

PREFACE

I am proud to be the co-author and lead editor of this Fifth Edition of *Employment Discrimination Law*, after serving as Editor-in-Chief of the Fourth Edition published in 2007. Although still a massive project, we benefitted in preparing this Fifth Edition from a streamlined research and supplementation process that we designed and implemented upon the completion of the Fourth Edition. As a result of this streamlining, we are able to deliver this new edition just over five years after the publication of the Fourth Edition, after approximately two and one-half years of concentrated and coordinated work from the team described below. This compares quite favorably with the five long years that went into the creation of the previous edition.

Over these 30 months of dedicated work, I have been privileged to coordinate the efforts of many talented members of the labor and employment law community. Through the combined work of attorneys from the three wings of the Equal Employment Opportunity Law Committee of the American Bar Association's Labor and Employment Law Section, representing the plaintiff/public, union, and defense employment bars, we have assembled this two-volume treatise covering virtually all of the federal laws governing claims of discrimination arising out of the employment relationship. These attorneys, each of whom is identified individually in the Board of Editors listing, have generously donated their time, efforts, and professional talents to serve as chapter chairs, contributors, and editors of this Fifth Edition. They are due our sincere thanks because they have helped to create a treatise that provides a balanced and comprehensive treatment of the law in this extraordinarily broad and complex field.

Some individuals deserve an even higher level of recognition for their immense contributions. Foremost among these are the eight Executive Editors, each of whom has expended many hundreds of hours on this project.

Representing the management/employer perspective, three of my partners at Paul Hastings LLP—**Ken Gage**, **Kathy Huibonhoa**, and **Neal Mollen**—undertook the initial task of creating the first draft of nearly all of the 44 chapters. Starting with the content in each chapter from the Fourth Edition, they added material from the published annual supplements to that edition, along with the more recent research results compiled by the designated Chapter Update Chairs and their respective teams of contributors. Ken, Kathy, and Neal synthesized this material into a coherent whole, and along the way deleted most of the citations to district court decisions, as the editorial team had determined that for this edition we would focus almost exclusively on opinions from the Supreme Court and the federal appellate courts.¹ I then edited each of the 44 chapters so that there would be substantive, stylistic, and editorial consistency across the treatise.

Representing the plaintiff/public perspective, **Paul Mollica**, **Julia Campins**, and **Roberta Steele** performed a detailed second edit of each chapter, often adding updated case citations (complete with descriptive parentheticals) to flesh out substantive areas that had not been addressed adequately in the initial drafts. Paul, Julia, and Roberta focused particularly on helping ensure that the chapters reflected the editorial balance we sought between the different perspectives of the EEO Committee’s three constituencies. Further, after I had incorporated their “plaintiffs’ edit” into each draft chapter, Paul, Julia, and Roberta conducted a second-pass review, further ensuring editorial balance.

Because of the enormity of the task and the tight publication window we sought to achieve, we enlisted the assistance of two additional Executive Editors, **Deb Millenson** and **Laurie Leader**, each of whom had served as Executive Editors of the recent annual supplements to the Fourth Edition. Deb and Laurie were my “pressure release valve”; together they handled the original edit responsibility

¹As noted in Chapter 1, the cutoff date for the systematic review of appellate court cases was June 30, 2011. Moreover, we included coverage of all pertinent decisions by the U.S. Supreme Court handed down on or before June 30, 2012. In addition, on an ad hoc basis we incorporated references to significant appellate decisions through the date of our final edit of each chapter; the final edit dates for the various chapters ranged from May to September 2012.

on several chapters, helped me with the task of consolidating the plaintiff and union edits on several other chapters, and also assisted with reviewing and editing page proofs.

Representing the union perspective, **Richard Rosenblatt** and **Carlos Bermudez** coordinated the team of union reviewers for selected chapters where they determined that union practitioners may have a point of view distinctly different from the perspective of lawyers who routinely practice on the plaintiff/public side. Those union reviewers are identified on a chapter-by-chapter basis in the Board of Editors listing.

I admire each of these outstanding professionals, and am very thankful for the support that their respective firms provided while they volunteered so much of their time to this project. Together, I believe that we have created a treatise that minimizes advocacy and, as much as possible, sets forth a balanced and neutral exposition of the law. Thus, what you read here does not represent the individual views of any particular author, chapter chair, contributor, or editor, but rather constitutes what we believe to be an informed description of the present state of the substantive law.

In addition to these outstanding efforts by the Executive Editors and Union Review Coordinators, the Fifth Edition could not have been completed without the extraordinary contributions of my law firm, Paul Hastings LLP. Those contributions have been on many levels. First and foremost, Paul Hastings has supported and encouraged me in devoting over a thousand hours of my time to this major undertaking. In addition, my colleagues in the firm's employment law department have provided a wide range of assistance, over and above the key role played by Kathy, Ken, and Neal as Primary Chapter Editors. Many of our employment lawyers, in offices throughout the nation, served as chapter chairs or contributors, or as page proof reviewers, for which they are recognized individually in the Board of Editors listing. Two of my Atlanta colleagues—Associate Editors **Erika Leonard** and **Amy Jensen**—played critically important roles that helped us get this treatise into print in a timely manner. Erika took responsibility for coordinating the chapter chairs and their teams as they went through the laborious update process, freeing me to focus on the substantive edits; she also served as the Primary Chapter Editor for two chapters and reviewed the

proofs of one of the largest chapters. Amy conducted voluminous follow-up research to augment the many footnotes in each chapter that lacked recent statutory and/or case-law support, and did further supplemental research where necessary after Paul, Julia, Roberta, and I had identified “queries” during our respective edits. Our legal researcher extraordinaire, **Scott Snipes**, cite-checked each chapter without so much as a grumble. And my assistant, **Vinette Turner**, coordinated the word processing of Scott’s cite-checking results, doing most of the work herself but also relying on the assistance of **Kathy Colt** of our Atlanta office and our firm’s centralized Data Processing Services team in Los Angeles.

We did not, of course, begin all this work in anything resembling a vacuum. **Barbara Lindemann (Schlei)** and **Paul Grossman** created the First Edition of this treatise in 1976, with far less assistance than we have had. They refined that work with their Second Edition in 1983, after which the EEO Committee undertook the task of producing periodic cumulative supplements. After the cumulative supplement to the Second Edition became quite lengthy itself, BNA Books and the EEO Committee commissioned a new Third Edition, which was published in 1996. We are all deeply indebted to Editor-in-Chief **Paul W. Cane, Jr.** and Associate Editors **Barry Goldstein** and **Patrick O. Patterson** for their outstanding work on the Third Edition. I served as the Editor-in-Chief of the Fourth Edition, which was published in 2007, with the assistance of Executive Editors **Paul Mollica**, **Linda Dardarian**, and **Marilyn Teitelbaum**, each of whom contributed greatly to the project. Many others contributed to the periodic annual and cumulative supplements to the Third and Fourth Editions. This Fifth Edition builds on the work of all of these outstanding attorneys, who are identified individually in each such predecessor edition or supplement.

Every project of this sort requires a publisher cracking the whip on deadlines and holding participants’ feet to the fire. Bloomberg BNA’s **Tim Darby** played this role very well once again, and was also intimately involved in the aforementioned restructuring of the editorial process that enabled this edition to be generated in a much tighter timeframe than its predecessors. **Anne Scott**, Senior Book Editor, directed the team at Bloomberg BNA that edited our work into the final published product.

Finally, I must thank my very patient and understanding wife, **Kelly**, who continues to question my sanity in taking on these

projects, and our three daughters, “**Summer**,” **Chelsea**, and **Kristen**, who are now all off to college or beyond. They cheerfully supported me in once again frequently forgoing alternative evening and weekend pastimes in order to get this new edition of *Employment Discrimination Law* into print.

The editorial team hopes that those who use this treatise will find that the time and efforts of our diligent team of authors and editors have been well spent, and that the Fifth Edition of *Employment Discrimination Law* makes a contribution to the field of EEO law comparable to that of its predecessor volumes.

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