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Book Review

By Patti Roberts

LITIGATING EMPLOYMENT DISCRIMINATION CASES

By Andrew H. Friedman
James Publishing Co. 2007 Update
Two Volumes, \$149.00

One of a lawyer's worst nightmares is suing a company that declares bankruptcy. Whether you are plaintiff or defense counsel, this situation will generally create a number of new and sometimes nearly unsolvable dilemmas. Fortunately, the newest chapter in this excellent, comprehensive and lengthy text reviews the topic in great detail in the "Bankruptcy Issues In Employment Litigation" chapter. This is an invaluable resource even for the experienced employment lawyer who may be a novice at the arcanum of bankruptcy law. The new chapter conforms with the original text and provides detailed and practical how-to information which is user-friendly. It covers such practical subjects as becoming employed and getting paid, an explanation of the Byzantine practices of the bankruptcy court, asset sales, where to litigate claims and statutes of limitations. If that were not enough to make a purchase worthwhile, the chapter adds thirty new forms to ease your way through the process. The chapter acts as a basic primer on bankruptcy law, starts with basic bankruptcy

resources and ends with more obscure points of practice. This new chapter merely confirms my original impression that this is a useful text. (See Book Review of July 2005 in this publication.)

Trying to prepare or respond to a summary judgment motion, whether in state or federal court, is often the most difficult step on the road to settlement or trial. As the "make it or break it" motion, the additional forty pages of text offered in this year's amendments provide a good deal of new and useful information. Though primarily directed at plaintiff's counsel, defense counsel will find useful tips as well. In addition to further explication of the intricacies of the *McDonnell-Douglas*¹ burden shifting doctrine, the new material covers in detail the "hirer-firer" doctrine. This coverage includes an extended discussion of how such an argument can be defeated with case law to support it. Also described is the "cat's paw" doctrine and its literary origins (new to me), and a further explanation of the uses of the *Ellerth/Faragher*² affirmative defense, another confusing area of the law. A discussion of the impact of recent cases, such as *Desert Palace, Inc. v. Costa*,³ is clear and comprehensive, and even includes a discussion of the academic commentary which questions the impact of certain recent Supreme Court decisions.

Despite the proliferation of on-line research tools, I still like books. For me, a book is usually the quickest route for preliminary research. And though I certainly do not have all the employment texts I would like, I have quite a few in my private library—enough books to encourage the lawyers with whom I share an office suite to come by from time to time to do their research. Friedman's text is a valuable addition to that library, and the new

amendments include materials that are simply not otherwise easily available to the employment attorney. The combination of a summary of relevant federal law and some very practical hands-on tips about how to pursue or defend an employment case makes this an especially valuable book. The inclusion of draft letters, extensive forms and the loose-leaf format enhances its value, as does its periodic updating. Unlike some employment texts which include materials in different parts of the book because of the distinction between the administrative and judicial process, this text's organization is straightforward. The breakdown of the materials within each chapter into small, mostly numbered sections makes retrieval of information generally easy. One does not have the feeling that one has missed something.

The 2007 amendments to this two-volume work do not merely update the rather extensive case law (the promotional material claims over 1,100 recent cases cited), but also provide additional high quality material on such topics as summary judgment, settlement and mediation. The text is reasonably priced and well worth the investment.

Finally, I must repeat my earlier suggestion that the text, at least for the California practitioner, suffers from the lack of material on state discrimination claims. As plaintiffs increasingly seek remedies in the state courts and avoid the federal courts, much of the text's materials will have limited value because they cover only federal law. If the text included state law, we would have an even more excellent and comprehensive resource. ☞

ENDNOTES

1. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
2. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. Boca Raton*, 524 U.S. 775 (1998).
3. 539 U.S. 90 (2003).

