

Highlights of the October 2026 Edition

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

The October 2026 edition includes updated cases, statutes, and regulations in both the chapters and appendices. Among the materials update in this edition are:

- **§ 1:25. Proper defendants in Title VII action—Definition of employer—Joint employers:** The Fourth Circuit uses a nine-factor test to determine which entities actually exercise control over an employee such that the entities can rightly be considered an employer under Title VII.
- **§ 1:39. Proper defendants in Title VII action—Subordinate liability or “cat’s paw” theory under Title VII:** The Tenth Circuit has stated that “[c]at’s paw causation depends on a showing that the alleged biased actor knew about the protected activity.”
- **§ 1:48. Claim of retaliation under Title VII—Similarly situated employees:** The Eleventh Circuit has stated “that a valid comparator is ordinarily someone who: (1) has engaged in the same basic conduct (or misconduct) as the plaintiff, (2) is subject to the same employment policy, guideline, or rule as the plaintiff, (3) is under the jurisdiction of the same supervisor as the plaintiff, and (4) shares the plaintiff’s employment or disciplinary history.”
- **§ 1:54. Claim of constructive discharge under Title VII:** An employee who quits without giving the employer a reasonable chance to work out a problem is not constructively discharged.
- **§ 1:75. Discrimination based on race or color under Title VII—Prima facie case:** To proceed on a Title VII race claim for discriminatory failure to hire, a job applicant has the burden to produce evidence that would permit a reasonable factfinder to conclude that race caused the employer to remove them from the hiring process.

- **§ 1:98. Sexual harassment under Title VII:** An employer is liable, under Title VII, for sexual harassment by a nonsupervisory co-worker only if employer is negligent in controlling working conditions.
- **§ 1:109. Sexual harassment under Title VII—Types of sexual harassment—Hostile environment—Sufficiently severe or pervasive:** The repeated touching of intimate parts of an unconsenting employee's body is, by its nature, severely intrusive and cannot properly be characterized as abuse that is minor.
- **§ 1:120. Filing with the EEOC before a Title VII suit:** Requiring aggrieved applicants and employees to seek redress from the EEOC before filing suit reflects Congress's decision to rely on a combination of public and private enforcement.
- **§ 1:155. Equitable tolling under Title VII:** In determining whether a party is entitled to equitable tolling of the limitations period, the court focuses not on a single event in the record but instead examines the totality of the circumstances.
- **§ 1:207. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—Plaintiff's initial burden of proof:** Procedural irregularities may be relevant in identifying discrimination, but are not inevitably a sign of protected-class bias and may instead reflect ineptitude, inexperience, or nondiscriminatory motives.
- **§ 1:211. Assessment of evidence in Title VII suits—Steps to establish Title VII disparate treatment discrimination claim—Plaintiff's initial burden of proof—Hostile work environment case:** A Title VII sex-based hostile-work-environment claim premised on three or four instances of harassing comments over an extended period of time is likely to fail unless those comments are sufficiently severe to overcome their infrequency.
- **§ 1:260. Remedies under Title VII:** Relief under Title VII is available against only the employer, not against individual employees.
- **§ 1:286. Remedies under Title VII—Injunctions under Title VII:** A federal court of appeals should approve a district court's denial of equitable relief under Title VII only if that denial does not frustrate Title VII's objective of making the plaintiff whole.
- **§ 1:292. Remedies under Title VII—Attorney's fees:** In calculating the lodestar amount, the district court may adjust the hours billed to exclude hours that are excessive, redundant, or otherwise unnecessary, to reflect the results obtained, and to represent the time and labor actually required for the successful handling of the claims.
- **§ 3:59. Nonfederal employee administrative channels under the ADEA—Filing with the EEOC:** Requiring ag-

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grieved applicants and employees to seek redress from the EEOC before filing suit under the ADEA reflects Congress's decision to rely on a combination of public and private enforcement.

- **§ 3:63. Time requirements in nonfederal employee suits under the ADEA:** Parties may not, by advance agreement, render untimely a suit that would otherwise be timely under the ADEA.
- **§ 3:95. Prima facie case of discrimination under the ADEA—Indirect evidence cases:** A loss of job duties can constitute an “adverse employment action” under the ADEA.
- **§ 3:105. Prima facie case of discrimination under the ADEA—Reasonable inference of discrimination:** Procedural irregularities may be relevant in identifying discrimination, but are not inevitably a sign of protected-class bias and may instead reflect ineptitude, inexperience, or nondiscriminatory motives.
- **§ 3:112. Prima facie case of discrimination under the ADEA—Specific incidents of discriminatory conduct—Constructive discharge:** Comments by an employer that suggest age bias may suggest age animus but also do not demonstrate an environment that would compel a reasonable person to resign.
- **§ 3:136. Pretext under the ADEA—Proving pretext:** An applicant asserting employment discrimination under the ADEA can show pretext by pointing to procedural irregularity, though not all procedural irregularities show pretext.
- **§ 4:29. Burdens of proof in a Section 1981 action—Hostile work environment:** The employee must allege facts that show that the workplace is overtly hostile.
- **§ 4:83. Cause of action under Section 1983:** If the plaintiff makes out a prima facie case, they are entitled to a rebuttable presumption of illicit intent.
- **§ 5:46. Immunity from suits under the Constitution—Qualified immunity:** A plaintiff can demonstrate a violation of a “clearly established law” by: (1) pointing the court to a materially similar case that has already been decided; (2) pointing the court to a broader, clearly established principle that should control the novel facts of the case; or (3) showing that the conduct involved in the case so obviously violates the Constitution that prior case law is unnecessary.
- **§ 5:49. Constitutional amendments in employment discrimination context—First Amendment:** A public employee asserting a First Amendment retaliation claim must show that the employer's action involved an important condition of employment and would likely chill the exercise of constitutionally protected speech.
- **§ 6:29. Administrative remedies under the ADA:** A “Complainant Information Sheet” filed with the Illinois

Department of Human Rights by a former employee, which described discrimination and retaliation the former employee allegedly suffered based on disability arising from a wrist injury, was not a “charge” that could satisfy the ADA’s deadline for filing a charge of employment discrimination.

- **§ 6:38. Judiciability of claims [New]:** Federal courts have jurisdiction over claims of ADA violations that are distinct from security-clearance-related determinations.
- **§ 6:69. Qualified individual with a disability under the ADA—Reasonable accommodation—Unreasonable accommodations:** A proposed accommodation is unreasonable if the employee requests an accommodation for non-work-related reasons.
- **§ 6:71. Qualified individual with a disability under the ADA—Receipt of disability benefits:** Statements to the Social Security Administration to secure disability benefits do not automatically preclude successful suit under the ADA.
- **§ 6:77. Failure to accommodate under the ADA:** The employer may pick an accommodation that is less expensive or easier to implement when given the choice between two reasonable accommodations.
- **§ 6:81. Hostile work environment harassment claims under the ADA:** The sporadic use of abusive language does not rise to level of actionable harassment under the ADA.
- **§ 6:140. “Otherwise qualified” under Section 504:** To determine if one is a “qualified individual” under Section 504 of the Rehabilitation Act, courts have devised a two part test: (1) whether the individual can perform the essential functions of the job, and (2) if not, whether a reasonable accommodation would allow the individual to perform those essential functions.
- **§ 6:149. Burden of proof analysis under Section 504—Disparate treatment:** In determining whether a discharge is pretext for disability discrimination under the Rehabilitation Act, a circuit court does not act as a super-personnel department that second-guesses an employer’s business judgments, and if a reasonable factfinder would be compelled to believe the employer’s explanation for a termination, then the employer is entitled to summary judgment.
- **§ 6:217. Exhaustion of administrative remedies under Section 501:** For purposes of determining whether administrative remedies have been exhausted in a Rehabilitation Act hostile-work-environment claim, the loss of a job is a discrete act and constitutes a separately actionable employment decision—not part of a hostile work environment.
- **§ 6:223. Burden of proof under Section 501—Failure-to-accommodate claims:** The Rehabilitation Act requires reasonable, not perfect, accommodations.
- **§ 6:224. Burden of proof under Section 501—Hostile work environment claims:** The hostile-work-environment

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claim under the Rehabilitation Act in the Seventh Circuit is sometimes referred to as the “continuing violation” doctrine.

- **§ 9:45. FMLA leave—Paid or unpaid leave:** An employee electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the employer’s policy that apply to other employees for the use of such leave.
- **§ 9:53. Civil actions pursuant to the FMLA by employees:** Independent contractors are not covered by the FMLA.
- **§ 9:70. Prima facie case of retaliation or interference under the FMLA—FMLA retaliation claim:** Protected conduct occurring after an adverse employment action cannot serve as the basis for a retaliation claim.
- **§ 10:42. Wrongful termination acts and/or provisions—Title IX—Retaliation:** For the purposes of retaliation claims under Title IX, “protected conduct” includes: (1) opposing a practice made unlawful under Title IX, or (2) charging, testifying, assisting, or otherwise participating in an investigation, proceeding, or hearing under Title IX.

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