

# Table of Contents

## Volume 1

### PART I. OVERVIEW

#### CHAPTER 1. LAWS AFFECTING HUMAN RESOURCES PRACTICES

##### I. SOURCES OF EMPLOYEE PROTECTION

- § 1:1 Federal law
- § 1:2 State law
- § 1:3 Local law

##### II. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- § 1:4 General prohibitions under Title VII
- § 1:5 Enforcement of Title VII
- § 1:6 Responding to a Title VII EEOC charge
- § 1:7 Using the EEOC's mediation program
- § 1:8 EEOC and settlement agreements
- § 1:9 Defining "job applicant" for Internet job searches
- § 1:10 Time limitations on filing an EEOC charge

##### III. AGE DISCRIMINATION IN EMPLOYMENT ACT

- § 1:11 General prohibitions under the ADEA
- § 1:12 Common issues and claims under the ADEA
- § 1:13 Employer defenses and potential remedies under the ADEA
- § 1:14 Using the disparate impact theory to prove ADEA violation

##### IV. OCCUPATIONAL SAFETY AND HEALTH ACT

- § 1:15 General duty clause of the OSH Act
- § 1:16 General industry, vertical, and emergency temporary standards under the OSH Act
- § 1:17 Recordkeeping requirements under the OSH Act
- § 1:18 Nonretaliation and nondiscrimination obligations under the OSH Act
- § 1:19 Enforcement of the OSH Act—Dealing with OSHA compliance officers
- § 1:20 —Employer defenses to OSH Act citations

## **V. EMPLOYEE RETIREMENT INCOME SECURITY ACT**

- § 1:21 Coverage under ERISA
- § 1:22 Reporting and disclosure under ERISA
- § 1:23 Fiduciary standards under ERISA
- § 1:24 HIPAA
- § 1:25 COBRA

## **VI. NATIONAL LABOR RELATIONS ACT**

- § 1:26 Employee rights under the NLRA: Concerted, protected activity
- § 1:27 Employee coverage under the NLRA
- § 1:28 Employer unfair labor practices under the NLRA
- § 1:29 A union's economic weaponry under the NLRA
- § 1:30 Enforcement of the NLRA
- § 1:31 Responding to a NLRB charge
- § 1:32 Remedies under the NLRA

## **VII. IMMIGRATION REFORM AND CONTROL ACT**

- § 1:33 Introduction to immigration and citizenship services
- § 1:34 Provisions of the IRCA

## **VIII. DRUG-FREE WORKPLACE ACT**

- § 1:35 Provisions of the Drug-Free Workplace Act

## **IX. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT**

- § 1:36 Provisions of the WARN Act

## **X. EMPLOYEE POLYGRAPH PROTECTION ACT**

- § 1:37 Provisions of the Employee Polygraph Protection Act

## **XI. AMERICANS WITH DISABILITIES ACT**

- § 1:38 Introduction to the ADA
- § 1:39 ADA Title I
- § 1:40 ADA Title II
- § 1:41 ADA Title III

## **XII. OLDER WORKERS BENEFIT PROTECTION ACT**

- § 1:42 Introduction to OWBPA
- § 1:43 OWBPA Title I: Overruling *Betts*—The *Betts* decision
- § 1:44 —Congress reinstates EEOC rule

## TABLE OF CONTENTS

- § 1:45 —Adjustments to severance at time of layoff
- § 1:46 —Coordination of disability benefits
- § 1:47 OWBPA Title II: Settlement and release of ADEA claims

### **XIII. CIVIL RIGHTS ACT OF 1991**

- § 1:48 Introduction to CRA '91
- § 1:49 —Effective date of CRA '91
- § 1:50 —Overruling *Wards Cove Packing Co. v. Atonio*—The *Wards Cove* decision
- § 1:51 — —Congress reverses *Wards Cove* and adopts the *Griggs* standard
- § 1:52 Section 1981 claims—Overruling *Patterson v. McLean Credit Union*—The *Patterson* decision
- § 1:53 — —Applying Section 1981 to on-the-job discrimination
- § 1:54 Expansion of Title VII and ADA remedies under CRA '91
- § 1:55 Mixed motive cases under CRA '91
- § 1:56 Other significant changes under CRA '91—Expansion of time for challenging seniority systems
- § 1:57 —Limitation on the right to challenge consent decrees
- § 1:58 —New time limits for discrimination
- § 1:59 —Availability of expert witness fees
- § 1:60 —Extraterritoriality
- § 1:61 —Prohibition of race norming

### **XIV. FAMILY AND MEDICAL LEAVE ACT**

- § 1:62 Introduction to the FMLA
- § 1:63 Employer obligations under the FMLA
- § 1:64 Employee obligations under the FMLA
- § 1:65 Accrual of seniority and other benefits under the FMLA
- § 1:66 Enforcement of the FMLA

### **XV. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994**

- § 1:67 Introduction to USERRA
- § 1:68 USERRA Regulations
- § 1:69 USERRA and FMLA

### **XVI. FAIR LABOR STANDARDS ACT**

- § 1:70 Introduction to the FLSA
- § 1:71 Workweek and minimum wage standards under the FLSA
- § 1:72 Determining “hours worked” under the FLSA
- § 1:73 Enforcement of the FLSA

### **XVII. WHISTLEBLOWER PROTECTION**

- § 1:74 Introduction to whistleblower protection

## **PART II. EMPLOYEE SELECTION AND EEO**

### **CHAPTER 2. RECRUITING, HIRING, AND INITIAL PLACEMENT**

#### **I. OVERVIEW TO RECRUITING, HIRING, AND INITIAL PLACEMENT**

§ 2:1 Introduction to recruiting, hiring, and initial placement

#### **II. RECRUITING AND THE LAW**

§ 2:2 Introduction to recruiting

§ 2:3 Discrimination in recruiting

§ 2:4 —Disparate impact

§ 2:5 —Disparate treatment

§ 2:6 Reasonable accommodation

§ 2:7 Job descriptions

§ 2:8 —List of duties

§ 2:9 —Essential functions

§ 2:10 Affirmative action

§ 2:11 —Office of Federal Contract Compliance Programs requirements

§ 2:12 —Setting goals for affirmative action

§ 2:13 —Affirmative action for individuals with disabilities

#### **III. RECRUITING PROCEDURES**

§ 2:14 Introduction to recruiting procedures

§ 2:15 Advertising—Contents of advertisements

§ 2:16 —Reaching applicants from all groups

§ 2:17 Word-of-mouth recruiting

§ 2:18 Recruitment through third parties—Employer liability

§ 2:19 —Guidelines for contracting with third-party recruiters

§ 2:20 Recruitment through unsolicited applications or resumes

§ 2:21 Recruiting representations

§ 2:22 Guidelines for recruitment procedures

#### **IV. HIRING**

§ 2:23 Introduction to hiring

§ 2:24 Artificial Intelligence in hiring

§ 2:25 Uniform Guidelines on employee selection procedures

§ 2:26 Antitrust issues in hiring

§ 2:27 Definition of applicant

§ 2:28 Establishing an application process

## TABLE OF CONTENTS

- § 2:29 —Sample job description
- § 2:30 —Instructions to applicant
- § 2:31 —Sample employment application
- § 2:32 The application
- § 2:33 —Volunteered information
- § 2:34 —Permissible inquiries
- § 2:35 —False answers
- § 2:36 The interview
- § 2:37 —Pitfalls in interviewing
- § 2:38 —Volunteered information
- § 2:39 —Taking notes
- § 2:40 —Assessing nonverbal conduct
- § 2:41 —Multiple interviews
- § 2:42 — —Interviewer training form
- § 2:43 References
- § 2:44 —Requesting references
- § 2:45 — —Sample policy for third-party employment investigations
- § 2:46 —Giving references
- § 2:47 —Law of defamation applied to employer references
- § 2:48 — —Applicant's or employee's consent to release of information
- § 2:49 Immigration Reform and Control Act
- § 2:50 —Documentation for hiring
- § 2:51 —Penalties
- § 2:52 —Nondiscrimination requirements
- § 2:53 —Tension between IRCA and Title VII protections for undocumented aliens
- § 2:54 Offering employment
- § 2:55 —Sample offer letter
- § 2:56 Negligent hiring
- § 2:57 Military status

## V. TESTING AND PERSONAL CHARACTERISTICS

- § 2:58 Introduction to testing and screening
- § 2:59 Assessing adverse impact
- § 2:60 —Validation studies
- § 2:61 Physical examinations and physical dexterity tests—Medical inquiries of applicants
- § 2:62 —Disclosure of medical records
- § 2:63 —Collective bargaining and privacy
- § 2:64 —Physical ability tests
- § 2:65 —Height and weight requirements
- § 2:66 Polygraphs and integrity tests
- § 2:67 Drug testing
- § 2:68 Tests for AIDS, HIV and other communicable diseases

§ 2:69 Language ability and communication skills

## **VI. ASSESSING THE HIRING PROCESS**

§ 2:70 Auditing established procedures

§ 2:71 Determining adverse impact and impact ratios

## **VII. INITIAL PLACEMENT**

§ 2:72 Introduction to initial placement

§ 2:73 Work assignments

§ 2:74 —Job pools

§ 2:75 —Seniority systems

§ 2:76 Compensation

§ 2:77 Probation

§ 2:78 —Commencing and completing probation

§ 2:79 —Terms of probation

§ 2:80 — —Probationary performance review

## **CHAPTER 3. AFFIRMATIVE ACTION PROGRAMS**

### **I. THE LAW OF AFFIRMATIVE ACTION PROGRAMS**

§ 3:1 Latest Developments in Affirmative Action and Diversity

§ 3:2 Diversity programs and affirmative action

§ 3:3 Coverage of Executive Order No. 11,246

§ 3:4 Rehabilitation Act of 1973—Background

§ 3:5 —Coverage of Section 504

§ 3:6 —Differences from the Americans with Disabilities Act—General background

§ 3:7 — —Covered disabilities

§ 3:8 — —Alcohol and drug abuse

§ 3:9 — —Contagious diseases/AIDS

§ 3:10 — —Risk of future injury

§ 3:11 —Reasonable accommodation—Undue hardship

§ 3:12 — —Types of accommodation

§ 3:13 — —Considering the rights of other employees

§ 3:14 —Remedies

§ 3:15 Affirmative action for veterans

§ 3:16 —VEVRAA and Section 503 Final Rules

§ 3:17 —Regulations under Section 503

§ 3:18 —Uniform Services Employment and Reemployment Rights Act

§ 3:19 Regulations governing affirmative action plans

§ 3:20 Enforcement of the Executive Order—Federal Contractor Selection System

§ 3:21 —OFCCP compliance evaluations and affected class cases

## TABLE OF CONTENTS

- § 3:22 —OFCCP evaluation and affected class cases—Impact-ratio analysis
- § 3:23 — —Cohort analysis
- § 3:24 —Compensation analysis
- § 3:25 —Applicant tracking
- § 3:26 —Notice of Violation
- § 3:27 —Timeliness and continuing violations
- § 3:28 —Conciliation and remedies
- § 3:29 —Contractor participation in an OFCCP audit
- § 3:30 Prevailing standard for affirmative action programs
- § 3:31 —U.S. Constitution
- § 3:32 —Title VII
- § 3:33 Evidentiary value in discrimination cases of affirmative action programs

## II. AFFIRMATIVE ACTION PLAN NARRATIVE

- § 3:34 Narrative for affirmative action programs
- § 3:35 Commitment to equal employment opportunity
- § 3:36 Dissemination of policy—Internal dissemination
- § 3:37 —External dissemination
- § 3:38 Responsibility for implementation
- § 3:39 Identification of problem areas and correction of deficiencies
- § 3:40 Internal audit and reporting systems
- § 3:41 Support of community action programs
- § 3:42 Compliance with guidelines on sex discrimination
- § 3:43 Compliance with guidelines on religious or national origin discrimination

## III. ORGANIZATIONAL PROFILE

- § 3:44 Organization profile for affirmative action programs
- § 3:45 Lines of progression
- § 3:46 Race/ethnic identification

## IV. JOB GROUP ANALYSIS

- § 3:47 Job group analysis for affirmative action programs
- § 3:48 Guidelines for developing job groups
- § 3:49 EEO-1 job categories
- § 3:50 —Officials and managers
- § 3:51 —Professional
- § 3:52 —Technical
- § 3:53 —Sales
- § 3:54 —Administrative support workers (formerly “Office and clerical”)
- § 3:55 —Craft workers (formerly “Craft workers (skilled)”)

- § 3:56 —Operatives (formerly “Operatives (semiskilled)”)
- § 3:57 —Laborers and helpers (formerly “Laborers (unskilled)”)
- § 3:58 —Service workers

## **V. AVAILABILITY ANALYSIS**

- § 3:59 Availability analysis for affirmative action programs
- § 3:60 Determination of availability
- § 3:61 Availability factor computation method
- § 3:62 Availability analysis—Estimating internal vs. external placements
- § 3:63 —Selecting the recruiting area
- § 3:64 —Determination of feeders
- § 3:65 —Occupational census codes
- § 3:66 —Other data sources

## **VI. COMPARISON OF INCUMBENCY TO AVAILABILITY**

- § 3:67 Comparisons in affirmative action programs
- § 3:68 —Comparison of results from the two-standard-deviation test and the 80% test
- § 3:69 —Two-standard-deviation (SD) analysis

## **VII. PLACEMENT GOALS**

- § 3:70 Placement goals in affirmative action programs
- § 3:71 Form for the workforce analysis
- § 3:72 Form for the job group analysis
- § 3:73 Availability analysis
- § 3:74 Form for the incumbency to availability

Appendix 3:1. Model Affirmative Action Plan for Disabled Individuals and Covered Veterans

Appendix 3:2. Model Affirmative Action Plan for Minorities and Women

# **CHAPTER 4. COUNTERING DISCRIMINATION IN THE WORKPLACE**

## **I. INTRODUCTION TO COUNTERING DISCRIMINATION IN THE WORKPLACE**

- § 4:1 Prohibited discrimination in the workplace

## **II. RELIGIOUS DISCRIMINATION AND ACCOMMODATIONS**

- § 4:2 Religious discrimination
- § 4:3 —Exemptions
- § 4:4 Religious Discrimination—Reasonable accommodation—Sincerely held religious beliefs and practices

## TABLE OF CONTENTS

- § 4:5 Religious discrimination—Reasonable accommodation—Notice requirement
- § 4:6 — —Information-sharing process
- § 4:7 — —Reasonableness
- § 4:8 — —Undue hardship
- § 4:9 — —Collective bargaining agreements
- § 4:10 — —Union dues
- § 4:11 — —First Amendment challenges
- § 4:12 — —Establishing a policy

### **III. RACIAL AND NATIONAL ORIGIN HARASSMENT**

- § 4:13 Race or national origin discrimination
- § 4:14 Race or national origin discrimination—Employer liability
- § 4:15 —Coverage under the Civil Rights Act of 1866
- § 4:16 —Avoiding harassment claims
- § 4:17 —Criminal records
- § 4:18 —English-only rules
- § 4:19 —Accent or manner of speaking

### **IV. SEXUAL HARASSMENT**

- § 4:20 Harassment—Based on Sex
- § 4:21 —Based on sex—Sexual orientation or gender identity
- § 4:22 —Quid Pro Quo
- § 4:23 —Hostile work environment
- § 4:24 —EEOC guidelines
- § 4:25 —Employer response to complaints
- § 4:26 —Employee use of complaint procedure
- § 4:27 —Consensual relationships
- § 4:28 —Same-sex harassment
- § 4:29 —Preferential treatment of consensual sexual partners
- § 4:30 —Claims by employees disciplined for harassing other employees
- § 4:31 —Evidentiary questions
- § 4:32 —Specific liability issues
- § 4:33 —National Labor Relations Act
- § 4:34 —Tort claims
- § 4:35 —Policy statement—Effective complaint procedure
- § 4:36 Harassment prohibition—Policy statement
- § 4:37 Harassment—Policy statement—Sample complaint form
- § 4:38 — —Sample policy

### **V. PREGNANCY DISCRIMINATION**

- § 4:39 Pregnancy discrimination
- § 4:40 —Pregnant Workers Fairness Act

- § 4:41 —Leave policies—Mandatory leave
- § 4:42 — —Medical leave
- § 4:43 — —Parental or child-care leave
- § 4:44 —Health care benefits—Liability of employer and insurer
- § 4:45 — —Abortion
- § 4:46 — —Dependents' benefits
- § 4:47 —Unmarried women
- § 4:48 —State laws
- § 4:49 —Policy on pregnancy and childbirth

## **VI. FAMILY AND MEDICAL LEAVE ACT OF 1993**

- § 4:50 Family and Medical Leave Act (FMLA)
- § 4:51 FMLA—Covered Employer
- § 4:52 —Eligible employee
- § 4:53 —Serious health condition
- § 4:54 —Spouse
- § 4:55 —Parent and son or daughter
- § 4:56 —Health care provider
- § 4:57 —Leave Amount and Reasons for Leave
- § 4:58 —Intermittent or reduced schedule leave
- § 4:59 —Pay during leave
- § 4:60 —Notice
- § 4:61 —Certification
- § 4:62 — —Second and third opinions
- § 4:63 — —Recertification
- § 4:64 — —Return to work
- § 4:65 — —Failure to provide certification
- § 4:66 —Employment and benefits protections
- § 4:67 — —Return from leave
- § 4:68 —School employees
- § 4:69 —Interference and retaliation
- § 4:70 —Enforcement
- § 4:71 —Remedies
- § 4:72 —Posting requirement
- § 4:73 —Interaction with other laws

## **CHAPTER 5. COUNTERING DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES**

### **I. INTRODUCTION TO THE AMERICANS WITH DISABILITIES ACT**

- § 5:1 Introduction to ADA
- § 5:2 Background and summary of ADA legislation

## TABLE OF CONTENTS

- § 5:3 Coverage under the ADA
- § 5:4 Defining disability under the ADA—General concepts
- § 5:5 —Substantial limitation required
- § 5:6 —Perceived disability
- § 5:7 —Temporary or intermittent disabilities
- § 5:8 —Effect of mitigating measures on impairment
- § 5:9 —Excluded conditions
- § 5:10 —Effect of receipt of benefits

## **II. AMERICANS WITH DISABILITIES ACT TITLE I: EMPLOYMENT PROVISIONS**

- § 5:11 ADA Title I
- § 5:12 —General obligations
- § 5:13 —Preemployment inquiries and medical examinations
- § 5:14 — —Preemployment inquiries
- § 5:15 — —Medical examinations
- § 5:16 — —Drug use inquiries and testing
- § 5:17 —Medical inquiries and examinations during employment
- § 5:18 —Identifying essential job functions
- § 5:19 —Reasonable accommodation
- § 5:20 — —Blanket exclusions and policies
- § 5:21 — —What triggers the obligation to accommodate
- § 5:22 — —Interactive process
- § 5:23 — —When an individual is not otherwise qualified
- § 5:24 — —Undue hardship not requiring accommodation
- § 5:25 — —Reasonable accommodation or fundamental alteration of job duties?
- § 5:26 — —Effect of collective bargaining agreements on reasonable accommodation
- § 5:27 — —EEOC enforcement guidance
- § 5:28 —Employees with psychiatric disabilities
- § 5:29 — —Mental impairment
- § 5:30 — —Substantial limitation
- § 5:31 — —Disability-related questions—Application stage
- § 5:32 — — —Post-application stage
- § 5:33 — —Discipline and performance standards
- § 5:34 — —Direct threat
- § 5:35 — —Confidentiality
- § 5:36 — —Special issues involving compensation
- § 5:37 —Remedies and enforcement

## **III. AMERICANS WITH DISABILITIES ACT TITLE III: PROVISIONS GOVERNING PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES**

- § 5:38 ADA Title III

- § 5:39 —Coverage
- § 5:40 —Requirements and prohibitions
- § 5:41 —Enforcement

#### **IV. RECOMMENDATIONS FOR EMPLOYERS**

- § 5:42 ADA considerations for employers

### **CHAPTER 6. PERFORMANCE APPRAISALS**

#### **I. INTRODUCTION TO PERFORMANCE APPRAISALS**

- § 6:1 Evaluating employee performance

#### **II. THE LAW AND PERFORMANCE APPRAISALS**

- § 6:2 Legal challenges to performance appraisals
- § 6:3 —Disparate treatment
- § 6:4 —Disparate impact
- § 6:5 —Appraisal systems invalidated by the courts as discriminatory on the basis of race, sex, or disability
- § 6:6 —Appraisal systems upheld by the courts
- § 6:7 —Age discrimination and performance appraisals
- § 6:8 —Other causes of action

#### **III. VALIDATION OF APPRAISAL SYSTEM DESIGN**

- § 6:9 Validating performance appraisal systems

#### **IV. DEVELOPING A SYSTEM FOR PERFORMANCE APPRAISALS**

- § 6:10 General safeguards against charges of discrimination in performance appraisals
- § 6:11 Features of performance appraisals—Job descriptions/job analyses
- § 6:12 —Pre-evaluation employee input
- § 6:13 —Training supervisors
- § 6:14 —Secondary review of appraisals
- § 6:15 —Employee feedback
- § 6:16 —Employee objections to appraisal
- § 6:17 Alternative to annual appraisals
- § 6:18 Auditing appraisal results
- § 6:19 Implementing the performance appraisal system

#### **V. PERFORMANCE APPRAISAL METHODS**

- § 6:20 Methods for performance appraisals

## TABLE OF CONTENTS

- § 6:21 —Continuous feedback
- § 6:22 —360° appraisals
- § 6:23 —Competency-based performance management
- § 6:24 —Management by objectives
- § 6:25 —Conventional rating scales
- § 6:26 —Behavior-based rating scales
- § 6:27 —Objective judgment quotient
- § 6:28 —Critical incidents
- § 6:29 —Essays
- § 6:30 —Ranking
- § 6:31 —Checklists

## **CHAPTER 7. TRAINING, PROMOTION, AND TRANSFER**

### **I. OVERVIEW OF TRAINING, PROMOTION, AND TRANSFER**

- § 7:1 Introduction to training, promotion and transfer
- § 7:2 Legal context for training, transfer, and promotion policies and practices
- § 7:3 Disparate treatment and training, promotion, and transfer
- § 7:4 Disparate impact and training, promotion, and transfer

### **II. TRAINING**

- § 7:5 Introduction to training
- § 7:6 Selection procedures of employees for training
- § 7:7 Administration of training
  - § 7:8 —On-site training
  - § 7:9 —Employer-assisted programs
  - § 7:10 —Voluntary programs
  - § 7:11 —Mandatory training programs
- § 7:12 Compensation of trainees
  - § 7:13 —Continuing education approval and refund of application
  - § 7:14 —Seeking reimbursement from employees for training costs

### **III. PROMOTION**

- § 7:15 Promotions and the law
- § 7:16 —Continuing violations
- § 7:17 Selection procedures and promotions
  - § 7:18 —Gender issues
  - § 7:19 —Suggested selection procedures
- § 7:20 Selection procedures—Value of procedural safeguards
- § 7:21 Terms of the promotion

- § 7:22 Affirmative action planning for promotions
- § 7:23 Establishing promotion practices

#### **IV. TRANSFER**

- § 7:24 Transfers and the law
- § 7:25 Selection procedures and transfers
- § 7:26 —Reasons for transfer
- § 7:27 —Transfer policies
- § 7:28 Relocation policies
- § 7:29 —Reimbursable expenses
- § 7:30 —Tax implications of relocations

#### **V. DEMOTIONS**

- § 7:31 Demotions and the law

### **PART III. EMPLOYEE AND MANAGEMENT RIGHTS**

#### **CHAPTER 8. EMPLOYMENT AT-WILL AND EMPLOYMENT CONTRACTS**

##### **I. OVERVIEW OF EMPLOYMENT AT-WILL AND EMPLOYMENT CONTRACTS**

- § 8:1 Introduction to employment at-will and employment contracts

##### **II. CONTRACT THEORY**

- § 8:2 Oral contracts and employment relationships
- § 8:3 Implied-in-fact contracts and employment relationships
- § 8:4 Implied covenant of good faith and fair dealing in employment relationships
- § 8:5 —Negligent discharge
- § 8:6 Human resources manuals as binding contractual obligations
- § 8:7 —Employee expectations: unilateral contract cases
- § 8:8 —Employee expectations: mutual agreement cases
- § 8:9 Layoffs and “good cause”
- § 8:10 Independent consideration for employment contracts
- § 8:11 Promissory or equitable estoppel and employment relationships
- § 8:12 Disclaimers of job security
- § 8:13 —Informing prospective employees during the application process of an at-will relationship
- § 8:14 —Interviewing the applicant

## TABLE OF CONTENTS

- § 8:15 —Employment manuals and other writings
- § 8:16 —Employment contracts

### **III. RESTRICTIVE COVENANTS IN EMPLOYMENT AGREEMENTS**

- § 8:17 Restrictive covenants in employment agreements
- § 8:18 Trade secret clauses in employment agreements
- § 8:19 Covenants not to compete in employment agreements—Judicial and legislative developments
  - § 8:20 —Federal Trade Commission final rule
- § 8:21 Nondisparagement and nondisclosure provisions in employment agreements
- § 8:22 No-raiding or nonsolicitation covenants in employment agreements
- § 8:23 Covenant not to seek reemployment in employment agreements
- § 8:24 —Sample form: Noncompetition and nonsolicitation agreement

### **IV. NONCONTRACTUAL THEORIES**

- § 8:25 Public policy exception and employment at-will
- § 8:26 —Discharge for refusal to commit a crime or unlawful act
- § 8:27 —Discharge for performance of a public duty or upholding the law
- § 8:28 —Discharge for exercising a constitutional or statutory right or legal interest
  - § 8:29 —Exemption from statutory coverage
- § 8:30 —Discharge for reporting or disclosing alleged violations of law
- § 8:31 —Discharge based on protected characteristics
- § 8:32 —Discharge based on refusal to sign agreement
- § 8:33 States that do not follow the public policy exception for employment at-will
- § 8:34 Torts relating to employment contracts—Malicious breach of contract
  - § 8:35 —Intentional interference with contract
- § 8:36 Discharge as conspiracy under federal statute
- § 8:37 Other noncontractual employment-related claims—Intentional infliction of emotional distress
  - § 8:38 —Prima facie tort
  - § 8:39 —Defamation
  - § 8:40 —Misrepresentation
  - § 8:41 —Other theories
- § 8:42 Federal preemption of state employment-related tort claims

### **V. LEGISLATION**

- § 8:43 Legislation addressing employment relationships

### **VI. AVOIDING WRONGFUL DISCHARGE CLAIMS**

- § 8:44 Checklist to avoid wrongful discharge claims

- § 8:45 Investigating the basis for the supervisor's decision to discharge
- § 8:46 Human resources department review of discharge
- § 8:47 Final discharge decision
- § 8:48 Assisting the discharged employee
- § 8:49 Drafting effective employment settlement agreements
- § 8:50 —Provisions typically found in settlement agreements
- § 8:51 Tax considerations arising from employment settlement agreements
- § 8:52 Arbitration of employment disputes
- § 8:53 Arbitration of employment issues—Federal Arbitration Act

## **CHAPTER 9. DISCIPLINE, TERMINATION, AND LAYOFFS**

### **I. INTRODUCTION TO DISCIPLINE, TERMINATION, AND LAYOFFS**

- § 9:1 Age, race, and sex discrimination in discharges

### **II. LEGAL BASIS OF EMPLOYEES' CLAIMS OF AGE DISCRIMINATION**

- § 9:2 Scope of the Age Discrimination in Employment Act (ADEA)
- § 9:3 Procedures for filing an ADEA suit—Filing with the federal Equal Employment Opportunity Commission (EEOC)
  - § 9:4 —Extensions of the filing period
  - § 9:5 —Conciliation
  - § 9:6 —Procedural rules for bringing suit
- § 9:7 Basis for claims under the ADEA
  - § 9:8 —Age disparity between employee and replacement
  - § 9:9 —Other types of proof of age discrimination
  - § 9:10 —Summary judgment/judgment notwithstanding the verdict
  - § 9:11 —Retaliatory discharge
  - § 9:12 —Constructive discharge
  - § 9:13 —Application of federal employment laws to government employers
- § 9:14 Retirement under the ADEA—Involuntary retirement
  - § 9:15 —Ensuring voluntary retirement
  - § 9:16 —Permissible mandatory retirement
- § 9:17 Waiver of rights under the ADEA and releases—Older Worker Benefit Protection Act (OWBPA) waiver
  - § 9:18 —EEOC's regulations on OWBPA waivers
- § 9:19 Agreements to arbitrate under the ADEA
- § 9:20 Bona fide occupational qualification defense under the ADEA

TABLE OF CONTENTS

**III. LEGAL BASIS OF EMPLOYEES' CLAIMS OF RACE AND SEX DISCRIMINATION**

- § 9:21 Coverage and procedures under Title VII of the Civil Rights Act (Title VII)
- § 9:22 Basis for claims under Title VII—Selective enforcement
- § 9:23 —Analyzing disparate treatment claims
- § 9:24 —Constructive discharge
- § 9:25 —Proof of pretext
- § 9:26 —Disparate impact
- § 9:27 —Retaliation
- § 9:28 —Application of federal employment laws to government employers

**IV. DAMAGES AND REMEDIES**

- § 9:29 Damages and remedies
- § 9:30 —Back pay
- § 9:31 —Liquidated damages
- § 9:32 —Reinstatement
- § 9:33 —Punitive and compensatory damages under Title VII

**V. ESTABLISHING A PROGRESSIVE DISCIPLINE POLICY**

- § 9:34 Progressive discipline

**VI. DISCHARGE FOR GOOD CAUSE**

- § 9:35 Good cause discharge
- § 9:36 —Grounds for good cause discharge

**VII. DOCUMENTING A DISCHARGE FOR GOOD CAUSE**

- § 9:37 Documenting discharge for good cause
- § 9:38 Discharge during probation
- § 9:39 Discharge for supplying false information
- § 9:40 Voluntary resignation
- § 9:41 Discharge resulting from a single incident
- § 9:42 Discharge for insubordination
- § 9:43 Discharge for poor attendance
- § 9:44 Record-keeping for progressive discipline systems
- § 9:45 Unemployment compensation issues

**VIII. LAYOFFS AND REDUCTIONS IN FORCE**

- § 9:46 Layoffs and reductions in force
- § 9:47 Exploring alternatives to discharge
- § 9:48 Carrying out the reduction in force or layoff

- § 9:49 Documenting economic justifications for layoffs
- § 9:50 Model evaluation and selection system
- § 9:51 —Step 1: Statistical analysis
- § 9:52 —Step 2: Job-function evaluation
- § 9:53 —Step 3: Employee evaluation
- § 9:54 — —Evaluation criteria rejected by the courts
- § 9:55 — —Evaluation criteria approved by the courts
- § 9:56 — —Implementing the evaluation process
- § 9:57 —Step 4: Notification of employees

## **IX. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT**

- § 9:58 Introduction to Worker Adjustment and Retraining Notification Act (WARN Act)
- § 9:59 Overview of the WARN Act
- § 9:60 Definitions under the WARN Act
- § 9:61 Exemptions from notice requirement under the WARN Act
- § 9:62 Good-faith defense under the WARN Act
- § 9:63 Sale of a facility and the WARN Act
- § 9:64 Contents of WARN Act notice
- § 9:65 Enforcement of the WARN Act

## **CHAPTER 10. EMPLOYEE PRIVACY AND RECORDKEEPING**

### **I. OVERVIEW OF EMPLOYEE PRIVACY AND RECORDKEEPING**

- § 10:1 Employee privacy and recordkeeping
- § 10:2 Defining “privacy”
- § 10:3 A dilemma for employers as to privacy
- § 10:4 —Liability for wrongful acts of employees
- § 10:5 —Pay history and transparency laws
- § 10:6 —Other potential pitfalls of failing to gather enough information
- § 10:7 —General limits in the recruitment process

### **II. PRIVACY IN EMPLOYEE TESTING**

- § 10:8 Privacy surrounding employee testing
- § 10:9 —Medical screening and information
- § 10:10 — —COVID-19-related privacy issues
- § 10:11 —Genetic and biochemical testing
- § 10:12 —Drug and alcohol testing—Labor Management Relations Act considerations

## TABLE OF CONTENTS

- § 10:13 — —Public sector employers
- § 10:14 — —Private sector employers
- § 10:15 — —AIDS testing
- § 10:16 — —Legal risks
- § 10:17 — —Rehabilitation Act of 1973 and Americans with Disabilities Act
- § 10:18 — —Lie detector tests
- § 10:19 — —Ongoing investigations of economic loss
- § 10:20 — —Content and administration of polygraph tests
- § 10:21 — —Disciplining employees
- § 10:22 — —State limitations on lie detector tests
- § 10:23 — —Background investigations
- § 10:24 — —Evaluating information about employees

### **III. MONITORING EMPLOYEES AT THE WORKPLACE**

- § 10:25 Monitoring employees in the workplace
- § 10:26 — —Employee telephone calls
- § 10:27 — —Access to electronic mail—Relevant legislation
- § 10:28 — —Employer authority
- § 10:29 — —Electronic mail rulings
- § 10:30 — —Precautions for employers
- § 10:31 — —Use of the Internet
- § 10:32 — —Precautions for employers
- § 10:33 — —No recording policies
- § 10:34 — —Surveillance, searches, and other intrusions—Surveillance
- § 10:35 — —Searches and other intrusions
- § 10:36 — —Biometric privacy legislation

### **IV. REGULATING EMPLOYEE LIFESTYLE AND OFF-DUTY CONDUCT**

- § 10:37 Regulation of lifestyle and off-duty conduct of employees
- § 10:38 — —General precautions for regulating employee lifestyle
- § 10:39 — —Legal use of Marijuana
- § 10:40 — —Employee dating
- § 10:41 — —Outside political and other activities
- § 10:42 — —Restricting social media activity

### **V. ISSUES ARISING FROM THEFT OR DISCLOSURE OF EMPLOYEE DATA**

- § 10:43 Theft or disclosure of employee data
- § 10:44 — —Legal issues arising from the disclosure of employee information
- § 10:45 — —Responding to a data breach

## **VI. OTHER PRIVACY ISSUES**

- § 10:46 Public disclosure of private facts
- § 10:47 Other actionable conduct regarding employee privacy

## **VII. PERSONNEL RECORDKEEPING**

- § 10:48 Recordkeeping and employee privacy
- § 10:49 —Equal employment and affirmative action records
- § 10:50 — —Job applicant log
- § 10:51 — —Record retention
- § 10:52 —Recordkeeping under the Age Discrimination in Employment Act
- § 10:53 —Recordkeeping requirements under the Fair Labor Standards Act
- § 10:54 —Recordkeeping requirements under the Equal Pay Act
- § 10:55 —Other records
- § 10:56 —Personnel files

# **CHAPTER 11. OCCUPATIONAL SAFETY AND HEALTH**

## **I. BACKGROUND OF THE OCCUPATIONAL SAFETY AND HEALTH ACT**

- § 11:1 History and purpose of the Occupational Safety and Health Act (OSH Act)
- § 11:2 OSHA Act—Overview
- § 11:3 OSH Act—Coverage
- § 11:4 —State OSHA-approved plans
- § 11:5 OSH Act Administration—Occupational Safety and Health Administration
- § 11:6 —Occupational Safety and Health Review Commission
- § 11:7 —National Institute for Occupational Safety and Health
- § 11:8 —State OSHA-approved plans
- § 11:9 —Preemption
- § 11:10 OSH Act Standards
- § 11:11 —Section 6(a)
- § 11:12 —Section 6(b)
- § 11:13 —Section 6(c) Emergency Temporary Standards
- § 11:14 OSH Act—Preemption—Other federal agencies
- § 11:15 — —Department of Transportation
- § 11:16 — —Environmental Protection Agency
- § 11:17 — —Nuclear Regulatory Commission
- § 11:18 — —Food and Drug Administration
- § 11:19 — —Consumer Product Safety Commission

## TABLE OF CONTENTS

§ 11:20 — —Maritime employment

§ 11:21 — —Mining employment

## **II. EMPLOYERS' OBLIGATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT**

§ 11:22 General Industry Standards

§ 11:23 —Exit routes and emergency planning

§ 11:24 —Walking-working surfaces and fall protection

§ 11:25 —Personal Protective Equipment

§ 11:26 —Hazard communication standard

§ 11:27 —Environmental controls

§ 11:28 —Toxic and hazardous substances

§ 11:29 —Heat Injury and Illness

§ 11:30 —Special industries

§ 11:31 —Other safety standards

§ 11:32 Industry-Specific Standards

§ 11:33 General Duty Clause

§ 11:34 Recordkeeping and reporting requirements

§ 11:35 —Recordable work-related injury or illness

§ 11:36 —Medical treatment beyond first aid

§ 11:37 —Severe injury and fatality reporting

§ 11:38 —Enforcement

§ 11:39 Safety and health management—Privacy concern cases

§ 11:40 —Safety and health programs

§ 11:41 —Employee involvement

§ 11:42 —OSHA access to employer safety audits

§ 11:43 —OSHA partnership programs

§ 11:44 Retaliation and whistleblower protections—OSH Act

§ 11:45 —Other laws enforced by OSHA

§ 11:46 Variances

§ 11:47 Defenses

§ 11:48 —Infeasibility of compliance defense

§ 11:49 —Isolated incident defense

§ 11:50 —Insufficient particularity defense

§ 11:51 —Greater hazard defense

§ 11:52 —Multiemployer worksite

§ 11:53 —Unpreventable employee misconduct defense

§ 11:54 —Undermining prima facie showing

## **III. OCCUPATIONAL SAFETY AND HEALTH ACT ENFORCEMENT**

§ 11:55 Inspections

§ 11:56 —Targeted inspection programs

- § 11:57 —Procedural Overview
- § 11:58 —Warrant
- § 11:59 —Examining credentials
- § 11:60 —Determining the reason for inspection
- § 11:61 —Opening conference
- § 11:62 —Walkaround
- § 11:63 — —Handling requests to interview employees
- § 11:64 — —Note taking
- § 11:65 — —Samples, photographs, and monitoring
- § 11:66 — —Trade secrets
- § 11:67 — —Responding to questions
- § 11:68 — —Determination of existence and degree of OSHA violations
- § 11:69 —Closing conference
- § 11:70 —Practices to avoid
- § 11:71 Citations—Issuance
- § 11:72 —Proper service
- § 11:73 —Posting
- § 11:74 —Review
- § 11:75 —Informal conference
- § 11:76 —Modifying abatement date
- § 11:77 Violations and notices
- § 11:78 —Serious violation
- § 11:79 —Repeated violation
- § 11:80 —Willful violation
- § 11:81 —Criminal/willful violation
- § 11:82 —Other-than-serious violation
- § 11:83 —De minimis notification
- § 11:84 —Imminent danger proceedings

#### **IV. OCCUPATIONAL SAFETY AND HEALTH ACT LITIGATION**

- § 11:85 Violations and notices—Notification of failure to abate
- § 11:86 Abatement
- § 11:87 Penalties
- § 11:88 —Personal Liability
- § 11:89 Contesting citations—Employer policy
- § 11:90 —Applicable rules
- § 11:91 —Right to counsel
- § 11:92 —Party status and intervention
- § 11:93 —Settlement
- § 11:94 —Prehearing matters—Notice of contest
- § 11:95 — —Complaint and answer
- § 11:96 — —Amendment of the pleadings
- § 11:97 — —Prehearing conference

## TABLE OF CONTENTS

§ 11:98	— —Prehearing order
§ 11:99	— —Mandatory mediation
§ 11:100	—Preparation of defense—Assessing the issues
§ 11:101	— —Statement of position
§ 11:102	Contesting citation—Preparation of defense—Discovery
§ 11:103	— —Motions
§ 11:104	Contesting citations—Preparation of defense—Subpoenas
§ 11:105	— —Use of photographs, videos, and diagrams
§ 11:106	— —Use of experts
§ 11:107	— —Preparing the employer’s experts
§ 11:108	— —Preparing for the government’s experts
§ 11:109	—Hearing—Participants
§ 11:110	— —Role of the administrative law judge
§ 11:111	— —Burden of proof
§ 11:112	— —Format of the hearing
§ 11:113	— —Post-hearing briefs
§ 11:114	—Appeal—Filing of petition for review
§ 11:115	— —Grant of petition for review
§ 11:116	— —Grant of attorney’s fees and costs
§ 11:117	— —Federal court
§ 11:118	—Alternatives to regular commission hearing—Expedited proceedings
§ 11:119	— —Simplified proceedings
§ 11:120	Criminal prosecution for occupational injuries and fatalities
§ 11:121	Relationship of OSH Act—Other litigation by employees
§ 11:122	Relationship of OSH Act to other litigation by employees—Common law
§ 11:123	—Statutory claims

## Volume 2

### **PART IV. UNION-MANAGEMENT RELATIONS**

#### **CHAPTER 12. UNION REPRESENTATION OF EMPLOYEES**

##### **I. SCOPE OF THE LABOR MANAGEMENT RELATIONS ACT**

§ 12:1	Labor Management Relations Act
§ 12:2	Jurisdiction of the NLRB—Commerce requirement
§ 12:3	—Excluded employees

- § 12:4 — —Supervisors
- § 12:5 — —Managerial employees
- § 12:6 — —Confidential employees
- § 12:7 — —Independent contractors
- § 12:8 — —Joint employers
- § 12:9 — —Employees of religious organizations
- § 12:10 — —Agricultural laborers
- § 12:11 — —Domestic servants
- § 12:12 — —Individuals employed by a parent or spouse
- § 12:13 — —Employees of employers not covered by the NLRA
- § 12:14 — —Disabled workers
- § 12:15 —Hospital interns, residents, and fellows
- § 12:16 — —*Cedars-Sinai*
- § 12:17 — —*St. Clare's Hospital*
- § 12:18 — —*Boston Medical Center* and additional cases
- § 12:19 —University graduate assistants
- § 12:20 —Non-academic student workers
- § 12:21 —Excluded employees—Student athletes
- § 12:22 —Undocumented workers

## II. ACHIEVING REPRESENTATIVE STATUS

- § 12:23 Representative status
- § 12:24 —Demand for recognition
- § 12:25 —Employer's voluntary recognition
- § 12:26 —Demand for voluntary recognition based on contractual language
- § 12:27 —Employer's polling of employees
- § 12:28 —Insisting on a National Labor Relations Board election
- § 12:29 Achieving representation status without election—*The Joy Silk*, *Gissel* and *Cemex* doctrines
- § 12:30 —Accretion
- § 12:31 —Successorship

## III. PETITIONING FOR A NLRB ELECTION

- § 12:32 Filing a petition
- § 12:33 —Representation petition
- § 12:34 —Notice of employee rights
- § 12:35 —NLRB E-File requirements
- § 12:36 NLRB review of petition
- § 12:37 —NLRB request for financial or commerce data
- § 12:38 Selecting an appropriate bargaining unit
- § 12:39 —Report on investigation of interest
- § 12:40 —Notice of representation hearing
- § 12:41 —Craft employees

## TABLE OF CONTENTS

§ 12:42	—Professional employees
§ 12:43	—Guards
§ 12:44	Bars to election petition
§ 12:45	—Contract bar
§ 12:46	— — —Factors that override contract bar—Change in employing enterprise
§ 12:47	— — —Change in union structure
§ 12:48	— — —Pre-hire agreements
§ 12:49	— — —Contracts offending federal labor policy
§ 12:50	— — —Contracts insufficient to stabilize bargaining relationship
§ 12:51	—Election bar
§ 12:52	—Certification year bar
§ 12:53	—Voluntary recognition bar
§ 12:54	—Blocking charge rule
§ 12:55	— —Request to proceed notwithstanding unfair labor practice charge
§ 12:56	—Prior petition bar
§ 12:57	—Successor bar doctrine
§ 12:58	Decertification
§ 12:59	Deauthorization
§ 12:60	—Sample ballot in deauthorization election
§ 12:61	Unit clarification

## IV. ELECTION CAMPAIGN

§ 12:62	NLRBs hands-off approach to elections
§ 12:63	Campaign appeals based on racial issues
§ 12:64	Pro-union conduct of supervisors
§ 12:65	Time, place, and manner of presenting campaign appeals—On and off employer property
§ 12:66	—The 24-hour rule
§ 12:67	—Employer restrictions on the use of e-mail
§ 12:68	Campaigning at the polls

## V. NLRB ELECTION PROCEDURES

§ 12:69	Types of elections
§ 12:70	—Consent elections
§ 12:71	— —Consent agreement
§ 12:72	— —Stipulated election agreement
§ 12:73	—Directed elections
§ 12:74	— —Decision and direction of election
§ 12:75	— —Decision and order dismissing petition
§ 12:76	Eligibility of voters—The <i>Excelsior</i> list
§ 12:77	Election time and place

- § 12:78 —Sample ballot used in collective bargaining election involving one union
- § 12:79 —Sample bilingual ballot used in collective bargaining election involving one union
- § 12:80 —Sample ballot used in collective bargaining election involving more than one union
- § 12:81 —Election notice
- § 12:82 Board revises representation case procedures
- § 12:83 Trends in representation case processing
- § 12:84 Election day
- § 12:85 —Instructions to election observers
- § 12:86 —Certification on conduct of election
- § 12:87 —Tally of ballots
- § 12:88 —Certification of representative
- § 12:89 —Certification of results of election
- § 12:90 Post-election proceedings—Challenge procedure
- § 12:91 —Objections to the election
- § 12:92 —Challenges based on violations of NLRB policy

## **VI. CHALLENGING THE UNION WITHIN THE LAW**

- § 12:93 Strategic issues in challenging union-organizing efforts
- § 12:94 —Coach your supervisors
- § 12:95 —Perform internal assessment
- § 12:96 —Train supervisors
- § 12:97 —Talk to employees
- § 12:98 Employer's initial encounter with union
- § 12:99 Employer actions against the union
- § 12:100 —Addressing grievances
- § 12:101 —Avoiding tactical errors
- § 12:102 —Remaining alert to unfair union practices
- § 12:103 Recent trends in union-organizing efforts
- § 12:104 Protecting the Right to Organize Act

## **CHAPTER 13. EMPLOYER UNFAIR LABOR PRACTICES**

### **I. UNFAIR LABOR PRACTICE PROCEDURES**

- § 13:1 Introduction to unfair labor practices
- § 13:2 Filing the charge
- § 13:3 —Who may file
- § 13:4 —Where to file
- § 13:5 —How to file
- § 13:6 —When to file

## TABLE OF CONTENTS

§ 13:7	—What to file
§ 13:8	— —Joint employers
§ 13:9	— —Charge against employer for unfair labor practices
§ 13:10	— —Charge against labor organization or its agents
§ 13:11	— —Charge of violation of statutory prohibition against hot-cargo agreement
§ 13:12	Preliminary investigation
§ 13:13	Dismissal of an unfair labor practice charge
§ 13:14	—Withdrawal request
§ 13:15	Deferral of an unfair labor practice charge
§ 13:16	Settlement agreements
§ 13:17	—Informal settlement agreements
§ 13:18	— —Informal settlement agreement for posting
§ 13:19	—Formal settlement agreements
§ 13:20	—Confidentiality, nondisparagement and noncompetition provisions
§ 13:21	Procedure in cases under Section 10(j) of the NLRA
§ 13:22	—Interfering with organizing campaign (no majority)
§ 13:23	—Interfering with organizing campaign (majority)
§ 13:24	—Withdrawal of recognition from incumbent
§ 13:25	—Undermining the bargaining representative
§ 13:26	—Successor refusal to recognize and bargain
§ 13:27	—Conduct during contract negotiations
§ 13:28	Complaint and hearing
§ 13:29	Judicial review of the NLRB orders

## II. INTERFERENCE, RESTRAINT, OR COERCION

§ 13:30	Introduction to interference, restraint and coercion
§ 13:31	Unlawful acts of supervisors
§ 13:32	Threats of reprisal
§ 13:33	—Threats to close or relocate the plant
§ 13:34	—Threats that unionization leads to strikes and to loss of jobs
§ 13:35	—Threats to bargain from scratch
§ 13:36	—Threats to litigate
§ 13:37	Promises and grants of benefits
§ 13:38	Solicitation of grievances
§ 13:39	Restricting employee activity
§ 13:40	—No-solicitation rules
§ 13:41	—No-distribution rules
§ 13:42	—Overly broad no-solicitation/no-distribution rules
§ 13:43	—Wearing union insignia and related expressive activity
§ 13:44	—Restricting off-duty employee activity on employer property
§ 13:45	—Restricting nonemployee activity on employer property
§ 13:46	—Employer restrictions on the use of e-mail

- § 13:47 —Confidentiality policies
- § 13:48 —Employer restrictions on social media
- § 13:49 —Mandatory arbitration and employer restrictions on class action claims
- § 13:50 Interrogating employees about union activity
- § 13:51 —Determinants of coercive interrogation
- § 13:52 —Legitimate grounds for interrogation
- § 13:53 Surveillance of employees' union activities
- § 13:54 —Actual surveillance
- § 13:55 —Method of observation
- § 13:56 — —Enlisting “spies”
- § 13:57 — —Electronic or optical devices
- § 13:58 — —Recording
- § 13:59 —Creating the impression of surveillance
- § 13:60 —Bargaining over surveillance
- § 13:61 Denying employee requests for union representation at an investigatory interview
- § 13:62 Discharging supervisors for union activity
- § 13:63 Miscellaneous violations of noninterference provisions
- § 13:64 —Inciting anti-union activity
- § 13:65 —Discrimination against employees for exercising NLRA rights
- § 13:66 —Discrimination for exercising rights under other federal statutes
- § 13:67 —Retaliation for pursuing unemployment or workers' compensation claims
- § 13:68 —Blacklisting employees
- § 13:69 —E-mail communications
- § 13:70 Refusal to supply information
- § 13:71 Dismissal for filing civil action
- § 13:72 Regressive bargaining
- § 13:73 Unilateral changes in terms or conditions of employment—  
Mandatory subjects of bargaining
- § 13:74 —Midterm contract modification
- § 13:75 —Past practice
- § 13:76 Determining when parties are at impasse in negotiations
- § 13:77 Refusal to bargain as means of challenging representation election

### **III. DOMINATION AND UNLAWFUL SUPPORT OF LABOR ORGANIZATIONS**

- § 13:78 Introduction to domination or interference with labor organizations
- § 13:79 Domination of a labor organization
- § 13:80 Assistance or support
- § 13:81 —Participation of supervisors
- § 13:82 —Other forms of prohibited assistance

## TABLE OF CONTENTS

- § 13:83 — —Financial assistance
- § 13:84 — —Indirect financial aid
- § 13:85 — —Nonfinancial assistance
- § 13:86 — —Indirect support
- § 13:87 Recognition of a minority union
- § 13:88 When competing unions seek recognition

### **IV. DISCRIMINATION TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP**

- § 13:89 Introduction to discrimination related to union membership
- § 13:90 Elements of discrimination violations
- § 13:91 Discrimination in hire, tenure, and terms or conditions of employment—Hire
- § 13:92 — —Tenure—Discharge of union activists during organizational campaigns
- § 13:93 — —Discharge of strikers
- § 13:94 — —Plant closure
- § 13:95 — —Plant relocation
- § 13:96 — —Subcontracting
- § 13:97 — —Terms or conditions of employment
- § 13:98 — —Merit pay increases
- § 13:99 — —Direct dealing

### **V. RETALIATION FOR COOPERATING WITH THE NATIONAL LABOR RELATIONS BOARD**

- § 13:100 Introduction to retaliation against participation in NLRB actions
- § 13:101 Scope of protected conduct
- § 13:102 Prohibited employer conduct
- § 13:103 Parties protected by the nonretaliation provisions of the Labor Management Relations Act

### **VI. CONSEQUENCES OF UNFAIR LABOR PRACTICES**

- § 13:104 Introduction to consequences of unfair labor practices
- § 13:105 Bargaining orders
- § 13:106 — —Grounds for issuance of a bargaining order
- § 13:107 — —Challenges to bargaining orders
- § 13:108 — —General counsel's guidelines on bargaining orders
- § 13:109 — —The *Gissel* decision
- § 13:110 — —Category I cases
- § 13:111 — —Category II cases
- § 13:112 Reinstatement with back pay
- § 13:113 — —General requirements
- § 13:114 — —“Salting”

- § 13:115 —Strikers
- § 13:116 —Displaced employees
- § 13:117 —Undocumented workers
- § 13:118 Miscellaneous remedies—Cease-and-desist orders
- § 13:119 —Posting notices
- § 13:120 —Other affirmative requirements
- § 13:121 —Consequential damages and monetary penalties

## **VII. CHECKLIST OF UNFAIR LABOR PRACTICES**

- § 13:122 Unfair labor practices checklist

## **CHAPTER 14. UNION UNFAIR LABOR PRACTICES, STRIKES, AND BOYCOTTS**

### **I. INTRODUCTION TO UNFAIR LABOR PRACTICES, STRIKES, AND BOYCOTTS**

- § 14:1 Unfair labor practices, strikes, and boycotts
- § 14:2 Union responsibility for acts of its agents

### **II. UNION RESTRAINT OR COERCION**

- § 14:3 Union restraint or coercion
- § 14:4 Physical violence
- § 14:5 Threats of physical violence or economic sanctions
- § 14:6 Promises and grants of benefits
- § 14:7 Interference with rivalunion activity
- § 14:8 Fostering racial or religious divisiveness
- § 14:9 Union discipline
- § 14:10 Union coercion of employers in selection of representatives

### **III. UNION DISCRIMINATION: THE DUTY OF FAIR REPRESENTATION**

- § 14:11 Duty of fair representation
- § 14:12 —Duty of good faith
- § 14:13 The duty of good faith—The duty of fair representation following decertification
- § 14:14 —Union security provisions and the duty of fair representation
- § 14:15 —The duty to seek judicial enforcement or review of arbitration awards
- § 14:16 —Hiring halls and the duty of fair representation
- § 14:17 Discrimination and internal union affairs
- § 14:18 —Rules restricting union membership on the basis of race or sex
- § 14:19 —Rules restricting access to the National Labor Relations Board

## TABLE OF CONTENTS

- § 14:20 —Rules banning or restricting member resignations
- § 14:21 —Rules restricting employee rights under the Labor Management Reporting and Disclosure Act
- § 14:22 —Membership distribution of materials adverse to the union
- § 14:23 —Rules restricting access to the grievance procedure
- § 14:24 —Right to refrain from concerted activities
- § 14:25 Consequences of restricting access to the grievance procedure

## **IV. UNION DISCRIMINATION: INDUCING UNLAWFUL DISCRIMINATION BY EMPLOYER**

- § 14:26 Union inducement of employer's unlawful discrimination
- § 14:27 Violations relating to superseniority provisions
- § 14:28 Violations relating to union security provisions—Nature of union security arrangements
- § 14:29 —Restrictions on union security arrangements
- § 14:30 — —Majority union
- § 14:31 — —Grace period
- § 14:32 — —Requirement of financial core membership
- § 14:33 — —Initiation fees for returning strikers
- § 14:34 — —Political and religious objections to the payment of union dues
- § 14:35 — —Notice requirements
- § 14:36 —Termination of union security arrangements
- § 14:37 — —Notice of required union membership
- § 14:38 — —Expiration of the contract
- § 14:39 — —Employees working outside the bargaining unit
- § 14:40 — —Decertification
- § 14:41 — —Deauthorization
- § 14:42 —Miscellaneous union security arrangements and related considerations—Dues checkoff
- § 14:43 — —Union dues checkoff authorization
- § 14:44 — —Agency shop
- § 14:45 — —Maintenance of membership
- § 14:46 — —Hiring halls

## **V. UNION DISCRIMINATION: EXCESSIVE OR DISCRIMINATORY MEMBERSHIP FEES AND FINES**

- § 14:47 Excessive or discriminatory union membership fees
- § 14:48 —Fees covered
- § 14:49 —Excessive fees
- § 14:50 —Discriminatory fees
- § 14:51 Membership fines

## VI. ECONOMIC WEAPONRY: STRIKES AND SECONDARY BOYCOTTS

- § 14:52 Strikes and secondary boycotts
- § 14:53 Strike activity: Protected and unprotected
- § 14:54 —Protected strikes—Unfair labor practice strikes
- § 14:55 — —Economic strikes
- § 14:56 —Replacement of strikers
- § 14:57 —Compensation during strike
- § 14:58 —Sympathy strikes—Nature of sympathy strikes
- § 14:59 — —Waiver of right to engage in sympathy strikes
- § 14:60 —Safety strikes—Group strikes
- § 14:61 — —Individual complaints
- § 14:62 — —Individual walkouts
- § 14:63 — —Walkouts protected by the Occupational Safety and Health Act
- § 14:64 — —Protest of abnormally dangerous conditions
- § 14:65 —Unprotected strikes
- § 14:66 — —Slowdowns and work stoppages
- § 14:67 — —Strike misconduct
- § 14:68 Secondary boycotts—Scope of secondary boycott prohibition
- § 14:69 — —Ally doctrine
- § 14:70 — —Single-employer and alter ego doctrines
- § 14:71 — —Straight-line operations
- § 14:72 —Common situs picketing
- § 14:73 — —Common situs plant picketing
- § 14:74 — —Common situs construction site picketing
- § 14:75 — —Common situs picketing standards
- § 14:76 — —Reserved gate
- § 14:77 — —Ambulatory picketing
- § 14:78 —Consumer picketing and handbilling
- § 14:79 — —Consumer picketing
- § 14:80 — —Handbilling
- § 14:81 — —Protected expression
- § 14:82 —“Hot-cargo” clauses
- § 14:83 — —Work preservation clauses
- § 14:84 — —Work acquisition clauses
- § 14:85 — —Work reacquisition or recapture agreements
- § 14:86 — —Union signatory vs. union standards clauses
- § 14:87 — —Picket line provisions
- § 14:88 —Construction industry proviso
- § 14:89 —Enforcement of agreements
- § 14:90 —Affinity group shopping
- § 14:91 Recognitional and organizational picketing
- § 14:92 Union activity on private property

## TABLE OF CONTENTS

§ 14:93	Liability of unions in “joint ventures”
§ 14:94	Controlling unlawful strikes and secondary boycotts
§ 14:95	—Norris-LaGuardia Act—Section 10(l) injunctions
§ 14:96	— — —“Reasonable cause” and “just and proper”
§ 14:97	— —Section 10(l) and secondary boycotts
§ 14:98	— —Section 10(l) and “bannering”
§ 14:99	Preparing for a strike
§ 14:100	—Prestrike activities—General activities
§ 14:101	— —Security for facilities
§ 14:102	— —Personnel assignments
§ 14:103	— —Facility preparation
§ 14:104	— — —Survey of section heads on problems anticipated during strike
§ 14:105	— — —Request for unit’s strike staffing plan
§ 14:106	—Conduct during a strike—Morale of nonstrikers
§ 14:107	— —Contact with strikers
§ 14:108	—Picket lines
§ 14:109	—Moving personnel in and out of the facility

## CHAPTER 15. COLLECTIVE BARGAINING

### I. OVERVIEW OF COLLECTIVE BARGAINING

§ 15:1	Introduction to collective bargaining
§ 15:2	Concept of collective bargaining
§ 15:3	Accretion: Are new jobs subject to bargaining?
§ 15:4	—National Labor Relations Board criteria
§ 15:5	—Reducing the risk of accretion
§ 15:6	Subjects of collective bargaining
§ 15:7	—Mandatory subjects
§ 15:8	—Nonbargainable management decisions
§ 15:9	—Relocation or removal of unit work
§ 15:10	— —Subcontracting
§ 15:11	— —Partial closings
§ 15:12	— —Plant relocation, automation, and sales of business
§ 15:13	—Subjects concerning the employer-union or union-member relationship
§ 15:14	—Alcohol and drug rules
§ 15:15	—Selection of bargaining representatives
§ 15:16	Duration of the duty to bargain
§ 15:17	—Employer’s good-faith doubt of majority support
§ 15:18	—Elements of good-faith doubt
§ 15:19	—Withdrawal of recognition—The <i>Levitz Furniture</i> doctrine
§ 15:20	Collective bargaining patterns and alliances—Multiemployer bargaining

§ 15:21 —Parallel, coalition, and coordinated bargaining

## **II. GOOD-FAITH BARGAINING REQUIREMENTS**

- § 15:22 Requirements for good-faith bargaining
- § 15:23 Duty to provide relevant information—Presumptively relevant information
  - § 15:24 — —Equal employment data
  - § 15:25 — —Data regarding applicants for employment
  - § 15:26 — —Data regarding occupational safety and health
  - § 15:27 — —Data regarding subcontracting and related management decisions
  - § 15:28 — —Data regarding personal services contracts
- § 15:29 —Information not presumptively relevant—Wage-related data concerning nonunit employees
  - § 15:30 — —Practical suggestions
  - § 15:31 — —Data concerning sales and profits
  - § 15:32 — —Medical information needed to process grievances
- § 15:33 Procedural requirements for providing information
- § 15:34 Employer defenses to the duty to disclose information
  - § 15:35 —Union bad faith
  - § 15:36 —Burdensomeness
  - § 15:37 —Confidentiality
  - § 15:38 —Waiver
- § 15:39 —Non-mandatory bargaining subjects
- § 15:40 —Witness statements
- § 15:41 Unlawful surface bargaining
- § 15:42 Unlawful circumvention of the union
- § 15:43 Checklist on communicating with employees during negotiations
- § 15:44 Locking out employees in support of the employer’s legitimate bargaining position

## **III. NOTICE REQUIREMENTS**

§ 15:45 Collective bargaining notice requirements

## **IV. CHANGES IN TERMS AND CONDITIONS OF EMPLOYMENT**

- § 15:46 Employment changes and collective bargaining
- § 15:47 Unilateral changes—Prior to negotiation of first contract
- § 15:48 Americans with Disabilities Act and collective bargaining
- § 15:49 Bankruptcy Code and collective bargaining—U.S. Supreme Court decision
  - § 15:50 —Congressional response
  - § 15:51 —Prioritizing claims arising from breach of collective bargaining agreements

TABLE OF CONTENTS

**V. DUTY OF SUCCESSOR EMPLOYERS TO BARGAIN**

- § 15:52 Successorship doctrine
- § 15:53 Workforce majority
- § 15:54 Continuity of the employing operations
- § 15:55 Continued appropriateness of the bargaining unit
- § 15:56 Commencement of successor's obligation

**VI. EMPLOYER'S DUTY TO BARGAIN WITH SUCCESSOR UNIONS**

- § 15:57 Bargaining and successor unions

**VII. SUMMARY CHECKLIST ON THE DUTY TO BARGAIN**

- § 15:58 Checklist on the duty to bargain

**VIII. ENFORCEMENT OF THE COLLECTIVE BARGAINING AGREEMENT**

- § 15:59 Enforcing the result of collective bargaining
- § 15:60 Grievance and arbitration procedures
- § 15:61 —Initiating arbitration
- § 15:62 — —Grievance procedures agreement
- § 15:63 — —Grievance initiation and report (union shop)
- § 15:64 — —Report of union employee complaint or grievance discussion
- § 15:65 —Arbitrators
- § 15:66 — —Permanent umpire
- § 15:67 — —Temporary arbitrator
- § 15:68 — —Selecting an arbitrator
- § 15:69 Role of the courts in enforcing labor agreements
- § 15:70 —Substantive arbitrability
- § 15:71 —Procedural arbitrability
- § 15:72 —Setting aside an arbitration award
- § 15:73 —Drug- and alcohol-related misconduct
- § 15:74 Suits by employers
- § 15:75 —Injunctive relief
- § 15:76 —Damage actions by employers
- § 15:77 Suits by individual employees
- § 15:78 —Exceptions to exhaustion requirement
- § 15:79 —Exhaustion of intraunion remedies
- § 15:80 —Recovery of damages
- § 15:81 National Labor Relations Board enforcement
- § 15:82 Postarbitration deferral: Honoring an arbitration award
- § 15:83 Prearbitration National Labor Relations Board deferral
- § 15:84 Arbitration of statutory rights

- § 15:85 Work rules concerning drugs and alcohol—Standards for determining just cause of discipline
- § 15:86 —Enforcement of alcohol- or drug-related rules
- § 15:87 —Discipline of employees for refusing to cooperate with alcohol or drug tests or searches
- § 15:88 —Enforcement of last chance agreements for drug- and alcohol-related misconduct
- § 15:89 —Checklist of preventive measures

## **IX. ENFORCING THE LABOR CONTRACT: PRACTICAL SUGGESTIONS**

- § 15:90 Enforcing the labor contract

# **PART V. COMPENSATION AND BENEFITS**

## **CHAPTER 16. COMPENSATION**

### **I. OVERVIEW OF COMPENSATION**

- § 16:1 Introduction to compensation

### **II. FEDERAL STATUTES**

- § 16:2 Fair Labor Standards Act
- § 16:3 —Coverage—Employers covered
- § 16:4 — —Establishments covered
- § 16:5 — —Employees covered
- § 16:6 — —Trainees covered
- § 16:7 — —Internships
- § 16:8 —Wage and hour provisions—Minimum wage provisions
- § 16:9 — —Maximum hour and overtime provisions
- § 16:10 — —Workweek
- § 16:11 — —Records
- § 16:12 — —Time of payment
- § 16:13 —Employees exempt from minimum wage and overtime provisions
- § 16:14 — —Executive
- § 16:15 — —Management
- § 16:16 — —Working supervisors
- § 16:17 — —Administrative
- § 16:18 — —Professional
- § 16:19 — —Salaried employees
- § 16:20 — —White-collar exemptions
- § 16:21 — — —Executive exemption
- § 16:22 — — —Administrative exemption

## TABLE OF CONTENTS

§ 16:23	— — —Professional exemption
§ 16:24	— — —Outside sales exemption
§ 16:25	— — —Computer employee exemption
§ 16:26	— — —Highly Compensated Employees
§ 16:27	— — —“Blue Collar Workers”
§ 16:28	— — —Police, Fire Fighters, Paramedics & Other First Responders
§ 16:29	— — —Other laws & collective bargaining agreements
§ 16:30	— — —Salary basis test
§ 16:31	— — —Deductions from pay/safe harbor provisions
§ 16:32	— —Employees exempt from overtime only
§ 16:33	—Independent contractors
§ 16:34	—Definition of “hours worked”
§ 16:35	—Avoiding unwanted hours worked
§ 16:36	—Child labor provisions
§ 16:37	—Employees to whom less than minimum wage may be paid
§ 16:38	—Work at home
§ 16:39	—Telecommuting time sheet
§ 16:40	Walsh-Healey Public Contracts Act—Coverage
§ 16:41	—Overtime requirements
§ 16:42	Service Contract Act of 1965 (McNamara-O’Hara Act)—Coverage
§ 16:43	—Overtime requirements
§ 16:44	Davis-Bacon Act—Coverage
§ 16:45	—Overtime requirements

### III. COMPENSABLE TIME

§ 16:46	Compensable time
§ 16:47	Portal-to-Portal Act—Preliminary and postliminary activities
§ 16:48	— —Changing clothes and protective gear
§ 16:49	— —Security and health screenings
§ 16:50	— —Booting up and shutting down computers
§ 16:51	Waiting time and on-call time
§ 16:52	Rest periods
§ 16:53	Break periods for nursing mothers
§ 16:54	Meal periods
§ 16:55	Sleeping time
§ 16:56	—Less than 24-hour duty
§ 16:57	—Duty of 24 hours
§ 16:58	—Living on premises
§ 16:59	Travel time
§ 16:60	—Home to work
§ 16:61	—Business travel
§ 16:62	Training time

#### **IV. TIME COMPENSABLE AT THE EMPLOYER'S OPTION**

- § 16:63 Vacations
- § 16:64 —Sample vacation policy
- § 16:65 Jury duty
- § 16:66 —Sample jury duty policy
- § 16:67 Holidays, Saturdays, and Sundays
- § 16:68 —Sample holiday policy
- § 16:69 Sick and maternity time
- § 16:70 Personal leaves
- § 16:71 —Sample personal leave policy

#### **V. PAYROLL ADMINISTRATION**

- § 16:72 Pay periods or paydays
- § 16:73 Deductions from paychecks
- § 16:74 —Sample notice to employee of garnishment of wages
- § 16:75 Calculating an employee's "regular rate" of pay for purposes of calculating overtime pay

#### **VI. EQUAL EMPLOYMENT ISSUES: WAGE DISCRIMINATION AND EQUAL PAY FOR EQUAL WORK**

- § 16:76 Equal pay issues
- § 16:77 Equal Pay Act
- § 16:78 —Regulatory and enforcement developments
- § 16:79 —Same establishment
- § 16:80 —Equal work
- § 16:81 —Equal skill
- § 16:82 —Equal effort
- § 16:83 —Equal responsibility
- § 16:84 —Similar working conditions
- § 16:85 —Employer's defenses to an Equal Pay Act suit
- § 16:86 —Market forces, salary compression and salary inversion
- § 16:87 Comparable worth
- § 16:88 Section 7(k) exemptions
- § 16:89 The "salary basis" test
- § 16:90 Sovereign immunity

### **CHAPTER 17. RETIREMENT AND OTHER BENEFITS PLANS**

#### **I. INTRODUCTION TO RETIREMENT AND OTHER BENEFITS PLANS**

- § 17:1 Employee benefit plans

## TABLE OF CONTENTS

- § 17:2 Employee benefits plans—Pension plans
- § 17:3 —Welfare plans
- § 17:4 —Federal regulation
- § 17:5 — —Internal Revenue Code
- § 17:6 — —Labor Management Relations Act
- § 17:7 — —Welfare and Pension Plans Disclosure Act
- § 17:8 Enactment of the Employee Retirement Income Security Act (ERISA)
- § 17:9 ERISA preemption—State regulation of employee benefits plans
- § 17:10 —Case law
- § 17:11 — —Wrong without a remedy

## II. OVERVIEW OF ERISA

- § 17:12 ERISA Overview
- § 17:13 Reporting and disclosure requirements under ERISA
- § 17:14 —Reporting requirements
- § 17:15 —Disclosure requirements
- § 17:16 Minimum standards under ERISA
- § 17:17 —Minimum age and service rules
- § 17:18 —Coverage requirements
- § 17:19 — —Contingent workers
- § 17:20 —Additional participation requirement
- § 17:21 —Vesting—Vesting schedules
- § 17:22 — —Amendments to vesting schedules
- § 17:23 —Top-heavy plans
- § 17:24 —Limitations on contributions and benefits
- § 17:25 —Automatic survivor benefits under the Retirement Equity Act
- § 17:26 — —Qualified joint and survivor and qualified preretirement survivor annuities
- § 17:27 — —“One-year married” rule
- § 17:28 — —Qualified domestic relations orders
- § 17:29 — —Election to waive receipt of benefits
- § 17:30 — —Explanation of benefits
- § 17:31 — —Distributions
- § 17:32 —401(k) plans
- § 17:33 —457 plans
- § 17:34 —Discrimination prohibitions
- § 17:35 —Maximum compensation
- § 17:36 Fiduciary standards under ERISA—Duties
- § 17:37 —Fiduciary Status
- § 17:38 —Fiduciary Liability and Penalties
- § 17:39 —Arbitral Waiver of Class Action Relief
- § 17:40 —Fund investments, performance, and fees
- § 17:41 —Environmental, social and governance factors

- § 17:42 —Cybersecurity best practices
- § 17:43 —Employee Stock Ownership Plans
- § 17:44 —Business decisions v. fiduciary acts
- § 17:45 —HMOs and fiduciary duty
- § 17:46 Fiduciary breach under ERISA—Statute of limitations
- § 17:47 Participant-directed accounts under ERISA
- § 17:48 Target-date funds under ERISA
- § 17:49 Prohibited transactions under ERISA
- § 17:50 Mandatory disclosures under ERISA
- § 17:51 Assertion of ERISA participants' claims
- § 17:52 Plan terminations under ERISA
- § 17:53 —Single Employer Pension Plan Amendments Act
- § 17:54 —Termination of overfunded pension plans
- § 17:55 —Multiemployer Pension Plan Amendments Act
- § 17:56 —Downsizing and outsourcing
- § 17:57 Government administration of ERISA

### **III. TAX TREATMENT OF DISTRIBUTIONS FROM QUALIFIED PENSION OR PROFIT-SHARING PLANS**

- § 17:58 Tax treatment of distributions

### **IV. CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT AND CONTINUED HEALTH INSURANCE**

- § 17:59 Introduction to COBRA

### **V. THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

- § 17:60 Introduction to HIPAA
- § 17:61 Limitations on exclusion of preexisting conditions under HIPAA
- § 17:62 Nondiscrimination rules applicable to health plans under HIPAA
- § 17:63 Patient Protection and Affordable Care Act
- § 17:64 No Surprises Act
- § 17:65 ERISA reporting and disclosure under HIPAA

### **VI. NONDISCRIMINATION REQUIREMENTS FOR WELFARE BENEFITS**

- § 17:66 Nondiscrimination requirements for employee benefits plans
- § 17:67 Self-insured medical plans
- § 17:68 Group term insurance
- § 17:69 Dependent care assistance plans
- § 17:70 Cafeteria plans

### **VII. ROLE OF THE HUMAN RESOURCES DIRECTOR**

- § 17:71 HR involvement in benefit plans

## TABLE OF CONTENTS

- § 17:72 Effective employee communications regarding employee benefits plans
- § 17:73 —Practical considerations
- § 17:74 —Identifying potential ERISA problems—Review of prior problem areas
- § 17:75 — —Potentially troublesome situations
- § 17:76 — —Termination of retiree welfare benefits
- § 17:77 — —Benefits descriptions or summaries in employee handbooks
- § 17:78 — —ERISA and Title VII of the Civil Rights Act
- § 17:79 — —Wrongful discharge actions
- § 17:80 — —Employee plans and the Americans with Disabilities Act
- § 17:81 — —Employee plans and the Mental Health Parity and Addiction Equity Act
- § 17:82 — —Securities law requirements
- § 17:83 — —Family and Medical Leave Act
- § 17:84 — —Uniformed Services Employment and Reemployment Rights Act
- § 17:85 —Employee counseling
- § 17:86 ERISA claims procedure
- § 17:87 —Deferral to determinations of welfare plan administrators

## **VIII. BENEFITS PLAN ADMINISTRATION CHECKLIST**

- § 17:88 Employee benefits plans reporting and disclosure checklist
- § 17:89 Employee benefits plans claims procedures checklist

### **Table of Cases**

### **Index**