§ 26:5 Representation agreement
§ 26:6 Plaintiff's first request for production of documents
§ 26:7 Plaintiff's first set of interrogatories to defendant
§ 26:8 Defendant's first request for production of documents
§ 26:9 Defendant's first set of interrogatories to plaintiff
§ 26:10 Settlement agreement and general release
§ 26:11 Sample general release (termination)
§ 26:12 Sample release (EEOC charge and/or court action)

PART IV. EQUAL PAY ACT OF 1963 (EPA)—CHECKLISTS

CHAPTER 27. EQUAL PAY ACT—INTRODUCTION

§ 27:1 In general

CHAPTER 28. EQUAL PAY ACT—SUMMARY

§ 28:1 Definitions
§ 28:2 Equal Pay Act provisions

- § 28:3 Penalties—Civil and criminal liability, enforcement procedure
- § 28:4 Statute of limitations and damages

CHAPTER 29. EQUAL PAY ACT—LAW

- § 29:1 Scope of statute
- § 29:2 Prima facie case
- § 29:3 Equal work
- § 29:4 Equal skill
- § 29:5 Equal effort and equal responsibility
- § 29:6 Factor other than sex
- § 29:7 Substantially equal
- § 29:8 Bringing an action
- § 29:9 Burden of proof
- § 29:10 Defenses
- § 29:11 Remedies
- § 29:12 EPA and Title VII
- § 29:13 Rules and regulations
- § 29:14 Miscellaneous

CHAPTER 30. Equal Pay Act—EEOC REGULATIONS

- § 30:1 Applicability and coverage
- § 30:2 Definitions and meanings
- § 30:3 Testing equality of jobs
- § 30:4 Jobs requiring—Equal skill in performance
- § 30:5 —Equal effort in performance
- § 30:6 —Equal responsibility in performance
- § 30:7 Job performed under similar working conditions
- § 30:8 Equality of wages
- § 30:9 Issuance of subpoenas
- § 30:10 Recordkeeping requirements
- § 30:11 Recovery of wages due; Injunctions; Penalties
- § 30:12 Opinion letter
- § 30:13 Miscellaneous

CHAPTER 31. Equal Pay Act—Prelitigation

- § 31:1 In general

CHAPTER 32. Equal Pay Act—DISCOVERY

- § 32:1 In general

CHAPTER 33. EQUAL PAY ACT—FORMS

- § 33:1 Complaint

TABLE OF CONTENTS

- § 33:2 Request for production of documents
- § 33:3 Plaintiff's first set of interrogatories
- § 33:4 Answer of defendant

PART V. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)—CHECKLISTS

CHAPTER 34. ADA—OVERVIEW

- § 34:1 In general
- § 34:2 Definitions under statute

CHAPTER 35. ADA—UNLAWFUL DISCRIMINATION

- § 35:1 In general

CHAPTER 36. ADA—MEDICAL EXAMINA- TIONS AND INQUIRIES

- § 36:1 Prohibition against discrimination
- § 36:2 Preemployment
- § 36:3 Employment entrance exam
- § 36:4 Examination and inquiry
- § 36:5 Employees applying for reemployment

CHAPTER 37. ADA—DEFENSES

- § 37:1 Reasonable accommodation
- § 37:2 Individual not handicapped
- § 37:3 Statute of limitations
- § 37:4 Claims prior to effective date of act
- § 37:5 Standards job-related
- § 37:6 Qualification standards
- § 37:7 Religious entities
- § 37:8 Homosexuality and bisexuality
- § 37:9 Individual currently engaging in illegal use of drugs
- § 37:10 Employers not covered under the act
- § 37:11 Failure to submit claim to arbitration
- § 37:12 Failure to control a controllable disability
- § 37:13 Same decision defense
- § 37:14 Judicial estoppel
- § 37:15 Violation of last chance agreement
- § 37:16 Issue preclusion; Laches
- § 37:17 Failure to submit to medical evaluation
- § 37:18 Requested accommodation conflicts with collective bargaining agreement

- § 37:19 Not a defense
- § 37:20 Defenses to punitive damages
- § 37:21 Plaintiff's testimony
- § 37:22 Failure to obtain right-to-sue letter
- § 37:23 Seniority policy
- § 37:24 Direct threat to health or safety
- § 37:25 Eleventh Amendment
- § 37:26 Business necessity
- § 37:27 Reliance upon employee's physician's evaluation
- § 37:28 Exhaustion of administrative remedies

CHAPTER 38. ADA—COMPILED LIST OF INFECTIOUS AND COMMUNICABLE DISEASES

- § 38:1 Secretary of Health and Human Services
- § 38:2 Application
- § 38:3 Construction

CHAPTER 39. ADA—ILLEGAL USE OF DRUGS AND ALCOHOL

- § 39:1 Qualified individual with disability
- § 39:2 Rules of construction
- § 39:3 Restricting drugs in workplace

CHAPTER 40. ADA—DRUG TESTING

- § 40:1 Reasonable policies or procedure
- § 40:2 Transportation employees

CHAPTER 41. ADA—ENFORCEMENT

- § 41:1 In general

CHAPTER 42. ADA—MISCELLANEOUS PROVISIONS

- § 42:1 In general

CHAPTER 43. ADA—PRELITIGATION CHECKLIST

- § 43:1 In general

CHAPTER 44. ADA—DISCOVERY LIST

- § 44:1 In general

CHAPTER 45. ADA—FORMS

- § 45:1 Complaint

TABLE OF CONTENTS

- § 45:2 Request for production of documents
- § 45:3 Interrogatories
- § 45:4 Answer of defendant

PART VI. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)—CHECKLISTS

CHAPTER 46. WARN—OVERVIEW

- § 46:1 In general

CHAPTER 47. WARN—RELATED LAWS

- § 47:1 National Labor Relations Act (NLRA)
- § 47:2 Other federal laws
- § 47:3 Collective bargaining agreements
- § 47:4 State laws

CHAPTER 48. WARN—LEGISLATIVE HISTORY

- § 48:1 Metzenbaum bill
- § 48:2 Reaction to Metzenbaum bill
- § 48:3 Amendments

CHAPTER 49. WARN—STATUTE

- § 49:1 Summary
- § 49:2 Definitions
- § 49:3 Penalties
- § 49:4 Exemptions

CHAPTER 50. WARN—ADMINISTRATIVE REGULATIONS

- § 50:1 Introduction
- § 50:2 Purpose and scope
- § 50:3 WARN enforcement
- § 50:4 Notice in ambiguous situations
- § 50:5 Coordination with job placement and retraining
programs
- § 50:6 WARN versus other laws and contracts
- § 50:7 WARN requirements
- § 50:8 Definitions
- § 50:9 Who must give notice
- § 50:10 When notice must be given
- § 50:11 Who must receive notice

- § 50:12 Content of notice
- § 50:13 WARN notice requirements to representative
- § 50:14 —Requirements where no representative
- § 50:15 Notices to state dislocated worker unit and local government unit
- § 50:16 Service of notice
- § 50:17 Notice less than 60 days in advance
- § 50:18 Extension of notice

CHAPTER 51. WARN—PRELITIGATION

- § 51:1 In general

CHAPTER 52. WARN—DISCOVERY

- § 52:1 In general

CHAPTER 53. WARN—DOCUMENT INVESTIGATION

- § 53:1 In general

CHAPTER 54. WARN—FORMS

- § 54:1 Answer of defendant
- § 54:2 Request for production of documents
- § 54:3 Request for admissions
- § 54:4 Interrogatories

PART VII. FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)—CHECKLISTS

CHAPTER 55. FMLA—INTRODUCTION

- § 55:1 Overview
- § 55:2 In general
- § 55:3 Purpose of FMLA
- § 55:4 Effective date of FMLA
- § 55:5 FMLA DOL regulations

CHAPTER 56. FMLA—COVERAGE

- § 56:1 Employers covered by FMLA

CHAPTER 57. FMLA—1993 STATUTE

- § 57:1 FMLA's effect upon other federal and state antidiscrimination laws
- § 57:2 Definitions

TABLE OF CONTENTS

- § 57:3 “Joint employment” treated under FMLA
- § 57:4 “Successor in interest”
- § 57:5 Any eligible employee may take leave under FMLA
- § 57:6 FMLA leave provisions
- § 57:7 Employers required to grant family or medical leave for birth, adoption, foster care, or serious illness
- § 57:8 Serious illness of “spouse,” “parent,” and “son or daughter” may qualify employee to take FMLA leave
- § 57:9 Husband and wife employed by same employer entitled to 12 weeks combined FMLA leave
- § 57:10 Employer may transfer employee to “alternative position” in order to accommodate intermittent leave or reduced leave schedule
- § 57:11 FMLA leave unpaid
- § 57:12 Employees who exercise their rights under FMLA are protected
- § 57:13 Stating a claim under the statute
- § 57:14 Willful Violations

CHAPTER 58. FMLA—BENEFITS

- § 58:1 Employee entitled to benefits while using FMLA leave

CHAPTER 59. FMLA—REINSTATEMENT OF EMPLOYEE

- § 59:1 Employee’s rights on returning to work from FMLA leave

CHAPTER 60. FMLA—KEY EMPLOYEE

- § 60:1 “Key employee”

CHAPTER 61. FMLA—NOTICES

- § 61:1 Posting notices requirements under act
- § 61:2 Required notices of employers to employees
- § 61:3 Required notices of employee to employer

CHAPTER 62. FMLA—MEDICAL CERTIFICATION

- § 62:1 Leave or reinstatement may be denied if employee fails to provide timely certification

CHAPTER 63. FMLA—REFUSAL TO GRANT LEAVE OR REINSTATEMENT

- § 63:1 Covered employer may refuse to provide FMLA leave or reinstatement to eligible employees
- § 63:2 Enforcement provisions of FMLA

- § 63:3 Recordkeeping required of employers
- § 63:4 Educational institutions
- § 63:5 Employer may provide greater benefits than required by FMLA

CHAPTER 64. FMLA—VIOLATIONS OF THE STATUTE

- § 64:1 Violations of the statute

CHAPTER 65. FMLA—FORMS

- § 65:1 Model company policy
- § 65:2 Certification of physician or practitioner
- § 65:3 U.S. Department of Labor program highlights
- § 65:4 2008 Forms

PART VIII. EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)—CHECKLISTS

CHAPTER 66. ERISA—IN GENERAL

- § 66:1 Scope of benefits covered by ERISA
- § 66:2 Employers
- § 66:3 Fiduciaries
- § 66:4 Employee's rights under ERISA
- § 66:5 Claims for violations of ERISA
- § 66:6 Forums available for ERISA claims
- § 66:7 Timing of ERISA claims
- § 66:8 Standing to sue
- § 66:9 Related laws

Volume 3

CHAPTER 67. ERISA—ANALYSIS

- § 67:1 Codification
- § 67:2 Legislative purpose
- § 67:3 Canons of statutory construction
- § 67:4 Enforcement agencies
- § 67:5 Selected definitions
- § 67:6 Plans
 - § 67:7 —Pension plan
 - § 67:8 —Employee welfare benefit plan
 - § 67:9 —General requirements
 - § 67:10 —Exemptions

TABLE OF CONTENTS

§ 67:11	Powers and duties of employers—Generally
§ 67:12	—Duty to record and report
§ 67:13	—Access to fund assets
§ 67:14	—Adverse treatment
§ 67:15	—Wrongful interference and retaliation
§ 67:16	—Funding of plans
§ 67:17	—Withdrawal from pension plan
§ 67:18	Powers and duties of fiduciaries, including trustees and plan administrators
§ 67:19	—Law governing
§ 67:20	—Specific duties
§ 67:21	—Specific prohibitions
§ 67:22	—Miscellaneous requirements
§ 67:23	—Nature of Fiduciary Act
§ 67:24	—Exemptions
§ 67:25	—Conflict of interest
§ 67:26	—Fiduciary breach
§ 67:27	—Liability
§ 67:28	Rights of employees—Generally
§ 67:29	—Participation in pension plans
§ 67:30	—Vesting in pension plans
§ 67:31	—Exemptions
§ 67:32	—Protection from plan amendments reducing benefits
§ 67:33	—Election of pension option
§ 67:34	—Form and payment of benefits
§ 67:35	—Written notice of benefits denial and review opportunity
§ 67:36	—Waiver
§ 67:37	Statutory causes of action
§ 67:38	Jurisdiction, venue and process
§ 67:39	Exhaustion
§ 67:40	Standing
§ 67:41	Statute of limitations
§ 67:42	Preliminary injunction
§ 67:43	Discovery
§ 67:44	Res judicata or collateral estoppel
§ 67:45	Standard of review
§ 67:46	Summary judgment
§ 67:47	Jury
§ 67:48	Liquidated damages
§ 67:49	Prejudgment interest and damages
§ 67:50	Attorney’s fees and costs
§ 67:51	Criminal provisions
§ 67:52	Relationship to other laws—Generally
§ 67:53	—Preemption
§ 67:54	—Removal from state court to federal court
§ 67:55	—Pendent claims

- § 67:56 —Age Discrimination in Employment Act (ADEA)
- § 67:57 —Bankruptcy code
- § 67:58 —Labor relations laws
- § 67:59 —Federal common law
- § 67:60 —Other
- § 67:61 Appeal

CHAPTER 68. ERISA—FORMS

- § 68:1 IRS Form 5329, additional taxes attributable to IRAs, other qualified retirement plans, annuities, modified endowment contracts, and MSAs
- § 68:2 Complaint in ERISA action
- § 68:3 Answers, defenses, and affirmative defenses in ERISA action
- § 68:4 Agreed protective order
- § 68:5 Plaintiff's first request for production of documents
- § 68:6 Plaintiff's first set of interrogatories to defendant
- § 68:7 Defendant's first request for production of documents
- § 68:8 Defendant's first set of interrogatories to plaintiff
- § 68:9 Request for admissions

PART IX. CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA)—CHECKLISTS

CHAPTER 69. COBRA—OVERVIEW

- § 69:1 Purpose and general requirements
- § 69:2 Exemptions
- § 69:3 Enforcement
- § 69:4 Definitions and requirements

CHAPTER 70. COBRA—NOTICE PROCEDURES

- § 70:1 In general

CHAPTER 71. COBRA—EFFECTIVE DATES

- § 71:1 In general

CHAPTER 72. COBRA—FORMS

- § 72:1 Notice model statement—Continuation coverage

TABLE OF CONTENTS

**PART X. WRONGFUL
TERMINATION: EMPLOYMENT-
AT-WILL AND RELATED
CLAIMS—CHECKLISTS**

**CHAPTER 73. WRONGFUL
TERMINATION—EMPLOYMENT-AT-WILL IN
GENERAL**

- § 73:1 At-will status of employment
- § 73:2 Tort claims available to at-will employee
- § 73:3 Typical factual issues
- § 73:4 Investigation
- § 73:5 Research and evaluation
- § 73:6 Tactical decisions
- § 73:7 Pleadings, discovery and trial

**CHAPTER 74. WRONGFUL
TERMINATION—EMPLOYMENT-AT-WILL
DOCTRINE**

- § 74:1 In general
- § 74:2 Employment-at-will relationship
- § 74:3 Limitations on discretion to terminate at-will employee
- § 74:4 Exposure from exercising at-will power to terminate

**CHAPTER 75. WRONGFUL
TERMINATION—CONTRACT CLAIMS**

- § 75:1 In general
- § 75:2 Express contract—Generally
- § 75:3 —Evaluation process
- § 75:4 —Discipline
- § 75:5 —Termination
- § 75:6 —Noncompete clause
- § 75:7 —Grievance/arbitration clause
- § 75:8 —Other clauses
- § 75:9 Implied contractual obligations
- § 75:10 —Implied in fact contract
- § 75:11 —Implied in law contract
- § 75:12 —Implied covenant of good faith and fair dealing
- § 75:13 —Implied condition of adherence to public policy
- § 75:14 —Promissory estoppel
- § 75:15 —Exception from general contract law restrictions
- § 75:16 —Modification
- § 75:17 —Remedies

CHAPTER 76. WRONGFUL TERMINATION—TORT REMEDIES

- § 76:1 General considerations
- § 76:2 Abusive or wrongful discharge
- § 76:3 Assault and/or battery
- § 76:4 Defamation
- § 76:5 False imprisonment
- § 76:6 Fraud
- § 76:7 Implied covenant of good faith and fair dealing
- § 76:8 Intentional or negligent infliction of emotional distress
- § 76:9 Interference with contract or prospective economic advantage
- § 76:10 Invasion of privacy
- § 76:11 Negligence
- § 76:12 Prima facie tort
- § 76:13 Breach of fiduciary duty

CHAPTER 77. WRONGFUL TERMINATION—PLAINTIFF INTERVIEW CHECKLIST

- § 77:1 In general
- § 77:2 Types of information to be obtained at client interview
- § 77:3 —Credibility
- § 77:4 —Cooperation
- § 77:5 —Intellectual and emotional level
- § 77:6 —Critical facts
- § 77:7 Opinion or advice letter

CHAPTER 78. WRONGFUL TERMINATION—DEFENDANT INTERVIEW CHECKLIST

- § 78:1 In general
- § 78:2 Designation of liaison for defense counsel
- § 78:3 Compiling documentation
- § 78:4 Interviewing key players
- § 78:5 External sources of information
- § 78:6 Settlement potential

CHAPTER 79. WRONGFUL TERMINATION—HANDBOOK DISCLAIMERS AND PROVISIONS

- § 79:1 In general
- § 79:2 Procedure

TABLE OF CONTENTS

- § 79:3 Disclaimers
- § 79:4 Typical provisions that may expose employer to implied contract claims
- § 79:5 Alternative dispute resolution provisions

CHAPTER 80. WRONGFUL TERMINATION—FORMS

- § 80:1 Application form
- § 80:2 Offer of employment
- § 80:3 Handbook receipt
- § 80:4 Complaint and jury demand
- § 80:5 Answer, defenses and affirmative defenses
- § 80:6 Plaintiff's interrogatories
- § 80:7 Defendant's interrogatories
- § 80:8 Plaintiff's request for documents
- § 80:9 Defendant's request for documents

PART XI. REHABILITATION ACT OF 1973—CHECKLISTS

CHAPTER 81. REHABILITATION ACT—INTRODUCTION

- § 81:1 In general

CHAPTER 82. Rehabilitation Act—Statutes

- § 82:1 Employment of handicapped individuals
- § 82:2 Employment under federal contracts
- § 82:3 Nondiscrimination under federal grants and programs; Promulgation of rules and regulations

CHAPTER 83. REHABILITATION ACT—LAW

- § 83:1 Employment of individuals with handicaps
- § 83:2 Section 503
- § 83:3 Section 504
- § 83:4 —Definitions
- § 83:5 —Handicaps
- § 83:6 —Not a handicap
- § 83:7 —“Otherwise qualified”
- § 83:8 —Prima facie case
- § 83:9 —Burden of proof
- § 83:10 —Reasonable accommodation

- § 83:11 —Defenses
- § 83:12 —Remedies
- § 83:13 Statute of limitations

CHAPTER 84. Rehabilitation Act—Regulations

- § 84:1 EEOC regulations on handicap
- § 84:2 Department of Labor regulations
- § 84:3 —Affirmative action for handicapped workers
- § 84:4 —Applicability of affirmative action program requirement
- § 84:5 Affirmative action policy, practices and procedures
- § 84:6 Miscellaneous

CHAPTER 85. Rehabilitation Act—General Enforcement and Complaint Procedure

- § 85:1 In general
- § 85:2 Complaint procedures
- § 85:3 Actions for noncompliance
- § 85:4 Formal hearings
- § 85:5 Posthearing

CHAPTER 86. Rehabilitation Act—Ancillary Matters

- § 86:1 In general

CHAPTER 87. Rehabilitation Act—Prelitigation Considerations

- § 87:1 In general

CHAPTER 88. Rehabilitation Act—Discovery Considerations

- § 88:1 In general

CHAPTER 89. REHABILITATION ACT—FORMS

- § 89:1 Complaint
- § 89:2 Request for production of documents
- § 89:3 Interrogatories
- § 89:4 Answer of defendant
- § 89:5 Model handicap and vietnam veterans app—Hearing

TABLE OF CONTENTS

**PART XII. DRUG-FREE
WORKPLACE ACT OF 1988
(DFWA)—CHECKLISTS**

CHAPTER 90. DFWA—INTRODUCTION

§ 90:1 In general

**CHAPTER 91. DFWA—REQUIREMENTS
FOR FEDERAL CONTRACTORS**

§ 91:1 In general

**CHAPTER 92. DFWA—REQUIREMENTS
FOR GRANTEES**

§ 92:1 In general

**CHAPTER 93. DFWA—CONTROLLED
SUBSTANCES**

§ 93:1 Schedule I

§ 93:2 Schedule II

**CHAPTER 94. DFWA—REGULATIONS FOR
CONTRACTORS**

§ 94:1 In general

**CHAPTER 95. DFWA—REGULATIONS FOR
GRANTEES**

§ 95:1 General principles

§ 95:2 Purpose

§ 95:3 Definitions

§ 95:4 Sanctions

§ 95:5 Exemptions

§ 95:6 Certification requirements

**CHAPTER 96. DFWA—DEBARMENT,
SUSPENSION AND INELIGIBILITY
PROCEDURES**

§ 96:1 Policy

§ 96:2 Definitions

§ 96:3 Parties excluded from procurement programs

§ 96:4 Effect of listing and continuation of current contracts

§ 96:5 Restrictions on subcontracting

§ 96:6 Debarment

- § 96:7 —Procedures
- § 96:8 —Notice of proposed debarment
- § 96:9 —Debarring official's decision
- § 96:10 —Period and scope of debarment
- § 96:11 Suspension
- § 96:12 Causes
- § 96:13 —Procedures
- § 96:14 —Period and scope of suspension

CHAPTER 97. DFWA—FEDERAL WORKPLACES

- § 97:1 Basis for executive order
- § 97:2 Federal employees obligations
- § 97:3 Agency responsibilities
- § 97:4 Drug testing programs
- § 97:5 Drug testing procedures
- § 97:6 Personnel actions
- § 97:7 Coordination of agency programs
- § 97:8 Definitions

PART XIII. EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA)—CHECKLISTS

CHAPTER 98. EPPA—OVERVIEW

- § 98:1 In general
- § 98:2 Summary of act

CHAPTER 99. EPPA—ADMINISTRATIVE REGULATIONS

- § 99:1 Introduction
- § 99:2 Comments—Legislative and Department of Labor (DOL)

CHAPTER 100. EPPA—APPLICATION

- § 100:1 Purpose and scope
- § 100:2 Definitions
- § 100:3 Coverage and prohibitions
- § 100:4 Effect on other laws or agreements

CHAPTER 101. EPPA—EXEMPTIONS

- § 101:1 In general
- § 101:2 Employers conducting investigations of economic loss or injury

TABLE OF CONTENTS

- § 101:3 Employers authorized to manufacture, distribute, or dispense controlled substances
- § 101:4 Employers providing security services

CHAPTER 102. EPPA—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

- § 102:1 Adverse employment action under ongoing investigation exemption
- § 102:2 Rights of examinee
- § 102:3 Qualifications of and requirements for examiners

CHAPTER 103. EPPA—RECORD KEEPING AND DISCLOSURE REQUIREMENTS

- § 103:1 In general
- § 103:2 Disclosure of test information

CHAPTER 104. EPPA—ENFORCEMENT

- § 104:1 In general
- § 104:2 Representation of Secretary
- § 104:3 Civil-money penalties

CHAPTER 105. EPPA—ADMINISTRATIVE PROCEEDINGS

- § 105:1 In general
- § 105:2 Request for hearing
- § 105:3 Rules of practice
- § 105:4 Referral for hearing
- § 105:5 Decision and order of administrative law judge
- § 105:6 Modification or vacation of decision and order of administrative law judge (ALJ)

CHAPTER 106. EPPA—PRELITIGATION

- § 106:1 In general

CHAPTER 107. EPPA—DISCOVERY

- § 107:1 In general

CHAPTER 108. EPPA—FORMS

- § 108:1 Notice to examinee
- § 108:2 Complaint
- § 108:3 Request for production of documents
- § 108:4 Request for admission
- § 108:5 Interrogatories
- § 108:6 Answer of defendant

PART XIV. EXECUTIVE ORDER 11246—CHECKLISTS

CHAPTER 109. EXECUTIVE ORDER 11246—INTRODUCTION

§ 109:1 In general

CHAPTER 110. Executive Order 11246—KEY PROVISIONS

§ 110:1 Nondiscrimination in government employment

§ 110:2 Nondiscrimination in employment by government
contractors and subcontractors

CHAPTER 111. EXECUTIVE ORDER 11246— LEGAL ISSUES

§ 111:1 Scope of Executive Order 11246

§ 111:2 Purpose

§ 111:3 Power to contract

§ 111:4 Definitions

§ 111:5 Enforcement

§ 111:6 Affirmative action programs

§ 111:7 Affirmative action plan

§ 111:8 Judicial review

§ 111:9 Remedies

§ 111:10 Defenses

CHAPTER 112. Executive Order 11246— Administrative Regulations

§ 112:1 In general

§ 112:2 Definitions

§ 112:3 Equal opportunity clause

§ 112:4 Exemptions

§ 112:5 Reports and other required information

§ 112:6 Segregated facilities

§ 112:7 Compliance by labor unions and by recruiting and
training agencies

§ 112:8 Private clubs

§ 112:9 Compliance reviews

§ 112:10 Complaints

§ 112:11 Processing of matters

§ 112:12 Enforcement proceedings

§ 112:13 Notices

§ 112:14 Conciliation agreements

TABLE OF CONTENTS

CHAPTER 113. Executive Order 11246—Affirmative Action Compliance Programs—Part 60-1

- § 113:1 In general
- § 113:2 Utilization and evaluation
- § 113:3 Solicitations or advertisements for employees
- § 113:4 Miscellaneous provisions

CHAPTER 114. Executive Order 11246—Affirmative Action Programs—Part 60-2

- § 114:1 In general
- § 114:2 Agency action
- § 114:3 Purpose of affirmative action program
- § 114:4 Required utilization analysis
- § 114:5 Establishment of goals and timetables
- § 114:6 Additional required ingredients of affirmative action programs
- § 114:7 Program summary, compliance status and reaffirmation of policy
- § 114:8 Dissemination of policy
- § 114:9 Responsibility for implementation
- § 114:10 Identification of problem areas by organizational units and job groups
- § 114:11 Development and execution of programs
- § 114:12 Internal audit and reporting systems
- § 114:13 Supportive action programs
- § 114:14 Miscellaneous provisions

CHAPTER 115. Executive Order 11246—Rules of Practice for Administrative Proceedings

- § 115:1 In general
- § 115:2 Determining whether to litigate
- § 115:3 Form, filing, service of pleadings and papers
- § 115:4 Administrative complaint
- § 115:5 Answer
- § 115:6 Motion; Disposition of motions
- § 115:7 Interrogatories and admissions as to facts and documents
- § 115:8 Production of documents
- § 115:9 Depositions upon oral examination
- § 115:10 Prehearing conferences
- § 115:11 Consent findings and order
- § 115:12 Administrative law judges
- § 115:13 Appearances

- § 115:14 Evidence; Objections
- § 115:15 Summary judgment
- § 115:16 Participation by interested persons
- § 115:17 Proposed findings of fact and conclusions of law
- § 115:18 Recommended decision and final order
- § 115:19 Expedited hearings

CHAPTER 116. EXECUTIVE ORDER 11246— FORMS

- § 116:1 Model affirmative action compliance plan

Volume 4

PART XV. ATTORNEY'S FEES AWARDS—CHECKLISTS

CHAPTER 117. ATTORNEY'S FEES AWARDS—IN GENERAL

- § 117:1 Sources for fees-shifting
- § 117:2 Distinguish costs other than fees
- § 117:3 Fees waiver

CHAPTER 118. ATTORNEY'S FEES AWARDS—FEES-SHIFTING STATUTORY PROVISIONS

- § 118:1 Prevailing party plaintiff
- § 118:2 —Standard
- § 118:3 —Status of prevailing party
- § 118:4 Status of party defendant
- § 118:5 Prevailing party defendant
- § 118:6 Computation
- § 118:7 —Lodestar
- § 118:8 —Hours reasonably expended
- § 118:9 —Reasonable hourly rate
- § 118:10 —Upward adjustment
- § 118:11 —Downward adjustment
- § 118:12 —Nonattorney hours
- § 118:13 —Attorney expenses
- § 118:14 —Allocation among parties
- § 118:15 Process
- § 118:16 Appellate review
- § 118:17 Federal IncomeTax

TABLE OF CONTENTS

**CHAPTER 119. ATTORNEY'S FEES
AWARDS—RULE 11**

- § 119:1 Standard for awarding
- § 119:2 Sanctions
- § 119:3 Standard of appellate review

**CHAPTER 120. ATTORNEY'S FEES
AWARDS—FORMS**

- § 120:1 Complaint in fees-only case
- § 120:2 Answer, defenses and affirmative defenses in fees-only case
- § 120:3 Application for an award of attorney's fees
- § 120:4 Memorandum in support of application
- § 120:5 Affidavit of trial attorney
- § 120:6 Affidavit of counsel supporting application
- § 120:7 Plaintiff's first set of interrogatories to defendant
- § 120:8 Defendant's first set of interrogatories to plaintiff
- § 120:9 Plaintiff's first request for production of documents
- § 120:10 Defendant's first request for production of documents

**PART XVI. THE GENETIC
INFORMATION NON-
DISCRIMINATION ACT OF 2008—
CHECKLISTS**

CHAPTER 121. GINA—OVERVIEW

- § 121:1 Introduction
- § 121:2 Legislative history and general provisions
- § 121:3 Definitions
- § 121:4 Employer practices
- § 121:5 Employment agency practices
- § 121:6 Labor organization practices
- § 121:7 Training programs
- § 121:8 Confidentiality of genetic information
- § 121:9 Remedies and enforcement

CHAPTER 122. GINA—FORMS

- § 122:1 Complaint
- § 122:2 Consent Decree

Table of Laws and Rules

Table of Cases

EMPLOYMENT LAW CHECKLISTS AND FORMS

Index