## TABLE OF CONTENTS

INTR	ODUCTION	
I.	HOW TO USE THIS BOOK	1
	A. LEGEND FOR CASE CITATIONS	
	B. TERMS OF REFERENCE	
II.	SUMMARY OF RECENT TRENDS IN THE LAW	
	A. THE ADA AMENDMENTS	
	B. ABUSE OF THE EEO PROCESS	3
	C. AGE DISCRIMINATION	3
	D. ATTORNEY FEES	
	E. CLASS ACTIONS	4
	F. COMPENSATORY DAMAGES	4
	G. DISABILITY DISCRIMINATION	6
	H. EQUAL PAY ACT	8
	I. EVIDENCE	
	J. HARASSMENT (INCLUDING SEXUAL HARASSMENT)	9
	K. INDEPENDENT CONTRACTORS	
	L. LEGITIMATE NONDISCRIMINATORY REASONS	10
	M. MIXED MOTIVE CASES	
	N. PROCEDURES	
	O. RELIGIOUS ACCOMMODATION	11
	P. REMEDIES	11
	Q. RETALIATION	12
	R. SANCTIONS	
	S. SETTLEMENT AGREEMENTS	13
	T. SEX DISCRIMINATION	
	U. SUMMARY JUDGMENT	13
	V. TIMELINESS	14
AFFI	RMATIVE ACTION	17
AGE	DISCRIMINATION	
l.	PROOF OF AGE DISCRIMINATION	19
	A. IN GENERAL	19
	B. AGE DIFFERENCE EVIDENCE	
	C. DIRECT EVIDENCE OF AGE DISCRIMINATION	21
	D. DISPARATE IMPACT	21
	E. LIQUIDATED DAMAGES	22
	F. TAX CONSEQUENCES OF A LUMP SUM PAYMENT	
II.	DISCRIMINATION WITHIN THE PROTECTED AGE GROUP—PREFERENCE FOR OLDER EMPLOYEES OF	
	EMPLOYEES WITHIN THE PROTECTED AGE GROUP	
III.	DISMISSALS	
IV.	OLDER WORKERS BENEFIT PROTECTION ACT (OWBPA)	
	A. ADEA REQUIREMENTS MET	
	B. ADEA VIOLATED, REQUIREMENT NOT MET	
	C. ADEA VIOLATION, EFFECT UPON OTHER BASES OF DISCRIMINATION	
V.	MIXED MOTIVE AGE CASES	
VI.	THE "SAME ACTOR" INFERENCE	
VII.	LAWSUIT IN FEDERAL DISTRICT COURT	
VIII.	NONSELECTION AGE CASES	25
<b>ALTE</b>	RNATIVE DISPUTE RESOLUTION	27
ATTO	PRNEY FEES	29

l.	WHO IS AN ATTORNEY?	
II.	PREVAILING PARTY	
III.	HOURS CLAIMED	
IV.	RATE CLAIMED	
V.	DOCUMENTATION OF CLAIMS	
VI.	STANDARD FOR PAYMENTREDUCTIONS (LACK OF SUCCESS AND ACROSS-THE-BOARD) UPHELD OR REVERSED	
VII.	·	
VIII.	FEE ENHANCEMENT	
IX.	ATTORNEY FEE AWARD UNWARRANTEDATTORNEY FEES AS SANCTIONS	
X.	OFFERS OF RESOLUTION/OFFER OF JUDGMENT	
XI. XII.	AGE PLUS OTHER BASES OF DISCRIMINATION	
XII. XIII.	NO FEES FOR PURSUIT OF A CRIMINAL ACTION AGAINST THE ALLEGED HARASSER	
XIII. XIV.	ATTORNEY CANNOT UNILATERALLY FILE AN APPEAL WITH THE COMMISSION	
XIV. XV.	NEED FOR TWO ATTORNEYS	
XVI.	TAXATION ISSUES	
XVII.	AUTHORITY TO AWARD FEES FOR COURT OR MSPB WORK	
XVIII.	OTHER	
CI A	SS ACTIONS	53
l. 	CLASS CERTIFIED	
II. 	CLASS NOT CERTIFIED	
III.	PROVISIONAL CERTIFICATION OF A CLASS	
IV.	CLASS DECERTIFIED	
V.	FAILURE TO PROVE CLASS CLAIMSDISABILITY HOSTILE ENVIRONMENT CLASS CLAIM	
VI. VII.	NOTICE TO CLASS MEMBERS	
VII. VIII.	NO DISMISSAL FOR FAILURE TO STATE A CLAIM	
IX.	SETTLEMENT OF CLASS ACTIONS	
Χ.	OTHER	
COM I. II.	UP TO \$5,000         \$5,001 TO \$10,000	65
III.	\$10,001 TO \$50,000	82
IV.	\$50,001 TO \$100,000	101
V.	OVER \$100,000	101
VI.		
v 1.	COMPENSATORY DAMAGES DENIED	110
VII.	EXCLUSIONS AND AVAILABILITY	110 116 118
	EXCLUSIONS AND AVAILABILITYCOMPENSATORY DAMAGES: MOOTNESS	110 116 118
VII. VIII. IX.	EXCLUSIONS AND AVAILABILITYCOMPENSATORY DAMAGES: MOOTNESS	110 116 118 119
VII. VIII. IX. X.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES	110 116 118 119 119
VII. VIII. IX. X. XI.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES  LARGE AWARDS WITHOUT MEDICAL EVIDENCE OF HARM	110 116 118 119 119 120
VII. VIII. IX. X. XI. XII.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES  LARGE AWARDS WITHOUT MEDICAL EVIDENCE OF HARM  LOSS OF EARNING CAPACITY	110 116 118 119 120 120
VII. VIII. IX. X. XI. XII.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES  LARGE AWARDS WITHOUT MEDICAL EVIDENCE OF HARM  LOSS OF EARNING CAPACITY  "GOOD FAITH" DISABILITY EXCLUSION	110 116 118 119 120 120 120
VII. VIII. IX. X. XI. XII. XIII. XIV.	EXCLUSIONS AND AVAILABILITY	110 116 118 119 120 120 120 122
VII. VIII. IX. X. XI. XII. XIII. XIV.	EXCLUSIONS AND AVAILABILITY	110116118119120120120120124
VII. VIII. IX. X. XI. XII. XIII. XIV. XV.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS	110116118119120120122124124
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES  LARGE AWARDS WITHOUT MEDICAL EVIDENCE OF HARM  LOSS OF EARNING CAPACITY  "GOOD FAITH" DISABILITY EXCLUSION  ADEQUACY OF CLAIM  DE NOVO COURT REVIEW OF AMOUNT  REDUCTION OF DAMAGES AS A SANCTION  OTHER	110116118119120120122124124
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI.	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS	110116118119120120120124124
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS  NO CLAIM FILED FOR COMPENSATORY DAMAGES  FUTURE PECUNIARY DAMAGES  LARGE AWARDS WITHOUT MEDICAL EVIDENCE OF HARM  LOSS OF EARNING CAPACITY  "GOOD FAITH" DISABILITY EXCLUSION  ADEQUACY OF CLAIM  DE NOVO COURT REVIEW OF AMOUNT  REDUCTION OF DAMAGES AS A SANCTION  OTHER	110116118119120120122124124124124
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY	110116118119120120122124124124124127
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY	110116118119120120122124124124127127
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY	110116118119120120122124124124127133
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY  COMPENSATORY DAMAGES: MOOTNESS	110116118119120120122124124124127127
VII. VIII. IX. X. XI. XII. XIII. XIV. XV. XVI. XVI	EXCLUSIONS AND AVAILABILITY	110116118119120120122124124124127127

	2.	Seeking to Assure the Broader Reinterpretation of the "Substantially Limits" Language	
	3.	Expanding the Definition of "Major Life Activities"	
	4.	Changes to the "Regarded as" Prong	135
	5.	Other Changes	136
	6.	Will the ADA Amendments Act Apply to Cases Based on Facts That Occurred Prior	
		to January 1, 2009?	136
B.	SUBS	TANTIAL IMPAIRMENT	
C.		PR LIFE ACTIVITIES	
٠.	1.	Concentration	
	2.	Eating	
	3.	Lifting	
	4.	Interacting With Others	
	5.	Performing Manual Tasks	
	6.	Reading	
	7.	Reproduction/Sexual Relations	
	7. 8.	Seeing	
	9.	Sleeping	
	9. 10.	Speaking	
		Walking	
	11.	3	
_	12.	Working	
D.		EIVED OR REGARDED AS HAVING A DISABILITY	
	1.	The ADA Amendments Act Of 2008	
_	2.	Cases	
E.		RD OF A DISABILITY	
F.	EXCLU	JSIONS FROM THE DEFINITION OF AN INDIVIDUAL WITH A DISABILITY	
	1.	The Illegal Use of Drugs Exclusion	
G.		CIES NOT REQUIRED TO PROVIDE A PERSONAL USE ACCOMMODATION	
H.		INDIVIDUAL REQUIRED TO GET TREATMENT THAT WOULD ELIMINATE HIS OR HER DISABILITY?	
l.		ORARY DISABILITIES	
J.	SPECI	FIC DISABILITIES	155
	1.	AIDS/HIV	155
	2.	Alcoholism	156
	3.	Allergic Reaction	156
	4.	Arthritis	156
	5.	Asthma/Ability to Breath	157
	6.	Back Injury	157
	7.	Bipolar Disorder	159
	8.	Carpal Tunnel Syndrome	
	9.	Depression and Anxiety	
	10.	Diabetes	
	11.	Drug & Alcohol Disabilities—Former Illegal Drug Users	
	12.	Epilepsy/Seizure Disorder	
	13.	Hearing Impairments	
	14.	Infertility	
	15.	Knee Injury	
	16.	Lupus	
	17.	Marfan's Syndrome	
	18.	Migraine Headaches	
	19.	Monocular Vision	
	20.	Multiple Sclerosis	
	20.	Post Traumatic Stress Disorder	
	21.		
	22. 23.	Processing Drugs	
		Prescription Drugs	
	24.	Sarcoidosis	
	25.	Seeing	
	26.	Sensitivity to Fragrance	
	27.	Sinusitis	
	28.	Sleep Apnea	
	29.	Speaking	
	30.	Stress Related Disabilities	174

		31.	Tourette Syndrome	174
		32.	Miscellaneous	175
III.	QUAI	IFIED IN	DIVIDUAL WITH A DISABILITY	175
	A.		NERAL	
	В.		IFICATION STANDARDS	
IV.		-	ACCOMMODATION	
	Α.		NERAL	
	В.		FIC DISABILITIES	
	υ.	1	Alcoholism	
		2.	Arthritis	
		3.	Asthma	
		4.	Back Injuries	
		5.	Carpal Tunnel Syndrome	
		5. 6.	Diabetes	
		7.	Difficulties Standing	
		7. 8.	Fragrance Sensitivity	
		o. 9.	Hearing Impairments	
		9. 10.	Lupus	
		10.	·	
			Mobility Impairments	
		12.	Psychiatric Impairments	
		13.	Seeing Impairments	
		14.	Sleep Disorders	
	_	15.	Miscellaneous Impairments	
	C.	REQU	ESTING ACCOMMODATION	
		I.	No Request for an Accommodation	
	D.	DELA	Y IN PROVIDING REASONABLE ACCOMMODATION	
	_	1.	Delay To Determine Medical Condition	
	Ε.		MPLOYEE IS NOT ENTITLED TO THE ACCOMMODATION OF HIS OR HER CHOICE	
	F.		JE HARDSHIP	
	G.		IS BETWEEN DISABILITY AND REQUESTED ACCOMMODATION	
	Н.		NTERACTIVE PROCESS	
	l.		FIC ACCOMMODATIONS	
		1.	Absences—Lengthy or Indefinite Absence or Arriving at Work Whenever Complainant Is Able	
		2.	A Chair—Ergonomic or Other	
		3.	Job Coach	
		4.	Light Duty/Limited Duty	
		5.	Modified Job Assignments	
		6.	No Contact With a Supervisor or Employee	
		7.	Parking Space	
		8.	Providing a New Supervisor	
		9.	Plastic Shield	
		10.	Reader for Individuals With Sight Impairments	
		11.	Reassignment	
		12.	Modified Work Schedule	
		13.	Smoke Free Work Environment	
		14.	Work at Home	
		15.	Working at a Different Agency Location	
		16.	Workstation Close to a Restroom	
	J.		IRE TO ACCOMMODATE AS A CONSTRUCTIVE DISCHARGE	215
	K.	G00[	D FAITH EFFORTS AT REASONABLE ACCOMMODATION AS A DEFENSE TO PAYMENT	
			DMPENSATORY DAMAGES	
	L.	ADEC	QUACY OF AGENCY INVESTIGATION OF REASONABLE ACCOMMODATION	218
	M.		ORARY REASONABLE ACCOMMODATIONS	218
	N.	EXEC	UTIVE ORDER AND EEOC GUIDANCE CONCERNING REQUIRED REASONABLE ACCOMMODATION	
			EDURES	
V.	DISPA	ARATE TR	EATMENT DISABILITY DISCRIMINATION	222
VI.	ASSC	CIATION	WITH PERSONS WITH A DISABILITY	227
VII.	PERF		E AND CONDUCT STANDARDS	
	A.		QUAL EMPLOYMENT OPPORTUNITY COMMISSION GUIDANCE	
	B.	THE N	AISCONDUCT EXCLUSION	228

VIII.	DIRECT THREAT AND RISK OF HARM DEFENSES	
IX.	DISABILITY-RELATED INQUIRIES/INQUIRY DISCRIMINATION	239
X.	REQUESTS FOR MEDICAL INFROMATION AND RECORDS	245
XI.	CONFIDENTIALITY OF MEDICAL RECORDS	
XII.	MEDICAL AND FITNESS-FOR-DUTY EXAMINATIONS	250
XIII.	CLASS ACTION CLAIMS	
XIV.	DISABILITY HARASSMENT CLAIMS	
XV.	NONSELECTION BECAUSE OF DISABILITY CLAIMS	
XVI.	PROMOTING THE EMPLOYMENT OF INDIVIDUAL WITH DISABILITIES	
XVII.	RELATIONSHIP OF THE REHABILITATION ACT/ADA TO OWCP (OFFICE OF WORKERS' COMPENSATION	
	A. COLLATERAL ATTACK ON THE OWCP PROCESS	
XVIII.	RELATIONSHIP OF REHABILITATION ACT/ADA TO UNION NEGOTIATED AGREEMENTS	
XIX.	RETALIATION FOR FILING A DISABILITY EEO COMPLAINT	
XX.	TRAINING AS PART OF A REMEDY FOR DISABILITY DISCRIMINATION	
DISC	CIPLINE	263
DISF	PARATE IMPACT	269
EEO	INVESTIGATIONS	271
l.	INADEQUATE INVESTIGATIONS	
 II.	RIGHT OF UNION TO BE REPRESENTED	
EFΩ	C APPELLATE REVIEW	
	REVIEW OF AJ DECISIONS	
l.	REVIEW OF AJ DECISIONS	
II.	REVIEW OF AGENCY FINAL ORDER	
III.	REVIEW OF OFO DECISIONS (I.E., RECONSIDERATION)	
IV. V.	REVIEW OF OFO DECISIONS (I.E., RECONSIDERATION)	276 276
v. VI.	REVIEW OF PREHEARING AND HEARING RULINGS	
VII.	INTERLOCUTORY APPEALS	
	AL PAY ACT	
EVIL	PENCE	
l.	COMMISSION DETERMINATION IN COURT	283
II.	CREDIBILITY RULINGS	283
III.	DIRECT EVIDENCE	
IV.	AGE DIFFERENCE EVIDENCE	
V.	RACE OR SEX PLUS	
VI.	MIXED-MOTIVE	
VII.	CONTINUING VIOLATIONS—BACKGROUND EVIDENCE	
VIII.	THE SAME ACTOR INFERENCE	
IX.	MEDICAL RECORDS	
Χ.	PRIVILEGE	
XI.	"CAT'S PAW" OR "RUBBER STAMP" EVIDENCE	
XII.	"ME TOO" EVIDENCE	
XIII.	TEMPORARY AND PROBATIONARY EMPLOYEES AS SIMILARLY SITUATED COMPARATORS	
XIV.	HEIGHTENED BURDEN IN "REVERSE DISCRIMINATION" CASES	
XV.	STATISTICAL EVIDENCE	
XVI. XVII.	SETTLEMENT AGREEMENTSOTHER	
	ERNMENT EMPLOYEES RIGHTS ACT OF 1991	
HAR	ASSMENT (NOT SEXUAL)	297
	ASSMENT (NOT SEXUAL)	
l.	AGE HARASSMENT CLAIMS	297
	AGE HARASSMENT CLAIMSDISABILITY HARASSMENT CLAIMS	297 297

IV.	RACE HARASSMENT CLAIMS	302
V.	RELIGIOUS HARASSMENT CLAIMS	307
VI.	REPRISAL HARASSMENT CLAIMS	308
VII.	SEX (GENDER) HARASSMENT CLAIMS	309
VIII.	SAME SEX HARASSMENT	
IX.	PROOF OF DISCRIMINATION-SUFFICIENTLY SEVERE OR PERVASIVE	313
Χ.	AFFIRMATIVE DEFENSES	
XI.	FRAGMENTATION OF HARASSMENT CLAIMS	318
	A. REMEDY FOR IMPROPER FRAGMENTATION	321
XII.	SUFFICIENT TO STATE A CLAIM	
XIII.	PROOF—BASED UPON A PROTECTED CLASS?	
HEA	RINGS (EEOC) AND AJ AUTHORITY	325
l.	REQUEST FOR HEARING	
II.	SANCTIONS	
	A. DEFAULT JUDGMENTS	
	B. DISMISSAL OF COMPLAINT	
	C. ADVERSE INFERENCE	
	D. MONEY SANCTIONS	
	E. SUSPENSION OR OTHER ACTIONS AGAINST REPRESENTATIVES	
	F. EXCLUSION OF EVIDENCE	
	G. DENIAL OF HEARING	
III.	DISMISSAL WITHOUT PREJUDICE	
IV.	DISMISSALS FOR FAILURE TO STATE A CLAIM	
V.	DECISIONS WITHOUT A HEARING (SUMMARY JUDGMENT)	
VI.	TELEPHONE TESTIMONY	
VII.	VIDEO HEARINGS	
VIII.	BIAS CLAIMS	
IX.	AGENCY FAILURE TO PROCESS	
Χ.	REQUESTS FOR RECUSAL	
XI.	AUTHORITY TO ADD A BASIS OF DISCRIMINATION	
XII.	REFRAMING OR INCLUDING ADDITIONAL ISSUES	
XIII.	CREDIBILITY DETERMINATIONS	
XIV.	WITNESSES	
XV.	BIFURCATED HEARINGS	
XVI.	CLASS ACTIONS	
XVII.	FAILURE TO PROVIDE INTERIM RELIEF	344
IND	EPENDENT CONTRACTORS	345
LAB	OR-RELATIONS AND EEO	353
	IS DECLIFATIONS AND SUIDANCE	255
	S, REGULATIONS, AND GUIDANCE	
l. 	THE LILLY LEDBETTER FAIR PAY ACT OF 2009	
II.	THE ADA AMENDMENTS ACT OF 2008	355
	A. REJECTION OF THE "REASONING" AND "DEMANDING STANDARDS" OF SUPREME COURT	
	AND LOWER COURT DECISIONS AND THE EEOC'S DISABILITY DEFINITION	
	B. SEEKING TO ASSURE THE BROADER REINTERPRETATION OF THE "SUBSTANTIALLY LIMITS" LANGUAGE	
	C. EXPANDING THE DEFINITION OF "MAJOR LIFE ACTIVITIES"	
	D. CHANGES TO THE "REGARDED AS" PRONG	
	E. OTHER CHANGES	357
III.	THE AMERICANS WITH DISABILITIES ACT: APPLYING PERFORMANCE AND CONDUCT STANDARDS	
	TO EMPLOYEES WITH DISABILITIES (OCTOBER 14, 2008)	
IV.	COMPLIANCE MANUAL, SECTION 12, RELIGIOUS DISCRIMINATION, NO. 915.033 (JULY 22, 2008)	359
V.	QUESTIONS AND ANSWERS: PROMOTING EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES IN THE FEDERAL	
	WORKFORCE (SEPTEMBER 30, 2008)	359
VI.	ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING	
	RESPONSIBILITIES, NO. 915.002 (MAY 23, 2007)	360
	A. TOPICS	
	B. DISPARATE TREATMENT	360

	C. PREGNANCY-RELATED ISSUES	
	D. DISABILITY, HOSTILE WORK ENVIRONMENT AND REPRISAL	360
VII.	INSTRUCTIONS TO FEDERAL AGENCIES FOR EQUAL EMPLOYMENT OPPORTUNITY	
	MANAGEMENT DIRECTIVE 715 (EEO MD-715) (JULY 20, 2004)	361
VIII.	AMERICAN JOBS CREATION ACT OF 2004, 118 STAT. 1418 (PUBLIC LAW 108-357)	362
LEG	ITIMATE NONDISCRIMINATORY REASONS (ADEQUACY OF)	363
MIX	(ED CASES	367
l. 	MIXED CASE OR NOT	
II.	DISMISSAL	
III.	SPECIAL PANEL	
IV.	UNMIXED BY MSPB DECISION	
V.	EEOC'S REVIEW OF MSPB DECISION	
VI. VII.	IMPACT OF MSPB DECISION	
VIII.	INEXTRICABLY INTERTWINED	
IX.	RIGHT TO HEARING AT MSPB ON EEO ISSUES	
X.	HOLDING EEO COMPLAINT IN ABEYANCE	
XI.	NOTIFICATION OF MIXED CASE PROCESS	
XII.	COURT REVIEW	
XIII.	APPEAL FROM GRIEVANCE-ARBITRATION	
XIV.	MSPB MIXED CASE DISCRIMINATION FINDINGS	
NAT	TIONAL ORIGIN DISCRIMINATION	375
l.	HOLIDAYS	375
II.	DISPARATE TREATMENT	
III.	HOSTILE ENVIRONMENT—NATIONAL ORIGIN—STRAY COMMENT	
IV.	FOREIGN ACCENT	376
V.	"SPEAK ENGLISH ONLY" RULES	
VI.	DISCIPLINE CLAIMS	378
VII.	NONSELECTION	378
NON	NSELECTION CLAIMS	
l.	CLAIMS OF NONSELECTION BECAUSE OF AGE	
II.	CLAIMS OF NONSELECTION BECAUSE OF DISABILITY	
III.	CLAIMS OF NONSELECTION BECAUSE OF NATIONAL ORIGIN	
IV.	CLAIMS OF NONSELECTION BECAUSE OF RACE	
V.	CLAIMS OF NONSELECTION BECAUSE OF REPRISAL	
VI.	CLAIMS OF NONSELECTION BECAUSE OF SEX	
VII.	MULTIPLE BASES	
VIII.	RACE PLUS	
IX.	ACCENT OR LANGUAGE ISSUES	
X. XI.	FAILURE OF AGENCY TO ARTICULATE AN ADEQUATE REASON	
XII.	"CLEARLY BETTER QUALIFIED" NOT "CLEARLY BETTER QUALIFIED"	
XIII.	REQUIRED RETENTION OF RECORDS IN SELECTION CASES	
XIV.	DISABILITY INQUIRIES DURING SELECTION PROCESS	
XV.	DISCRIMINATION BUT NO POSITION RELIEF	
XVI.	OTHER	
OFF	FICIAL TIME	405
PER	RFORMANCE-RELATED CASES	407
	OCEDURES	
PRO I.	DISMISSALS OF COMPLAINTS	
1.	A. FAILURE TO STATE A CLAIM/GENERALLY (1614.107(A)(1))	
	B. PREVIOUSLY FILED CLAIM (1614.107(A)(1)	
	C FAILURETO STATE A CLAIM/HOSTILE ENVIRONMENT (1614 107(A)(1))	

	D.	FAILURE TO STATE A CLAIM/REPRISAL (1614.107(A)(1))	431
	E.	FAILURE TO STATE A CLAIM/DRESS AND APPEARANCE ISSUES (1614.107(A)(1))	
	F.	FAILURE TO STATE A CLAIM/NO AVAILABLE REMEDY OR NOT WITHIN PURVIEW (1614.107(A)(1))	
	G.	FAILURE TO STATE A CLAIM/COLLATERAL ATTACK (1614.107(A)(1))	
	H.	MOOT AND PREMATURE COMPLAINTS (1614.107(A)(5))	
	l.	PREMATURE/PRELIMINARY STEP COMPLAINTS (1614.107(A)(5))	443
	J.	FAILURE TO LOCATE COMPLAINANT (1614.107(A)(6))	
	K.	PENDING CIVIL ACTION (1614.107(A)(3))	445
	L.	ABUSE OF PROCESS (1614.107(A)(9))	446
	M.	ELECTION OF REMEDIES (1614.107(A)(4))	449
	N.	FAILURE TO PROSECUTE (1614.107(A)(7))	451
	O.	SPIN-OFF COMPLAINTS (1614.107(A)(8))	453
II.	LIKE O	R RELATED CLAIMS	454
III.		MENTATION	
IV.		DLIDATION	
V.		ER OF AGENCY PARTIES	
VI.		DMENT OF COMPLAINT	
VII.		NNG	
VIII.		DUNSELOR/EEO OFFICE ERROR	
IX.		SENTATIVE/ATTORNEY ERROR	
X.		CY ERROR	
XI.		AL TIME ISSUES	
XII.		TTO WITHDRAW COMPLAINT	
XIII.		MMISSION JURISDICTION FOR SOME OFF-DUTY CONDUCT BY COWORKER	
XIV.		OG ATE MY COMPLAINT FORMS	
XV.		PER SERVICE OF HEARING REQUEST	
XVI.		HANCE AGREEMENT WAIVERS	
XVII.	OTHER		461
RAC	<b>E DISC</b>	RIMINATION	465
l.	DISMI	SSAL	465
ı. II.		ELECTION	
 III.		SSMENT/HOSTILE WORK ENVIRONMENT	
IV.		ACTION	
V.		RATE TREATMENT/ACCOMMODATION	
VI.		L OF OVERTIME	
VII.		LINE	
VIII.		NG AND PROMOTIONAL OPPORTUNITIES	
IX.		IGNMENT	
X.	SETTLI	EMENT	473
XI.	RACIA	L PROFILING	473
XII.	DISPA	RATE IMPACT	473
DELI	CIOUS	DISCRIMINATION	175
l.		SSAL	
II.		ERENCE OR RELIGIOUS OBLIGATION?/REQUIRED BY BELIEFS	
III.		OF OBSERVANCE	
IV.		OUS DRESS	
V.		VANCE AT WORK	
VI.		LE WORK ENVIRONMENT	
VII.		LINE	
VIII.	MIXED	CASES	481
REM	<b>EDIES</b>	AND OTHER RELIEF	483
l.	REINST	FATEMENT	483
II.		MENT IN POSITION SOUGHT	
III.	OFFER	OF THE POSITION DENIED OR A SUBSTANTIALLY EQUIVALENT POSITION	485
IV.		ACTIVE PROMOTION, PERFORMANCE OR OTHER AWARDS	
V.		PAY AWARDS	
VI.	BACK	PAY AWARDS/MITIGATION	488

VII.	TRAINING AND OTHER RELIEF	
VIII.	ADJUSTMENT FOR INCREASED TAXES	
IX.	DAMAGES PAYABLE TO THE ESTATE	
Χ.	ALTERING EMPLOYMENT PRACTICES	
XI.	DISCRIMINATION BUT NO POSITION RELIEF	
XII.	OTHER	493
REPF	RESENTATION	495
l.	SANCTIONS/SUSPENSION	
II.	CONFLICT OF INTEREST	
III.	TIMELINESS/RESPONSIBILITY FOR	
IV.	NONATTORNEY REPRESENTATIVES	
V.	FILING COMPLAINTS	
REP	RISAL/RETALIATION	
l.	PRIMA FACIE CASE/NEXUS	
II.	NO KNOWLEDGE OF PROTECTED ACTIVITY	
III.	OPPOSITION REPRISAL	
IV.	PARTICIPATION REPRISAL	
V.	NONSELECTION REPRISAL	
VI.	FITNESS FOR DUTY AS REPRISAL	
VII.	DISCIPLINE OR PERFORMANCE REASONS AS REPRISAL	
VIII.	AWARDS AS REPRISAL	
IX.	JOB REFERENCES AS REPRISAL	
Χ.	REASSIGNMENT AS REPRISAL	
XI.	LEAVE-RELATED REASON AS REPRISAL	
XII.	PROTECTED ACTIVITY	
XIII.	SUMMARY JUDGMENT	
XIV.	MIXED MOTIVE	
XV.	REASONABLY LIKELY TO DETER/DIRECT EVIDENCE/PER SE	
XVI.	DISABILITY RETALIATION	
XVII.	ADEA RETALIATION	
XVIII.	REPRISAL HARASSMENT CLAIMS	
XIX.	SEXUAL ORIENTATIONCLASS ACTION REPRISAL CLAIMS	
XX.	CLAIMS BY REPRESENTATIVES	
XXI.	CREDIBILITY-BASED FINDINGS	
XXII. XXIII.	EVIDENCE/CAT'S PAW	
XXIV.		
SECU	URITY CLEARANCES AND STATE SECRETS	525
	TLEMENT	
<b>3611</b>  .	COURT JURISDICTION IN BREACH CLAIMS	
ı. II.	GENERAL PRINCIPLESGENERAL PRINCIPLES	
11.	A. SETTLEMENT AS A CONTRACT	
	B. ADEQUACY OF CONSIDERATION	
	C. "MEETING OF THE MINDS"	
	D. RATIFICATION OF AN AGREEMENT	
	E. TYPICALLY LIMITING INTERPRETATION TO FOUR CORNERS	
III.	DISMISSALS	
IV.	AGENCY BURDEN TO PROVIDE EVIDENCE OF COMPLIANCE	
V.	SPECIFIC PROVISIONS	
	A. PRIORITY CONSIDERATION	
	B. CONFIDENTIALITY	
	C. THE OLDER WORKERS' BENEFIT PROTECTION ACT	
	D. EXPUNGEMENT OF RECORDS	
VI.	BREACH OF A SETTLEMENT AGREEMENT	
VII.	NO BREACH OF SETTLEMENT AGREEMENT	
VIII	CLAIM OF DELAY IN IMPLEMENTATION AS RREACH	

IX.	CHANGE IN CIRCUMSTANCES AS VOIDING THE AGREEMENT	546
Χ.	CLAIMS OF COERCION, MISREPRESENTATION AND MISTAKE	546
XI.	CURING AN ALLEGED BREACH	
XII.	LACHES AS A DEFENSE TO AN ALLEGATION OF BREACH	
XIII.	COMPENSATORY DAMAGES NOT AVAILABLE FOR BREACH	
XIV.	UNENFORCEABLE/UNAUTHORIZED AGREEMENTS	
XV.	LACK OF AUTHORITY FOR AGENCY TO ENFORCE A SETTLEMENT AGREEMENT	
XVI.	LACK OF EEOC AUTHORITY TO ENFORCE AN MSPB OR GRIEVANCE SETTLEMENT	
XVII.	WAIVER CLAUSES	
XVIII.	TAX CONSEQUENCES	
XIX.	CHALLENGE TO OR RELIANCE ON AN EEO SETTLEMENT IN ANOTHER CASE	
XX.	OFFERS OF FULL RELIEF	
XXI.	SUBSEQUENT ACTS OF DISCRIMINATION/REPRISAL AS SEPARATE COMPLAINTS	
XXII.	CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS	
XXIII.	ATTORNEY FEES	
XXIV.	TIMELINESS	
SEX	(GENDER) DISCRIMINATION	555
l.	PREGNANCY-RELATED DISCRIMINATION	
II.	DIRECT EVIDENCE	
III.	DISCIPLINE	
IV.	NONSELECTION	
V.	TRANSFER OR REASSIGNMENT	
VI.	BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ) CLAIMS	
VII.	GENDER STEREOTYPE CLAIMS	
VIII.	TRANSEXUAL ISSUES	
IX.	DRESS ISSUES	
Χ.	SEX PLUS	
XI.	EQUAL PAY ACT	
XII.	NO REMEDY AVAILABLE	
XIII.	SEX (GENDER) HARASSMENT CLAIMS	
XIV.	DISMISSALS	
XV.	TRAINING REMEDY	
XVI.	SEX-BASED V. SEXUAL	
XVII.		
SEX	UAL HARASSMENT	
l.	DISMISSALS	567
II.	UNWELCOMENESS	
III.	SEVERE OR PERVASIVE	570
IV.	BECAUSE OF SEX	
V.	SEXUAL IN NATURE	
VI.	AFFIRMATIVE DEFENSE: COWORKER HARASSMENT	
VII.	AFFIRMATIVE DEFENSE: SUPERVISOR HARASSMENT	
VIII.	DEFENSE NOT AVAILABLE/TANGIBLE EMPLOYMENT ACTION	
IX.	CLAIMS OF SEXUAL FAVORITISM	
Χ.	SAME SEX HARASSMENT	
XI.	EEO COMPLAINTS BY INDIVIDUALS ACCUSED OF SEXUAL HARASSMENT (OR BECAUSE OF SEXUAL HAR	
	INVESTIGATIONS)	
XII.	CREDIBILITY ISSUES	
SEX	UAL ORIENTATION	591
SUM	MMARY JUDGMENT	593
l.	THE EEOC STANDARD	
ı. II.	IMPROPERLY MAKING CREDIBILITY DETERMINATIONS AND RESOLVING CONFLICTS	
III.	GRANTING SUMMARY JUDGMENT TO THE NON-MOVING PARTY	
IV.	IMPROPERLY FRAGMENTING CLAIMS	
V.	DECISION ON THE RECORD	
VI.	CASES BY BASIS	

	A.	DISABILITY	598
	B.	SEX	602
	C.	RACE CASES	603
	D.	NATIONAL ORIGIN	603
	E.	RETALIATION	604
	F.	AGE CASES	605
	G.	EQUAL PAY ACT	606
	H.	RELIGION	606
VII.	CASE	S BY ISSUE	606
	A.	TRANSFER	
	B.	TERMINATION OF APPOINTMENT	
	C.	DISCIPLINE	
	D.	HARASSMENT	
	E.	NONSELECTION	
	F.	ASSIGNMENT OF WORK	610
VIII.	AGE	CASES	610
TIME	ELINE	SS	611
l.		DEN OF PROOF	
II.	STAR	T OF TIME PERIOD	612
III.	ACTU	JAL OR CONSTRUCTIVE KNOWLEDGE	614
IV.	CLAI	MS OF MISINFORMATION	617
V.	"REA	SONABLE SUSPICION" OF DISCRIMINATION	618
VI.	CON	TACT BUT NO INTENT TO FILE	62
VII.	PLAC	E OR METHOD OF CONTACTING	622
VIII.	ATTC	PRNEY/REPRESENTATIVE NOT PROPERLY SERVED	623
IX.		EASONABLE DELAY (AND LACHES)/DUE DILIGENCE	
Χ.	CLAI	MS OF INCAPACITATION	624
XI.	SOM	EONE IN THE HOUSEHOLD AT FAULT	626
XII.	ACTI	VE MILITARY DUTY	626
XIII.	FEAR	OF REPRISAL TO JUSTIFY AN UNTIMELY EEO COMPLAINT	626
XIV.		TINUING OR RECURRING VIOLATIONS/LIKE OR RELATED	
XV.	ATTE	MPT TO RESOLVE THROUGH MANAGEMENT DOES NOT TOLL TIME PERIOD	634
XVI.	DENI	AL OF OFFICIAL TIME NOT AN EXCUSE	635
XVII.	MAIL	ING PRESUMPTION	635
XVIII.	EQUI	TABLE TOLLING	636
XIV.	OTH	ER	636
ΔΡΡΙ	FNDI	X	
		IDED TABLE OF CONTENTS	
Т	REND	S IN THE LAW 2003-2007	643
	Α.	AFFIRMATIVE ACTION	
	В.	AGE DISCRIMINATION	
	C.	ALTERNATIVE DISPUTE RESOLUTION	
	D.	ATTORNEY FEES	
	E.	CLASS ACTIONS	
	F.	COMPENSATORY DAMAGES	
	G.	CONSTRUCTIVE DISCHARGE	
	Н.	DISABILITY DISCRIMINATION	
	l.	DISPARATE IMPACT	
	J.	EEO INVESTIGATIONS	
	K.	EQUAL PAY ACT	
	L.	EVIDENCE	
	M.	HARASSMENT (NOT SEXUAL)	
	N.	HEARINGS (EEOC) AND AJ AUTHORITY	
	O.	HOSTILE WORK ENVIRONMENT	660
	P.	INDEPENDENT CONTRACTORS	
	Q.	LABOR-RELATED ISSUES	662

R.	MISCELLANEOUS	662		
S.	MIXED CASES	663		
T.	NATIONAL ORIGIN DISCRIMINATION	663		
U.	NONSELECTION CLAIMS	663		
V.	OFFICIAL TIME	664		
W.	PROCEDURES			
Х.	RACE	666		
Y.	REGULATIONS/GUIDANCE	666		
Z.	RELIGIOUS DISCRIMINATION	667		
AA.	REMEDIES AND OTHER RELIEF			
BB.	REPRISAL/RETALIATION	669		
CC.	SANCTIONS	670		
DD.	SETTLEMENT	671		
EE.	SEX (GENDER) DISCRIMINATION	672		
FF.	SEXUAL HARASSMENT	672		
GG.	SEXUAL ORIENTATION	673		
HH.	SUMMARY JUDGMENT	673		
II.	TIMELINESS			
TABLE OF CASES677				