

PREFACE

This Eleventh Edition comes at a significant inflection point for antidiscrimination goals in the United States. The prior edition was published in 2021, during a reckoning with entrenched inequality marked by the popularization of the #MeToo and Black Lives Matter movements and the Supreme Court’s prohibition of sexual orientation and gender identity discrimination in employment in *Bostock v. Clayton County* (2020). As of this edition’s publication date in late 2025, the second election of President Trump marked a dramatic turning of the tides, with a new focus — at least by federal executive agencies and enforcement powers — on combatting so-called “reverse discrimination” against majority-group members and reviving traditional, biologically-determined definitions of “sex.” Regardless of one’s political views, the stark difference in visions of (in)equality and the whiplash-inducing speed with which public rhetoric has swung highlight the importance of informed discussion of employment discrimination law, which we hope this course, and casebook, will spark.

The law continues to evolve in the courts, albeit perhaps at a slower pace than in decades past. But there are still important developments, such as the Supreme Court’s decision in *Muldrow v. City of St. Louis* (2024), “resolving” how significantly a “term or condition” of employment must be affected to be actionable under Title VII (a mere 60 years after the statute was enacted!), and in *Groff v. DeJoy* (2023), “clarifying” an employer’s burden when refusing to accommodate an employee’s religious practice (ditto). *Groff* and the 2023 enactment of the Pregnant Workers Fairness Act mark a major reworking of federal law on accommodation as a requirement to ensure equal employment opportunity, bringing our workplace approach to pregnancy and religion much closer to that of disability. Beyond the courts, the casebook, as has always been true, attempts to keep its users abreast of the literature, much of which brings important insights from a wide array of both distinguished and emerging scholars in antidiscrimination law.

A new edition is always an occasion for reflecting not just on what’s happening in the area but how it should be taught. While veteran adopters will find the structure of this book largely the same, they will notice significant updating and some changes. Despite the inclusion of new cases, it is only marginally longer than the Tenth Edition.

As before, the casebook begins with the three chapters analyzing each of the three basic theories of discrimination — individual disparate treatment, systemic disparate treatment, and disparate impact (Chapters 1, 2, and 3), followed by a chapter on the interrelation of those theories (Chapter 4). It then moves to “special problems” of discrimination law (Chapter 5), treating coverage, sex discrimination, religion, national origin discrimination, and age. Chapter 6 then follows, dealing with retaliation. These chapters continue the prior editions’ merger of the treatment of the Age Discrimination in Employment Act and the Reconstruction

Civil Rights Acts, primarily 42 U.S.C.A. §1981, into the Title VII discussion. Pedagogically, the casebook reflects the statutory and common law unification of discrimination analysis under all three statutes, although the significant differences among these laws are noted in the relevant chapters and collected in Chapter 5 on “special problems.”

Chapter 7, dealing with the Americans with Disabilities Act, has settled down a bit. There are numerous updates as the statute — and our societal approach to disability — continue to mature, but no new principal cases. The remaining three chapters — Chapter 8, Procedures; Chapter 9, Remedies; and Chapter 10, Risk Management — try to concisely treat issues that, though critical for how employment discrimination is practiced “on the ground,” often seem to be afterthoughts in many courses. To help cope with the problem of length, these chapters remain shorter and more didactic.

An annual Professor’s Update and occasional other materials support the teaching mission of the book, provided each August on AspenPublishing.com (available on the book’s product page under “Professor Materials” for adopters who register and sign in). The Update does not attempt to track every judicial, legislative, or administrative change as there are services that do that far better; rather, the goal is to identify the more important developments and key them to the casebook before each new school year begins. The authors can also be reached by email, via stephanie.bornstein@lls.edu.

A final word about the editing of excerpted material: All omissions are indicated by ellipses or brackets, except that citations (including parentheticals), footnotes, and internal cross-references are deleted with no indication. Footnotes in extract retain their original numbers, while those added by the authors are indicated by asterisks and daggers.

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