

PREFACE TO FIRST EDITION

This book is intended to provide an insider's perspective on how the Equal Employment Opportunity Commission (EEOC) works and how to most effectively advance a party's interest with the EEOC. It provides an in-depth look at the EEOC's charge investigation, mediation, settlement, and litigation processes, explains where and how decisions are made, and discusses the various ways in which those decisions are influenced. The focus of this book is not primarily on substantive employment discrimination case law, but on how the agency operates, what it does, and how to negotiate the agency's framework. It is not intended to replicate the excellent treatises in the field dealing with judicial interpretations of employment discrimination statutes, but can be seen as a complement to them, in particular to *Employment Discrimination Law* and *Equal Employment Law Update*, also published by BNA Books.

This is the first book to explain the nuts and bolts of how the EEOC works, including how the EEOC is organized, how the charge-filing process works, and how investigations are prioritized and conducted. It also explains the EEOC's conciliation and litigation processes and gives sample language from actual EEOC conciliation and settlement agreements.

For plaintiff-side practitioners, the book explains the EEOC's multiple-component charge-filing practices and suggests steps that the practitioner can take to improve the charging party's chances of receiving a mediation settlement, or a thorough investigation and a finding of reasonable cause. It also provides suggestions for working with the EEOC as co-counsel in class cases and explains how to obtain access to the EEOC's internal files.

For defense-side practitioners, the book explains how to work with the EEOC during investigations and how to write better position statements. It also provides information on the EEOC's settlement practices—both in conciliation and in litigation. In addition, the book explains when and how the EEOC uses investigative subpoenas and when it litigates to enforce them, discusses the EEOC's

litigation practices and the special rules that apply to EEOC litigation, and explains how and when the EEOC and defendants rely on expert testimony. The book also explains how the EEOC exercises its authority to seek temporary injunctions and how the EEOC conducts its appellate litigation and *amicus* participation.

In addition, the book provides other useful information, such as:

- How to interact with the EEOC during the charging investigation and conciliation processes;
- How to represent respondents and charging parties in Commissioner charge investigations;
- What works in EEOC mediations;
- How the EEOC conducts and fares in litigation, including pattern-or-practice cases; and
- How the EEOC conducts settlement, including the rules, procedures, and settlement language utilized by the EEOC during conciliation and litigation settlement negotiations.

The book includes contributions from renowned members of the plaintiff and defense bars, a preeminent labor economist, and academic researchers. These individuals are listed in the Acknowledgments section.

The book is divided into three parts:

- Part I, “The Agency,” includes information on the EEOC’s structure and allocation of responsibilities; EEOC regulations, policy guidance, and opinion letters; and access to EEOC internal files.
- Part II, “EEOC Charge Filing and Investigations,” includes information on charge filing and representing charging parties, charge investigations, EEOC-initiated investigations, EEOC investigations on behalf of respondents, position statements, disposition of charges, an empirical picture of the EEOC’s charge processing system, the conciliation process, and conciliation agreements.
- Part III, “EEOC Litigation,” includes information on EEOC subpoena enforcement litigation, EEOC Section 706(f)(2) actions, the EEOC as co-plaintiff in class cases, EEOC enforcement litigation, expert witnesses in EEOC litigation, remedies and settlements in EEOC litigation, and appellate litigation.

The author welcomes comments and suggestions from readers for additional topics to be covered in supplements, including drafts of new commentary and analysis. They can be sent to dlivingston@akingump.com. All contributions used will be acknowledged in the publication.

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