

Questions & Answers:
Employment Discrimination

CAROLINA ACADEMIC PRESS
QUESTIONS & ANSWERS SERIES

- Questions & Answers: Administrative Law, Fourth Edition**
Linda D. Jellum, Karen A. Jordan
- Questions & Answers: Antitrust**
Shubha Ghosh
- Questions & Answers: Bankruptcy, Second Edition**
Mary Jo Wiggins
- Questions & Answers: Business Associations, Second Edition**
Douglas M. Branson
- Questions & Answers: Civil Procedure, Fifth Edition**
William V. Dorsaneo, III, Elizabeth Thornburg,
Brooke D. Coleman
- Questions & Answers: Constitutional Law, Third Edition**
Paul E. McGreal, Linda S. Eads,
Charles W. Rhodes
- Questions & Answers: Contracts, Third Edition**
Scott J. Burnham
- Questions & Answers: Copyright Law, Second Edition**
Dave Fagundes, Robert C. Lind
- Questions & Answers: Criminal Law, Fifth Edition**
Paul Marcus
- Questions & Answers: Criminal Procedure — Police Investigation, Fourth Edition**
Wayne A. Logan
- Questions & Answers: Criminal Procedure — Prosecution and Adjudication, Fourth Edition**
Wayne A. Logan
- Questions & Answers: Employment Discrimination**
Marcia L. McCormick
- Questions & Answers: Environmental Law**
Dru Stevenson
- Questions & Answers: Evidence, Fourth Edition**
Paul C. Giannelli
- Questions & Answers: Family Law, Fourth Edition**
Mark Strasser
- Questions & Answers: Federal Estate & Gift, Taxation, Third Edition**
James M. Delaney, Elaine Hightower Gagliardi
- Questions & Answers: Federal Income Tax, Second Edition**
James M. Delaney
- Questions & Answers: Intellectual Property, Third Edition**
Gary Myers, Lee Ann Wheelis Lockridge
- Questions & Answers: International Law**
Rebecca Bratspies
- Questions & Answers: Patent Law**
Cynthia M. Ho
- Questions & Answers: Payment Systems, Second Edition**
Timothy R. Zinnecker
- Questions & Answers: Professional Responsibility, Fifth Edition**
Patrick Emery Longan
- Questions & Answers: Property, Third Edition**
John Copeland Nagle, Donald J. Kochan
- Questions & Answers: Remedies, Second Edition**
Rachel M. Janutis, Thomas O. Main
- Questions & Answers: Secured Transactions, Fourth Edition**
Bruce A. Markell, Timothy R. Zinnecker
- Questions & Answers: The First Amendment, Fourth Edition**
Russell L. Weaver, William D. Araiza
- Questions & Answers: Torts, Fifth Edition**
Anita Bernstein
- Questions & Answers: Trademark and Unfair Competition**
Vince F. Chiappetta
- Questions & Answers: Wills, Trusts, and Estates, Third Edition**
Thomas M. Featherston, Jr.

Questions & Answers:
Employment Discrimination

*Multiple Choice and Short Answer
Questions and Answers*

Marcia L. McCormick

PROFESSOR AND CO-DIRECTOR
WILLIAM C. WEFEL CENTER FOR EMPLOYMENT LAW
SAINT LOUIS UNIVERSITY SCHOOL OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2023
Marcia L. McCormick
All Rights Reserved

ISBN: 978-1-5310-2391-1
eISBN: 978-1-5310-2392-8
LCCN: 2022948444

Carolina Academic Press
700 Kent Street
Durham, NC 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

Table of Contents

Preface	vii
About the Author	ix
Questions	1
Topic 1: General Overview of Applicable Law, Enforcement, and Remedies	3
Topic 2: Analytical Frameworks: Disparate Treatment and Disparate Impact Basics	11
Topic 3: Disparate Treatment, the <i>McDonnell Douglas</i> Test, and other Frameworks	15
Topic 4: Defense to Disparate Treatment: BFOQ	21
Topic 5: Conduct-Based Disparate Treatment: Retaliation	23
Topic 6: Systemic Disparate Treatment	27
Topic 7: Disparate Impact	29
Topic 8: Defenses to Disparate Impact	33
Topic 9: Harassment	35
Topic 10: Focused Issues Related to Protected Classes: Race/Color	39
Topic 11: Focused Issues Related to Protected Classes: National Origin	43
Topic 12: Focused Issues Related to Protected Classes: Sex	47
Topic 13: Focused Issues Related to Protected Classes: Religion	55
Topic 14: Focused Issues Related to Protected Classes: Age	59
Topic 15: Focused Issues Related to Protected Classes: Disability	61
Sample Exam	69
Additional Issue Spotter Questions	73
Additional Short Answer Questions	81
Answers	83
Topic 1: General Overview of Applicable Law, Enforcement, and Remedies	85
Topic 2: Analytical Frameworks: Disparate Treatment and Disparate Impact Basics	93
Topic 3: Disparate Treatment, the <i>McDonnell Douglas</i> Test, and other Frameworks	97
Topic 4: Defense to Disparate Treatment: BFOQ	105
Topic 5: Conduct-Based Disparate Treatment: Retaliation	109
Topic 6: Systemic Disparate Treatment	113

Topic 7: Disparate Impact	115
Topic 8: Defenses to Disparate Impact	119
Topic 9: Harassment	123
Topic 10: Focused Issues Related to Protected Classes: Race/Color	127
Topic 11: Focused Issues Related to Protected Classes: National Origin	133
Topic 12: Focused Issues Related to Protected Classes: Sex	137
Topic 13: Focused Issues Related to Protected Classes: Religion	145
Topic 14: Focused Issues Related to Protected Classes: Age	149
Topic 15: Focused Issues Related to Protected Classes: Disability	153
Sample Exam	161
Additional Issue Spotter Questions	169
Additional Short Answer Questions	185
Topical Index	189

Preface

This study guide is written as a survey of most topics covered in Employment Discrimination Law courses in law schools. Although the structure of some casebooks or particular courses may vary from the structure of this volume, it tracks the structure that I have found most useful for teaching: starting with basic coverage questions and remedies, moving to the main frameworks for analyzing discrimination, and then spending more concentrated time on specific issues related to classes protected by Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Employment discrimination law in the courts is not always settled. There are number of controversies and circuit splits on relevant issues. Moreover, a number of issues worth exploring relate to policy or large questions about the definitions of discrimination and protected classes. As a result, this volume has more open-ended questions and more policy-type questions than at least some other volumes in the Q & A series. These kinds of questions do not have “right” answers in the usual sense, and so the answers provided are just one option of a response. Some answers explicitly note this and simply give guidance about the kinds of things students might explore. Similar caveats apply to the answers to the exam questions, additional issue spotter, and additional short essay questions at the end of the volume.

Lastly, the practice of employment discrimination law is often viewed as highly technical, with specialized frameworks for analyzing different kinds of adverse employment actions and discriminatory environments. Because the Supreme Court has generally *not* engaged in those efforts towards complexity, and in fact has pushed back repeatedly to keep the legal question fairly straightforward, this volume does not engage with some of those more detailed frameworks, like for reductions in force, discriminatory discipline, etc. The explanations hint at some of this complexity, but the questions do not tackle it head-on. I welcome any and all feedback from readers including additional areas to cover in future editions.

Marcia L. McCormick
St. Louis, Missouri
marcia.mccormick@slu.edu

About the Author

Marcia L. McCormick is a Professor and Co-Director of the William C. Wefel Center for Employment Law at St. Louis University School of Law. McCormick began her legal career as a staff attorney with the International Human Rights Law Institute, where she directed analysis and research of allegations of sexual violence committed during the war in what was formerly known as Yugoslavia. She then went to the Illinois Attorney General's Office where she litigated civil appeals in state and federal courts. She left the Illinois Attorney General's Office to join the faculty at Chicago-Kent College of Law at the Illinois Institute of Technology. McCormick then moved on to Cumberland Law School at Samford University, before coming to SLU LAW. Professor McCormick's work has been published in a variety of law journals, including the *Berkeley Journal of Labor & Employment Law*, the *University of Pennsylvania Journal of Constitutional Law*, the *Indiana Law Review*, and others. She has contributed to several books, and co-authors a leading casebook on Employment Discrimination Law and a leading treatise and hornbook on Employment Law. She is also frequently sought out by the media for legal analysis of civil rights issues.

