Table of Contents

Volume 1

CHAPTER 1. INDIVIDUAL EMPLOYMENT RIGHTS

I. INTRODUCTION

§ 1:1 Scope of chapter
§ 1:2 The judicial expansion of employee rights
§ 1:3 Employment at-will
§ 1:4 At-will doctrine—Common-law view of the employment relationship
§ 1:5 —Erosion

II. LAW AND REMEDIES

§ 1:6 Contract-law remedies
§ 1:7 —Public policy
§ 1:8 —Employment discrimination
§ 1:9 —Implied covenants of good faith and fair dealing
§ 1:10 —Lifetime or permanent employment
§ 1:11 —Manuals, handbooks, and policy statements
§ 1:12 —Express or implied just cause provisions
§ 1:13 —Post-employment duties
§ 1:14 Contract-law remedies by state
§ 1:15 —Alabama
§ 1:16 —Alaska
§ 1:17 —Arizona
§ 1:18 —Arkansas
§ 1:19 —California
§ 1:20 —Colorado
§ 1:21 —Connecticut
§ 1:22 —Delaware
§ 1:23 —District of Columbia
§ 1:24 —Florida
§ 1:25 —Georgia
§ 1:26 —Hawaii
§ 1:27 —Idaho
§ 1:28 —Illinois
§ 1:29 —Indiana

§ 1:30 —Iowa
§ 1:31 —Kansas
§ 1:32 —Kentucky
§ 1:33 —Louisiana
§ 1:34 —Maine
§ 1:35 —Maryland
§ 1:36 —Massachusetts
§ 1:37 —Michigan
§ 1:38 —Minnesota
§ 1:39 —Mississippi
§ 1:40 —Missouri
§ 1:41 —Montana
§ 1:42 —Nebraska
§ 1:43 —Nevada
§ 1:44 —New Hampshire
§ 1:45 —New Jersey
§ 1:46 —New Mexico
§ 1:47 —New York
§ 1:48 —North Carolina
§ 1:49 —North Dakota
§ 1:50 —Ohio
§ 1:51 —Oklahoma
§ 1:52 —Oregon
§ 1:53 —Pennsylvania
§ 1:54 —Rhode Island
§ 1:55 —South Carolina
§ 1:56 —South Dakota
§ 1:57 —Tennessee
§ 1:58 —Texas
§ 1:59 —Utah
§ 1:60 —Vermont
§ 1:61 —Virginia
§ 1:62 —Washington
§ 1:63 —West Virginia
§ 1:64 —Wisconsin
§ 1:65 —Wyoming
§ 1:66 Violation of state or federal constitutional rights—Federal cases
§ 1:67 —State cases
§ 1:68 Tort law remedies—An overview
§ 1:69 —Public policy
§ 1:70 — —Public policy exceptions by state
§ 1:71 — — —Alabama
§ 1:72 — — —Alaska
§ 1:73 — — —Arizona
§ 1:74 — — —Arkansas

§ 1:75 — — —California
§ 1:76 — — —Colorado
§ 1:77 — — —Connecticut
§ 1:78 — — —Delaware
§ 1:79 — — —District of Columbia
§ 1:80 — — —Florida
§ 1:81 — — —Georgia
§ 1:82 — — —Hawaii
§ 1:83 — — —Idaho
§ 1:84 — — —Illinois
§ 1:85 — — —Indiana
§ 1:86 — — —Iowa
§ 1:87 — — —Kansas
§ 1:88 — — —Kentucky
§ 1:89 — — —Louisiana
§ 1:90 — — —Maine
§ 1:91 — — —Maryland
§ 1:92 — — —Massachusetts
§ 1:93 — — —Michigan
§ 1:94 — — —Minnesota
§ 1:95 — — —Mississippi
§ 1:96 — — —Missouri
§ 1:97 — — —Montana
§ 1:98 — — —Nebraska
§ 1:99 — — —Nevada
§ 1:100 — — —New Hampshire
§ 1:101 — — —New Jersey
§ 1:102 — — —New Mexico
§ 1:103 — — —New York
§ 1:104 — — —North Carolina
§ 1:105 — — —North Dakota
§ 1:106 — — —Ohio
§ 1:107 — — —Oklahoma
§ 1:108 — — —Oregon
§ 1:109 — — —Pennsylvania
§ 1:110 — — —Rhode Island
§ 1:111 — — —South Carolina
§ 1:112 — — —South Dakota
§ 1:113 — — —Tennessee
§ 1:114 — — —Texas
§ 1:115 — — —Utah
§ 1:116 — — —Vermont
§ 1:117 — — —Virginia
§ 1:118 — — —Washington
§ 1:119 — — —West Virginia
§ 1:120 — — —Wisconsin

§ 1:121 — — —Wyoming
§ 1:122 Whistleblowing
§ 1:123 —Federal whistleblowing
§ 1:124 —Qui tam actions
§ 1:125 —Protection for employees of publicly traded companies
§ 1:126 —Dodd-Frank Wall Street Reform and Consumer Protection Act
§ 1:127 —Whistleblowing by state
§ 1:128 — —Alabama
§ 1:129 — —Alaska
§ 1:130 — —Arizona
§ 1:131 — —Arkansas
§ 1:132 — —California
§ 1:133 — —Colorado
§ 1:134 — —Connecticut
§ 1:135 — —Delaware
§ 1:136 — —District of Columbia
§ 1:137 — —Florida
§ 1:138 — —Georgia
§ 1:139 — —Hawaii
§ 1:140 — —Idaho
§ 1:141 — —Illinois
§ 1:142 — —Indiana
§ 1:143 — —Iowa
§ 1:144 — —Kansas
§ 1:145 — —Kentucky
§ 1:146 — —Louisiana
§ 1:147 — —Maine
§ 1:148 — —Maryland
§ 1:149 — —Massachusetts
§ 1:150 — —Michigan
§ 1:151 — —Minnesota
§ 1:152 — —Mississippi
§ 1:153 — —Missouri
§ 1:154 — —Montana
§ 1:155 — —Nebraska
§ 1:156 — —Nevada
§ 1:157 — —New Hampshire
§ 1:158 — —New Jersey
§ 1:159 — —New Mexico
§ 1:160 — —New York
§ 1:161 — —North Carolina
§ 1:162 — —North Dakota
§ 1:163 — —Ohio
§ 1:164 — —Oklahoma
§ 1:165 — —Oregon

§ 1:166 — —Pennsylvania
§ 1:167 — —Rhode Island
§ 1:168 — —South Carolina
§ 1:169 — —South Dakota
§ 1:170 — —Tennessee
§ 1:171 — —Texas
§ 1:172 — —Utah
§ 1:173 — —Vermont
§ 1:174 — —Virginia
§ 1:175 — —Washington
§ 1:176 — —West Virginia
§ 1:177 — —Wisconsin
§ 1:178 — —Wyoming
§ 1:179 Other tort-based causes of action
§ 1:180 —Common law remedies
§ 1:181 —Intentional infliction of emotional distress
§ 1:182 —Misrepresentation and deceit
§ 1:183 —Defamation
§ 1:184 —Invasion of privacy
§ 1:185 —Intentional interference with contractual relations
§ 1:186 —Negligence
§ 1:187 Drug testing
§ 1:188 Statutory remedies
§ 1:189 —State statutes
§ 1:190 — —Alabama
§ 1:191 — —Alaska
§ 1:192 — —Arizona
§ 1:193 — —Arkansas
§ 1:194 — —California
§ 1:195 — —Colorado
§ 1:196 — —Connecticut
§ 1:197 — —Delaware
§ 1:198 — —District of Columbia
§ 1:199 — —Florida
§ 1:200 — —Georgia
§ 1:201 — —Hawaii
§ 1:202 — —Idaho
§ 1:203 — —Illinois
§ 1:204 — —Indiana
§ 1:205 — —Iowa
§ 1:206 — —Kansas
§ 1:207 — —Kentucky
§ 1:208 — —Louisiana
§ 1:209 — —Maine
§ 1:210 — —Maryland
§ 1:211 — —Massachusetts

§ 1:212 — —Michigan
§ 1:213 — —Minnesota
§ 1:214 — —Mississippi
§ 1:215 — —Missouri
§ 1:216 — —Montana
§ 1:217 — —Cases under Montana statute
§ 1:218 — —Nebraska
§ 1:219 — —Nevada
§ 1:220 — —New Hampshire
§ 1:221 — —New Jersey
§ 1:222 — —New Mexico
§ 1:223 — —New York
§ 1:224 — —North Carolina
§ 1:225 — —North Dakota
§ 1:226 — —Ohio
§ 1:227 — —Oklahoma
§ 1:228 — —Oregon
§ 1:229 — —Pennsylvania
§ 1:230 — —Rhode Island
§ 1:231 — —South Carolina
§ 1:232 — —South Dakota
§ 1:233 — —Tennessee
§ 1:234 — —Texas
§ 1:235 — —Utah
§ 1:236 — —Vermont
§ 1:237 — —Virginia
§ 1:238 — —Washington
§ 1:239 — —West Virginia
§ 1:240 — —Wisconsin
§ 1:241 — —Wyoming
§ 1:242 Federal statutes, rules and regulations
§ 1:243 —The Employee Retirement Income Security Act of 1974 (ERISA)
§ 1:244 — —Actions to enforce statutory or fiduciary duties
§ 1:245 — —Actions to recover benefits
§ 1:246 —The Employee Polygraph Protection Act of 1988
§ 1:247 —The Worker Adjustment and Retraining Notification Act (WARN)
§ 1:248 —Family and Medical Leave Act of 1993 (FMLA)
§ 1:249 —Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
§ 1:250 Affirmative defenses
§ 1:251 —Preemption
§ 1:252 —Claims preclusion, issues preclusion
§ 1:253 —Statute of frauds
§ 1:254 —Statutes of limitation
§ 1:255 Claims by employers against employees

§ 1:256 —Breach of fiduciary duty

III. PROBLEMS AND PREVENTION

§ 1:257 Problems and prevention, generally
§ 1:258 Job references
§ 1:259 Preemployment issues
§ 1:260 Manuals, handbooks, and policy statements
§ 1:261 Industrial due process
§ 1:262 Progressive discipline
§ 1:263 Alternative Dispute Resolution
§ 1:264 Grievance procedure
§ 1:265 —Arbitration
§ 1:266 Employer checklist

IV. LITIGATION PRACTICE

§ 1:267 Choice of forum and remedy
§ 1:268 Class actions
§ 1:269 Pendant jurisdiction
§ 1:270 Discovery in general
§ 1:271 Plaintiff's discovery
§ 1:272 Defendant's discovery
§ 1:273 Plaintiff's motion practice
§ 1:274 Defendant's motion practice
§ 1:275 Trial and hearing
§ 1:276 Evidentiary issues
§ 1:277 Discovery in general—Alabama
§ 1:278 —Alaska
§ 1:279 —Arizona
§ 1:280 —Arkansas
§ 1:281 —California
§ 1:282 —Colorado
§ 1:283 —Connecticut
§ 1:284 —Delaware
§ 1:285 —District of Columbia
§ 1:286 —Florida
§ 1:287 —Georgia
§ 1:288 —Hawaii
§ 1:289 —Idaho
§ 1:290 —Illinois
§ 1:291 —Indiana
§ 1:292 —Iowa
§ 1:293 —Kansas
§ 1:294 —Kentucky
§ 1:295 —Louisiana
§ 1:296 —Maine

§ 1:297 —Maryland
§ 1:298 —Massachusetts
§ 1:299 —Michigan
§ 1:300 —Minnesota
§ 1:301 —Mississippi
§ 1:302 —Missouri
§ 1:303 —Montana
§ 1:304 —Nebraska
§ 1:305 —Nevada
§ 1:306 —New Hampshire
§ 1:307 —New Jersey
§ 1:308 —New Mexico
§ 1:309 —New York
§ 1:310 —North Carolina
§ 1:311 —North Dakota
§ 1:312 —Ohio
§ 1:313 —Oklahoma
§ 1:314 —Oregon
§ 1:315 —Pennsylvania
§ 1:316 —Rhode Island
§ 1:317 —South Carolina
§ 1:318 —South Dakota
§ 1:319 —Tennessee
§ 1:320 —Texas
§ 1:321 —Utah
§ 1:322 —Vermont
§ 1:323 —Virginia
§ 1:324 —Washington
§ 1:325 —West Virginia
§ 1:326 —Wisconsin
§ 1:327 —Wyoming
§ 1:328 Jury issues
§ 1:329 Remedies
§ 1:330 —Attorney's fees
§ 1:331 Alternative dispute resolution after lawsuit is filed

V. FORMS AND MATERIALS

§ 1:332 Complaint—Breach of covenant of good faith and fair dealing, interference with contract, intentional and negligent infliction of emotional distress, loss of consortium
§ 1:333 —Form with jury claim, breach of employment contract, defamation, invasion of privacy, interference with advantageous relations, quantum meruit, violation of public policy
§ 1:334 —Form with multiple common law claims—Breach of

covenant of good faith and fair dealing, breach of employee handbook, violation of public policy, intentional infliction of emotional stress, violation of state civil rights, defamation, interference with advantageous contractual relations
§ 1:335 — —Form with whistleblowing and other claims
§ 1:336 Answer
§ 1:337 Motion to amend answer
§ 1:338 Defendant's motion to dismiss
§ 1:339 Defendant's memorandum in support of motion to dismiss
§ 1:340 Plaintiff's memorandum in opposition to defendant's motion to dismiss
§ 1:341 Defendant's motion for summary judgment
§ 1:342 —Another form
§ 1:343 —Memorandum in support of summary judgment motion
§ 1:344 — —Another form
§ 1:345 —Memorandum in opposition of summary judgment motion
§ 1:346 — —Another form
§ 1:347 Plaintiff's request for production of documents
§ 1:348 Plaintiff's first set of interrogatories
§ 1:349 —Another form
§ 1:350 Defendant's first set of interrogatories
§ 1:351 —Another set
§ 1:352 Defendant's first request for production of documents
§ 1:353 Plaintiff's proposed jury instructions
§ 1:354 —Multiple causes of action
§ 1:355 Miscellaneous jury instructions
§ 1:356 Model Employment Termination Act

CHAPTER 2. COLLECTIVE BARGAINING: EMPLOYEE, UNION AND MANAGEMENT RIGHTS AND RESPONSIBILITIES

I. OVERVIEW

§ 2:1 The collective bargaining system: Law origins and development
§ 2:2 Early unions and doctrine of criminal conspiracy
§ 2:3 Transition from criminal conspiracy to conduct in restraint of trade
§ 2:4 The movement toward legislation regulating collective bargaining
§ 2:5 The transition of current labor law from the NIRA to the NLRA

II. LAW AND REMEDIES

A. BASIC STATUTORY SCHEME OF REGULATING LABOR RELATIONS

§ 2:6 The National Labor Relations Act

B. THE ORGANIZATION PROCESS: THE SELECTION OF THE BARGAINING REPRESENTATIVE; REPRESENTATION PROCEEDINGS AND ELECTIONS

§ 2:7 Introduction and overview of bargaining
§ 2:8 Introduction and overview—Paid union organizers as employees
§ 2:9 Representation proceedings and elections
§ 2:10 Supervisors
§ 2:11 Authorization cards
§ 2:12 —Particular cases

C. THE COLLECTIVE BARGAINING PROCESS

§ 2:13 Introduction and overview of collective bargaining
§ 2:14 The duty to bargain—Exclusivity and good-faith bargaining
§ 2:15 Appropriate subjects for collective bargaining—Mandatory subjects
§ 2:16 —Permissive subjects
§ 2:17 —Illegal or nonnegotiable subjects

III. PROBLEMS AND PREVENTION

A. THE ENFORCEMENT OF COLLECTIVE BARGAINING RIGHTS

§ 2:18 The grievance and arbitration process
§ 2:19 —Arbitrability
§ 2:20 —Interrogation of employees, *Weingarten* rights
§ 2:21 Enforcement of agreement to arbitrate
§ 2:22 Suits for violation of collective bargaining agreements
§ 2:23 Suits to enforce arbitration awards
§ 2:24 Suits to vacate arbitration awards
§ 2:25 Suits to set aside collective bargaining agreements
§ 2:26 Suits to enforce collective bargaining agreements

B. THE FUNCTION AND OPERATION OF THE UNION

§ 2:27 Structure and operation of unions

§ 2:28 Rights, duties, and obligations of members in general
§ 2:29 Union's duty to act impartially and without discrimination: duty of fair representation
§ 2:30 Individual rights in conflict with the union—Dues, fees, and assessments
§ 2:31 —Dues unrelated to union activities
§ 2:32 Union security and related matters
§ 2:33 —Internal union affairs
§ 2:34 —Superseniority

C. COLLECTIVE ACTION: STRIKES, BOYCOTTS AND PICKETING

§ 2:35 Introduction and definitions of strikes, boycotts and picketing
§ 2:36 Common situs picketing
§ 2:37 Recognitional picketing
§ 2:38 Handbilling
§ 2:39 Secondary boycott
§ 2:40 Withdrawal of recognition
§ 2:41 Decertification proceedings
§ 2:42 Reinstatement
§ 2:43 Shutdowns and lockouts

IV. LITIGATION PRACTICE

§ 2:44 National Labor Relations Board and proceedings
§ 2:45 Administration and jurisdiction of the NLRA—Injunctions under Section 10(j)
§ 2:46 Definitions and limitations of coverage
§ 2:47 Joint employers
§ 2:48 Successor employer
§ 2:49 Disregarding corporate entity; piercing corporate veil
§ 2:50 Procedures in unfair labor practice cases
§ 2:51 —Violation of Section 8(a)(1)
§ 2:52 —Violation of Section 8(a)(2)
§ 2:53 —Violation of Section 8(a)(3)
§ 2:54 —Violation of Section 8(a)(4)
§ 2:55 —Violation of Section 8(a)(5)
§ 2:56 —Violation of Section 8(b)(1)
§ 2:57 —Violation of Section 8(b)(2)
§ 2:58 —Violation of Section 8(b)(3)
§ 2:59 —Violation of Section 8(b)(4)(A)
§ 2:60 —Violation of Section 8(b)(4)(B)
§ 2:61 —Violation of Section 8(b)(4)(C)
§ 2:62 —Violation of Section 8(b)(4)(D)
§ 2:63 —Violation of Section 8(b)(5)
§ 2:64 —Violation of Section 8(b)(6)

§ 2:65 —Violation of Section 8(b)(7)
§ 2:66 —Concerted action
§ 2:67 —Polling
§ 2:68 —Hot cargo contracts
§ 2:69 —Preemption
§ 2:70 —Particular cases
§ 2:71 Representation proceedings
§ 2:72 Procedure in representation cases—Prohibited conduct by employers
§ 2:73 —Prohibited conduct by unions
§ 2:74 —Permitted conduct by employers
§ 2:75 —Permitted conduct by unions

V. FORMS AND MATERIALS

§ 2:76 Representation case procedures
§ 2:77 NLRB directory
§ 2:78 Commerce questionnaire
§ 2:79 Section 9 petition
§ 2:80 Consent election form
§ 2:81 —Stipulation for certification
§ 2:82 Election notice
§ 2:83 Union withdrawal request
§ 2:84 Request to proceed
§ 2:85 Employer notice of petition for investigation
§ 2:86 Charge against employer
§ 2:87 Notice of charge
§ 2:88 Hearing notice
§ 2:89 Summary of formal hearing procedures
§ 2:90 Notice of designation of agent
§ 2:91 Notice of appearance
§ 2:92 Appeal procedures
§ 2:93 Notice of appeal
§ 2:94 Memorandum in support of appeal
§ 2:95 Complaint against company for breach of collective bargaining agreement and union for breach of duty of fair representation in violation of § 301
§ 2:96 Plaintiff's first set of interrogatories to employer in breach of collective bargaining agreement under § 301 and breach of duty of fair representation
§ 2:97 Plaintiff's first set of interrogatories to union in breach of collective bargaining agreement under § 301 and breach of duty of fair representation

CHAPTER 3. GRIEVANCES AND ARBITRATION

I. INTRODUCTION

§ 3:1 Scope of chapter

§ 3:2 Grievance proceedings

II. LAW AND REMEDIES

§ 3:3 Introduction to grievances and arbitration
§ 3:4 Arbitration agreements
§ 3:5 Enforcement of agreement to arbitrate
§ 3:6 Enforcing the arbitration award: *Steelworkers'* trilogy
§ 3:7 Authority of arbitrators
§ 3:8 Construction and operation
§ 3:9 Function of the courts
§ 3:10 Court enforcement by injunction
§ 3:11 Jurisdiction, procedure, and remedies
§ 3:12 Defenses

III. PROBLEMS AND PREVENTION

§ 3:13 Introduction to issues between unions and management
§ 3:14 Breach of no-strike clause
§ 3:15 Grievances arising prior to collective bargaining agreements
§ 3:16 Grievances arising after collective bargaining agreement terminates
§ 3:17 Successor employers
§ 3:18 Effect of bankruptcy or reorganization
§ 3:19 Matters subject to arbitration under agreement
§ 3:20 Procedural issues
§ 3:21 —Determining merits of grievances
§ 3:22 —Frivolous grievances
§ 3:23 Particular disputes
§ 3:24 —Strikes and slowdowns
§ 3:25 —Concerted activities
§ 3:26 —Working conditions, safety disputes
§ 3:27 —Work assignments
§ 3:28 —Work rules
§ 3:29 —Transfers
§ 3:30 —Contracting out work
§ 3:31 —Promotions and demotions
§ 3:32 —Hours
§ 3:33 —Wages and bonuses
§ 3:34 —Vacation, holidays, and sick leave
§ 3:35 —Leaves of absence
§ 3:36 —Absenteeism
§ 3:37 —Classification and seniority rights
§ 3:38 —Discipline
§ 3:39 —Poor performance
§ 3:40 —Fighting

§ 3:41 —Layoffs and recalls
§ 3:42 —Discharges
§ 3:43 — —Just cause
§ 3:44 — —Particular cases
§ 3:45 — —Remedies
§ 3:46 —Privacy rights
§ 3:47 — —Drug testing
§ 3:48 —Harassment
§ 3:49 — —Sexual harassment
§ 3:50 —Discrimination
§ 3:51 —Discipline or discharge for conduct outside employment
§ 3:52 —Pensions and other benefits

IV. LITIGATION PRACTICE

§ 3:53 Introduction to litigation practice in arbitration proceedings
§ 3:54 Arbitration clause
§ 3:55 Evaluation of case
§ 3:56 Selecting the arbitrator
§ 3:57 Preparing the case
§ 3:58 Presentation of case
§ 3:59 Order of witnesses and testimony
§ 3:60 Examination and cross-examination of witnesses
§ 3:61 Use of documentary evidence
§ 3:62 Handling discipline and discharge cases
§ 3:63 Rules of evidence
§ 3:64 Posthearing memorandum
§ 3:65 Award
§ 3:66 —Enforcement of award
§ 3:67 —Grounds for impeachment or enforcement
§ 3:68 —Remedies
§ 3:69 Award that violates public policy
§ 3:70 Breach of duty of fair representation
§ 3:71 Section 301 of the Taft-Hartley Act and preemption

V. FORMS AND MATERIALS

§ 3:72 Complaint—To compel arbitration and enjoin strike
§ 3:73 —Section 301 hybrid suit against employer and union
§ 3:74 Application to vacate arbitration award
§ 3:75 Answer and counterclaim to confirm arbitration award
§ 3:76 Posthearing memorandum—Defendant
§ 3:77 —Plaintiff
§ 3:78 Memorandum to confirm arbitration award
§ 3:79 Memorandum to vacate arbitration award

Volume 2

CHAPTER 4. EMPLOYMENT DISCRIMINATION

I. IN GENERAL

§ 4:1 Scope of chapter
§ 4:2 Administrative agencies and proceedings
§ 4:3 State fair employment laws
§ 4:4 Remedies and procedures in general

II. LAWS AND REMEDIES

§ 4:5 Overlap of remedies and prohibitions
§ 4:6 Forbidden grounds for discrimination in general
§ 4:7 Civil Rights Acts of 1866 to 1871
§ 4:8 —Covered parties
§ 4:9 —Class actions
§ 4:10 —Prohibited acts
§ 4:11 —Retaliation
§ 4:12 —Procedure
§ 4:13 —Discovery
§ 4:14 —Burden of proof, defenses
§ 4:15 — —First Circuit
§ 4:16 — —Second Circuit
§ 4:17 — —Third Circuit
§ 4:18 — —Fourth Circuit
§ 4:19 — —Fifth Circuit
§ 4:20 — —Sixth Circuit
§ 4:21 — —Seventh Circuit
§ 4:22 — —Eighth Circuit
§ 4:23 — —Ninth Circuit
§ 4:24 — —Tenth Circuit
§ 4:25 — —Eleventh Circuit
§ 4:26 — —District of Columbia Circuit
§ 4:27 —Evidence
§ 4:28 —Jury issues
§ 4:29 —Remedies
§ 4:30 Title VII of the Civil Rights Act of 1964
§ 4:31 —Covered parties
§ 4:32 —Class actions
§ 4:33 —Prohibited acts
§ 4:34 —Retaliation
§ 4:35 —Procedure
§ 4:36 —Discovery

§ 4:37 —Burden of proof, defenses
§ 4:38 — —First Circuit
§ 4:39 — —Second Circuit
§ 4:40 — —Third Circuit
§ 4:41 — —Fourth Circuit
§ 4:42 — —Fifth Circuit
§ 4:43 — —Sixth Circuit
§ 4:44 — —Seventh Circuit
§ 4:45 — —Eighth Circuit
§ 4:46 — —Ninth Circuit
§ 4:47 — —Tenth Circuit
§ 4:48 — —Eleventh Circuit
§ 4:49 — —District of Columbia Circuit
§ 4:50 —Evidence
§ 4:51 —After-acquired evidence
§ 4:52 —Jury issues
§ 4:53 —Remedies
§ 4:54 — —Punitive damages
§ 4:55 Civil Rights Act of 1991
§ 4:56 Equal Pay Act of 1963
§ 4:57 —Covered parties
§ 4:58 —Class actions
§ 4:59 —Prohibited acts
§ 4:60 —Retaliation
§ 4:61 —Procedure
§ 4:62 —Discovery
§ 4:63 —Burden of proof, defenses
§ 4:64 — —First Circuit
§ 4:65 — —Second Circuit
§ 4:66 — —Third Circuit
§ 4:67 — —Fourth Circuit
§ 4:68 — —Fifth Circuit
§ 4:69 — —Sixth Circuit
§ 4:70 — —Seventh Circuit
§ 4:71 — —Eighth Circuit
§ 4:72 — —Ninth Circuit
§ 4:73 — —Tenth Circuit
§ 4:74 — —Eleventh Circuit
§ 4:75 — —District of Columbia Circuit
§ 4:76 — —Federal Circuit
§ 4:77 —Evidence
§ 4:78 —Jury issues
§ 4:79 —Remedies
§ 4:80 Age Discrimination in Employment Act
§ 4:81 —Covered parties
§ 4:82 —Class actions

§ 4:83 —Prohibited acts
§ 4:84 —Retaliation
§ 4:85 —Older Workers Benefit Protection Act
§ 4:86 —Settlement agreement and release—Sample form
§ 4:87 —Procedure
§ 4:88 —Discovery
§ 4:89 —Burden of proof, defenses
§ 4:90 — —First Circuit
§ 4:91 — —Second Circuit
§ 4:92 — —Third Circuit
§ 4:93 — —Fourth Circuit
§ 4:94 — —Fifth Circuit
§ 4:95 — —Sixth Circuit
§ 4:96 — —Seventh Circuit
§ 4:97 — —Eighth Circuit
§ 4:98 — —Ninth Circuit
§ 4:99 — —Tenth Circuit
§ 4:100 — —Eleventh Circuit
§ 4:101 — —District of Columbia Circuit
§ 4:102 —Evidence
§ 4:103 —After-acquired evidence
§ 4:104 —Jury issues
§ 4:105 —Remedies
§ 4:106 — —Liquidated damages
§ 4:107 Executive Order No. 11246—Office of Federal Contract Compliance Programs
§ 4:108 Rehabilitation Act of 1973
§ 4:109 —Covered parties
§ 4:110 —Class actions
§ 4:111 —Prohibited acts
§ 4:112 —Retaliation
§ 4:113 —Procedure
§ 4:114 —Discovery
§ 4:115 —Burden of proof, defenses
§ 4:116 —Evidence
§ 4:117 —Jury issues
§ 4:118 —Remedies
§ 4:119 Prohibitions under the Vietnam Era Veterans' Readjustment Act of 1977
§ 4:120 —Covered parties
§ 4:121 —Procedure
§ 4:122 —Remedies
§ 4:123 Immigration Reform and Control Act of 1986
§ 4:124 —Covered parties
§ 4:125 —Prohibited acts
§ 4:126 —Retaliation
§ 4:127 —Procedure

§ 4:128 —Discovery
§ 4:129 —Burden of proof, defenses
§ 4:130 —Evidence
§ 4:131 —Remedies
§ 4:132 Americans with Disabilities Act
§ 4:133 —Covered parties
§ 4:134 —Class actions
§ 4:135 —Substantially limits
§ 4:136 —Essential functions of the job
§ 4:137 —Regarded as
§ 4:138 —Record of impairment
§ 4:139 —Major life activities
§ 4:140 —Undue hardship
§ 4:141 —Association with disabled person
§ 4:142 —Effect of disability representations in benefits application
§ 4:143 —Prohibited acts
§ 4:144 —Retaliation
§ 4:145 —Procedure
§ 4:146 —Discovery
§ 4:147 —Burden of proof, defenses
§ 4:148 — —First Circuit
§ 4:149 — —Second Circuit
§ 4:150 — —Third Circuit
§ 4:151 — —Fourth Circuit
§ 4:152 — —Fifth Circuit
§ 4:153 — —Sixth Circuit
§ 4:154 — —Seventh Circuit
§ 4:155 — —Eighth Circuit
§ 4:156 — —Ninth Circuit
§ 4:157 — —Tenth Circuit
§ 4:158 — —Eleventh Circuit
§ 4:159 — —District of Columbia Circuit
§ 4:160 —Direct threat defense
§ 4:161 —Evidence
§ 4:162 —Jury issues
§ 4:163 —Remedies
§ 4:164 —Reasonable accommodation
§ 4:165 — —First Circuit
§ 4:166 — —Second Circuit
§ 4:167 — —Third Circuit
§ 4:168 — —Fourth Circuit
§ 4:169 — —Fifth Circuit
§ 4:170 — —Sixth Circuit
§ 4:171 — —Seventh Circuit
§ 4:172 — —Eighth Circuit

§ 4:173 — —Ninth Circuit
§ 4:174 — —Tenth Circuit
§ 4:175 — —Eleventh Circuit
§ 4:176 — —District of Columbia Circuit
§ 4:177 — —Federal Circuit

III. PROBLEMS AND PREVENTION

A. IN GENERAL

§ 4:178 Introduction to employment discrimination problems and prevention
§ 4:179 Alternative dispute resolution
§ 4:180 Grievance procedure
§ 4:181 Compulsory arbitration
§ 4:182 Affirmative action or reverse discrimination
§ 4:183 —First Circuit
§ 4:184 —Second Circuit
§ 4:185 —Third Circuit
§ 4:186 —Fourth Circuit
§ 4:187 —Fifth Circuit
§ 4:188 —Sixth Circuit
§ 4:189 —Seventh Circuit
§ 4:190 —Eighth Circuit
§ 4:191 —Ninth Circuit
§ 4:192 —Tenth Circuit
§ 4:193 —Eleventh Circuit
§ 4:194 —District of Columbia
§ 4:195 Investigating complaints

B. DISCRIMINATORY HIRING, JOB REFERRALS, ADVERTISING, OR TESTING

§ 4:196 Hiring
§ 4:197 —Possible defendants
§ 4:198 — —Employment agencies, newspapers
§ 4:199 Educational requirements, ability tests
§ 4:200 —First Circuit
§ 4:201 —Second Circuit
§ 4:202 —Third Circuit
§ 4:203 —Fourth Circuit
§ 4:204 —Fifth Circuit
§ 4:205 —Sixth Circuit
§ 4:206 —Seventh Circuit
§ 4:207 —Eighth Circuit
§ 4:208 —Ninth Circuit
§ 4:209 —Tenth Circuit
§ 4:210 —Eleventh Circuit

§ 4:211 —District of Columbia Circuit
§ 4:212 —Test validation
§ 4:213 Discriminatory interview questions or application forms
§ 4:214 Interviewing job applicants with disabilities
§ 4:215 Other discriminatory criteria or procedures
§ 4:216 Hiring checklist

C. DISCRIMINATION ON THE JOB: COMPENSATION, PROMOTION, WORKING CONDITIONS

§ 4:217 Compensation and benefits
§ 4:218 Promotion, demotion, and transfer
§ 4:219 Seniority or merit system
§ 4:220 Disciplinary action
§ 4:221 Leaves of absence
§ 4:222 Sexual harassment
§ 4:223 —Written sexual harassment policy
§ 4:224 —Hostile environment
§ 4:225 —Affirmative defense to sexual harassment
§ 4:226 —First Circuit
§ 4:227 —Second Circuit
§ 4:228 —Third Circuit
§ 4:229 —Fourth Circuit
§ 4:230 —Fifth Circuit
§ 4:231 —Sixth Circuit
§ 4:232 —Seventh Circuit
§ 4:233 —Eighth Circuit
§ 4:234 —Ninth Circuit
§ 4:235 —Tenth Circuit
§ 4:236 —Eleventh Circuit
§ 4:237 —District of Columbia Circuit
§ 4:238 Harassment—Employer liability for a supervisor's hostile environment sexual harassment claim
§ 4:239 —Nonsexual harassment claims
§ 4:240 — —First Circuit
§ 4:241 — —Second Circuit
§ 4:242 — —Third Circuit
§ 4:243 — —Fourth Circuit
§ 4:244 — —Fifth Circuit
§ 4:245 — —Sixth Circuit
§ 4:246 — —Seventh Circuit
§ 4:247 — —Eighth Circuit
§ 4:248 — —Ninth Circuit
§ 4:249 — —Tenth Circuit
§ 4:250 — —Eleventh Circuit

§ 4:251 — —District of Columbia Circuit
§ 4:252 Sexual orientation discrimination
§ 4:253 —First Circuit
§ 4:254 —Second Circuit
§ 4:255 —Third Circuit
§ 4:256 —Fourth Circuit
§ 4:257 —Fifth Circuit
§ 4:258 —Sixth Circuit
§ 4:259 —Seventh Circuit
§ 4:260 —Eighth Circuit
§ 4:261 —Ninth Circuit
§ 4:262 —Tenth Circuit
§ 4:263 —Eleventh Circuit
§ 4:264 —District of Columbia Circuit
§ 4:265 —Federal Circuit
§ 4:266 —State cases
§ 4:267 Religious discrimination
§ 4:268 —First Circuit
§ 4:269 —Second Circuit
§ 4:270 —Third Circuit
§ 4:271 —Fourth Circuit
§ 4:272 —Fifth Circuit
§ 4:273 —Sixth Circuit
§ 4:274 —Seventh Circuit
§ 4:275 —Eighth Circuit
§ 4:276 —Ninth Circuit
§ 4:277 —Tenth Circuit
§ 4:278 —Eleventh Circuit
§ 4:279 —District of Columbia Circuit
§ 4:280 On-the-job discrimination checklist

D. DISCRIMINATORY DISCHARGES

§ 4:281 Discriminatory termination—Discharge or lay off
§ 4:282 —Constructive discharge
§ 4:283 Retaliatory discharge
§ 4:284 Discriminatory discharge checklist

IV. LITIGATION PRACTICE

A. PLAINTIFF'S OR COMPLAINANT'S CASE

§ 4:285 Choice of statute, forum and remedy
§ 4:286 Multiple remedies
§ 4:287 Referral to expert labor counsel
§ 4:288 Initial client interview
§ 4:289 —Employment, retainer and fee agreement
§ 4:290 —Sample fee agreement

§ 4:291 Client interview checklist
§ 4:292 Discovery
§ 4:293 —Using administrative procedures and findings
§ 4:294 —Electronic discovery
§ 4:295 Interrogatories and depositions
§ 4:296 Statistical evidence
§ 4:297 Preparation of witnesses
§ 4:298 Ex parte communications with former employees
§ 4:299 Communications in class actions
§ 4:300 Summary judgment and motion practice—Plaintiff
§ 4:301 Settlement
§ 4:302 Trial notebook
§ 4:303 Attorney's fees—Introduction
§ 4:304 —Factors the court considers
§ 4:305 —Lodestar figure
§ 4:306 —Contingency fees
§ 4:307 —Public policy considerations
§ 4:308 —Awards to defendants
§ 4:309 —Federal statutes providing for attorney's fees
§ 4:310 Case preparation checklist

B. DEFENDANT'S CASE

§ 4:311 Initial client interview
§ 4:312 Interrogatories and depositions
§ 4:313 Use of statistics
§ 4:314 Summary judgment and motion practice
§ 4:315 Rule 11 sanctions
§ 4:316 Counterclaims
§ 4:317 Trial notebook

V. FORMS AND MATERIALS

A. COMPLAINTS

§ 4:318 Complaint with jury claim—Form 1
§ 4:319 —Form 2
§ 4:320 —Form 3
§ 4:321 Complaint for disability discrimination

B. ANSWERS

§ 4:322 Answer

C. MOTIONS

§ 4:323 Motion to dismiss—Title VII claim, ADEA claim
§ 4:324 —Supporting memorandum
§ 4:325 —Memorandum in opposition to motion to dismiss

§ 4:326 Motion for summary judgment—ADEA, claim and pendent state claims
§ 4:327 —Supporting memorandum
§ 4:328 —Opposition to summary judgment

D. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 4:329 Requests for production of documents—Age and race discrimination—By plaintiff
§ 4:330 — —By defendant
§ 4:331 —Disability discrimination—By plaintiff
§ 4:332 — —By defendant
§ 4:333 —Sex discrimination—By plaintiff
§ 4:334 — —By defendant

E. INTERROGATORIES

§ 4:335 Interrogatories—Age and race discrimination—By plaintiff
§ 4:336 — —By defendant
§ 4:337 —Disability discrimination—By plaintiff
§ 4:338 — —By defendant
§ 4:339 —Sex discrimination—By plaintiff
§ 4:340 — —By defendant

F. JURY INSTRUCTIONS

§ 4:341 Jury instructions—42 U.S.C.A. § 1981—Requested by plaintiff
§ 4:342 — —Special verdict
§ 4:343 — —Proposed by defendant
§ 4:344 —Age discrimination—Plaintiff's instructions
§ 4:345 — —Plaintiff's special jury questions
§ 4:346 — —Requested by defendant
§ 4:347 —Disability discrimination—Plaintiff's instructions
§ 4:348 — —Plaintiff's special jury questions
§ 4:349 — —Defendant's instructions
§ 4:350 — —Failure to Accommodate
§ 4:351 — — —Special questions
§ 4:352 — —Termination
§ 4:353 Sex discrimination—Plaintiff's instructions
§ 4:354 Jury instructions—Sex discrimination—Plaintiff's special jury questions
§ 4:355 — —Defendant's instructions
§ 4:356 —Retaliation—Special jury questions
§ 4:357 —Retaliation and sexual harassment—Special jury questions

G. MISCELLANEOUS

§ 4:358 Plaintiff's motion for attorney's fees
§ 4:359 —Affidavit in support of motion

Volume 3

CHAPTER 5. WAGE AND HOUR LAW

I. INTRODUCTION

§ 5:1 Scope of chapter
§ 5:2 Historical overview

II. LAW AND REMEDIES

§ 5:3 Overview of the Federal Labor Standards Act
§ 5:4 Coverage defined
§ 5:5 Definition of "enterprise"
§ 5:6 Definition of "employer"
§ 5:7 —Individual liability
§ 5:8 — —First Circuit
§ 5:9 — —Second Circuit
§ 5:10 — —Third Circuit
§ 5:11 — —Fourth Circuit
§ 5:12 — —Fifth Circuit
§ 5:13 — —Sixth Circuit
§ 5:14 — —Seventh Circuit
§ 5:15 — —Eighth Circuit
§ 5:16 — —Ninth Circuit
§ 5:17 — —Tenth Circuit
§ 5:18 — —Eleventh Circuit
§ 5:19 — —District of Columbia Circuit
§ 5:20 —Public sector employers
§ 5:21 Covered employees
§ 5:22 Working time
§ 5:23 Work week defined
§ 5:24 Preliminary or postliminary activities
§ 5:25 Minimum wages and overtime pay
§ 5:26 Regular rate
§ 5:27 Compensatory time
§ 5:28 Salary basis regulation
§ 5:29 Tips
§ 5:30 Child labor
§ 5:31 Records and reports
§ 5:32 —Information to be recorded
§ 5:33 Retaliation

§ 5:34 Discovery
§ 5:35 Burden of proof—Defenses
§ 5:36 — —First Circuit
§ 5:37 — —Second Circuit
§ 5:38 — —Third Circuit
§ 5:39 — —Fourth Circuit
§ 5:40 — —Fifth Circuit
§ 5:41 — —Sixth Circuit
§ 5:42 — —Seventh Circuit
§ 5:43 — —Eighth Circuit
§ 5:44 — —Ninth Circuit
§ 5:45 — —Tenth Circuit
§ 5:46 — —Eleventh Circuit
§ 5:47 — —District of Columbia Circuit
§ 5:48 — —Federal Circuit
§ 5:49 Evidence
§ 5:50 Jury issues
§ 5:51 Remedies
§ 5:52 —Injunctive relief
§ 5:53 —Back wage relief
§ 5:54 —Reinstatement
§ 5:55 —Liquidated damages
§ 5:56 —Costs and attorney's fees
§ 5:57 State wage-and-hour laws
§ 5:58 —Alabama
§ 5:59 —Alaska
§ 5:60 —Arizona
§ 5:61 —Arkansas
§ 5:62 —California
§ 5:63 —Colorado
§ 5:64 —Connecticut
§ 5:65 —Delaware
§ 5:66 —District of Columbia
§ 5:67 —Florida
§ 5:68 —Georgia
§ 5:69 —Hawaii
§ 5:70 —Idaho
§ 5:71 —Illinois
§ 5:72 —Indiana
§ 5:73 —Iowa
§ 5:74 —Kansas
§ 5:75 —Kentucky
§ 5:76 —Louisiana
§ 5:77 —Maine
§ 5:78 —Maryland
§ 5:79 —Massachusetts

§ 5:80 —Michigan
§ 5:81 —Minnesota
§ 5:82 —Mississippi
§ 5:83 —Missouri
§ 5:84 —Montana
§ 5:85 —Nebraska
§ 5:86 —Nevada
§ 5:87 —New Hampshire
§ 5:88 —New Jersey
§ 5:89 —New Mexico
§ 5:90 —New York
§ 5:91 —North Carolina
§ 5:92 —North Dakota
§ 5:93 —Ohio
§ 5:94 —Oklahoma
§ 5:95 —Oregon
§ 5:96 —Pennsylvania
§ 5:97 —Rhode Island
§ 5:98 —South Carolina
§ 5:99 —South Dakota
§ 5:100 —Tennessee
§ 5:101 —Texas
§ 5:102 —Utah
§ 5:103 —Vermont
§ 5:104 —Virginia
§ 5:105 —Washington
§ 5:106 —West Virginia
§ 5:107 —Wisconsin
§ 5:108 —Wyoming

III. PROBLEMS AND PREVENTION

§ 5:109 Exemptions
§ 5:110 —Blue collar workers
§ 5:111 —Police, fire fighters, paramedics, and other first responders
§ 5:112 —Other laws and collective bargaining agreements
§ 5:113 —Sample salary basis policy
§ 5:114 —Executives
§ 5:115 — —Salary basis
§ 5:116 — —Primary duty
§ 5:117 —Administrators
§ 5:118 — —Exercise of discretion and independent judgment
§ 5:119 — —Fee basis
§ 5:120 —Professionals
§ 5:121 —Outside salespersons
§ 5:122 —Retail or service establishments

§ 5:123 —Motor Carrier Act
§ 5:124 —Other

IV. LITIGATION PRACTICE

§ 5:125 Enforcement by the United States Department of Labor
§ 5:126 Authority and procedures for investigation and enforcement
§ 5:127 Suits by the department
§ 5:128 Enforcement by employees
§ 5:129 Class/collective actions
§ 5:130 —Class Action Fairness Act
§ 5:131 —First Circuit
§ 5:132 —Second Circuit
§ 5:133 —Third Circuit
§ 5:134 —Fourth Circuit
§ 5:135 —Fifth Circuit
§ 5:136 —Sixth Circuit
§ 5:137 —Seventh Circuit
§ 5:138 —Eighth Circuit
§ 5:139 —Ninth Circuit
§ 5:140 —Tenth Circuit
§ 5:141 —Eleventh Circuit
§ 5:142 —District of Columbia Circuit
§ 5:143 —Federal Circuit
§ 5:144 —Settlement, fairness hearing
§ 5:145 Miscellaneous enforcement matters
§ 5:146 Offenses and prosecutions
§ 5:147 Statutes of limitations
§ 5:148 Employer defenses
§ 5:149 Joint employer liability
§ 5:150 Successor employer liability

V. FORMS AND MATERIALS

A. COMPLAINTS

§ 5:151 Complaint—FLSA—Overtime
§ 5:152 — —Class action complaint
§ 5:153 — — —Motion for conditional certification and court authorized notice
§ 5:154 — — — —Notice
§ 5:155 — — — — —Another form
§ 5:156 — — — —Defendants' opposition to plaintiffs' motion for conditional certification, discovery, and notice
§ 5:157 —FLSA and state law—Class action complaint

§ 5:158 — — —Combined FLSA and state wage-and-hour claims and retaliation

B. ANSWERS

§ 5:159 Answer to class action complaint
§ 5:160 Defendant's motion to amend answer

C. MOTIONS

§ 5:161 Motion to dismiss
§ 5:162 Motion for summary judgment
§ 5:163 —Memorandum in opposition to plaintiff's motion for summary judgment

D. DISCOVERY

§ 5:164 Plaintiff's request for production of documents—Class action
§ 5:165 — —Another form
§ 5:166 Defendants' request for production of documents
§ 5:167 Interrogatories—Plaintiff's first set of interrogatories
§ 5:168 —Plaintiff's second set of interrogatories
§ 5:169 —Defendants' first set of interrogatories

E. JURY INSTRUCTIONS

§ 5:170 Plaintiff's request for jury instructions
§ 5:171 Collective action jury instructions—Jury charge
§ 5:172 —Verdict form

F. MISCELLANEOUS

§ 5:173 Attorney's fees—Plaintiff's motion for attorney's fees
§ 5:174 — —Plaintiff's memorandum in support of motion for attorney's fees
§ 5:175 — —Defendants' memorandum in opposition to motion for attorney's fees
§ 5:176 —Court order on attorney's fees
§ 5:177 — —Another form
§ 5:178 Settlement agreement—Second amended settlement agreement
§ 5:179 —Order approving class action settlement agreement

Table of Laws and Rules

Table of Cases

Index