TABLE OF CONTENTS

VOLUME 1

Chapter 1	EMPLO	YMENT AT WILL
	§ 1.1	WHAT IS EMPLOYMENT AT WILL?
	§ 1.2	ORIGINS AND HISTORY
		§ 1.2.1—Origins§ 1.2.2—Gradual Erosion Of The Doctrine§ 1.2.3—Exceptions
	§ 1.3	CHECKLIST OF POSSIBLE LEGAL CLAIMS IN EMPLOYMENT CASES
Chapter 2	CONTR	ACT AND PROMISSORY ESTOPPEL CLAIMS
	§ 2.1	EXPRESS CONTRACTS
		 § 2.1.1—Contracts For A Specific Term § 2.1.2—Breach Of Contract To Pay Compensation Or To Provide Work § 2.1.3—Oral Agreements § 2.1.4—Contracts For Permanent Employment § 2.1.5—Due-Process Claims For Public Employees § 2.1.6—Arbitration § 2.1.7—Other Issues § 2.1.8—General Principles Of Construction
	§ 2.2	GOOD FAITH AND FAIR DEALING
		§ 2.2.1—Express Covenant Of Good Faith And Fair Dealing § 2.2.2—Implied Covenant Of Good Faith And Fair Dealing
	§ 2.3	IMPLIED CONTRACTS
		 § 2.3.1—What Is Covered § 2.3.2—Disclaimers § 2.3.3—Knowledge Of And Reliance Upon Employer Practices

§ 2.4 PROMISSORY ESTOPPEL

- § 2.4.1—Historical Background
- § 2.4.2—Status Of Doctrine Today
- § 2.4.3—Claims Against Governmental Entities
- § 2.4.4—Some Distinctions Between Promissory Estoppel And Breach Of Contract Claims
- § 2.4.5—Effect Of Disclaimers

§ 2.5 DEFENSES

- § 2.5.1—Statute Of Frauds
- § 2.5.2—Statutes Of Limitations
- § 2.5.3—Specificity And Definiteness
- § 2.5.4—The After-Acquired Evidence Doctrine
- § 2.5.5—Duty To Mitigate
- § 2.5.6—Employer's Unconditional Offer Of Reinstatement
- § 2.5.7—Preemption
- § 2.5.8—Internal Grievance Procedures And Appeal Boards

§ 2.6 REMEDIES

- § 2.6.1—Available Damages
- § 2.6.2—Limitations On Available Damages
- § 2.6.3—Prejudgment Interest
- § 2.6.4—Postjudgment Interest

Chapter 3 FEDERAL STATUTES AND CLAIMS

§ 3.1 INTRODUCTION

§ 3.2 TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- § 3.2.1—Introduction
- § 3.2.2—Requirements For Enforcement Of Title VII
- § 3.2.3—Requirements Of Filing A Charge Of Discrimination
- § 3.2.4—Proof Of A Title VII Violation
- § 3.2.5—Specific Categories Of Title VII Claims
- § 3.2.6—Defenses To Title VII Claims
- § 3.2.7—Remedies For Violation Of Title VII

TOC-4 (11/14)

§ 3.3 THE AGE DISCRIMINATION IN EMPLOYMENT ACT

- § 3.3.1—In General
- § 3.3.2—Prohibited Conduct And Proof Of Same
- § 3.3.3—Defenses
- § 3.3.4—Remedies For Violation Of The ADEA
- § 3.3.5—Administrative Prerequisites

§ 3.4 FEDERAL LAWS ADDRESSING DISCRIMINATION IN EMPLOYMENT BASED ON DISABILITY

- § 3.4.1—Background
- § 3.4.2—What Employers Are Covered By The ADA And §§ 501 And 504?
- § 3.4.3—What Are The Elements Of A Prima Facie Case?
- § 3.4.4—What Is A "Disability" Under The ADA And The Rehabilitation Act?
- § 3.4.5—Who Is A "Qualified" Individual With A Disability?
- § 3.4.6—What Types Of Discrimination Are Prohibited?
- § 3.4.7—Are Medical Examinations And Inquiries Permitted?
- § 3.4.8—Are Charging Parties Protected From Retaliation?
- § 3.4.9—What Defenses Are Available?
- § 3.4.10—What Remedies Are Available?
- § 3.4.11—Other Issues

§ 3.5 THE FAMILY AND MEDICAL LEAVE ACT

- § 3.5.1—In General
- § 3.5.2—What Employers Are Covered By The FMLA?
- § 3.5.3—What Employees Are Eligible For Leave?
- § 3.5.4—Leave For The Birth, Adoption, Or Placement Into A Foster Home Of A Child
- § 3.5.5—What Is A Qualifying Serious Health Condition?
- § 3.5.6—Who Is A Son, Daughter, Spouse, Parent, Or Next Of Kin Of A Covered Service Member?
- § 3.5.7—Who Is A Health Care Provider?
- § 3.5.8—Leave
- § 3.5.9—Employee's Notice Requirements
- § 3.5.10—Employer's Notice Requirements
- § 3.5.11—Employer's Record-Keeping Requirements
- § 3.5.12—Reinstatement To Former Or Equivalent Position
- § 3.5.13—Benefit Continuation
- § 3.5.14—Exemptions For Key Employees
- § 3.5.15—Certification Requirements
- § 3.5.16—FMLA Prohibits Interference, Retaliation, Or Discrimination
- § 3.5.17—Remedies For Violations Of The FMLA
- § 3.5.18—Who May Be Liable For Violations?

- § 3.5.19—States' Immunity From Civil Suit
- § 3.5.20—FMLA Accrual For Uniformed Service Members
- § 3.5.21—Useful Resources

§ 3.6 THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

- § 3.6.1—Introduction
- § 3.6.2—Employment Eligibility Verification
- § 3.6.3—Discrimination In Employment Verification

§ 3.7 FEDERAL LABOR STATUTES

§ 3.7.1—The Labor-Management Relations Act

EXHIBITS

- Exhibit 3A—ADA Amendments Act Of 2008
- Exhibit 3B—Form I-9, Employment Eligibility Verification
- Exhibit 3C—Annotated Mockup Of I-9 Violations
- Exhibit 3D—Colorado's Immigration Status Verification Requirements On Employers
- Exhibit 3E—Colorado Affirmation Of Legal Work Status Form
- Exhibit 3F—Colorado Department Of Labor And Employment Sample Notice Of Complaint

Chapter 4 THE COLORADO ANTI-DISCRIMINATION ACT

§ 4.1 GENERAL PROVISIONS

- § 4.1.1—Overview
- § 4.1.2—Remedies Under CADA
- § 4.1.3—Relationship To Federal Law And State Common Law
- § 4.1.4—Who Is Subject To CADA

§ 4.2 DISCRIMINATORY OR UNFAIR PRACTICES IN EMPLOYMENT

- § 4.2.1—Discriminatory Practices For Anyone
- § 4.2.2—Employer Discriminatory Practices
- § 4.2.3—Employers And Employment Agencies: Advertising And Publications
- § 4.2.4—Labor Organization Prohibited Practices

TOC-6 (11/14)

§ 4.3 ENFORCEMENT BY THE COLORADO CIVIL RIGHTS DIVISION

- § 4.3.1—CCRD Authority And Structure
- § 4.3.2—Filing A Charge Of Discrimination
- § 4.3.3—Investigation, Dismissal, And Obtaining The Right To Sue
- § 4.3.4—Proceedings After A Probable Cause Finding

§ 4.4 LITIGATION OF A CADA CASE

- § 4.4.1—Burdens Of Proof And Production In CADA Discrimination Cases
- § 4.4.2—Case And Statutory Analysis Prohibited Practices

§ 4.5 DISCRIMINATION ON ACCOUNT OF LEGAL OFF-DUTY ACTIVITIES

- § 4.5.1—Overview
- § 4.5.2—Prohibited Practices
- § 4.5.3—Defenses

Chapter 5 PROTECTED ACTIVITIES

§ 5.1 INTRODUCTION

§ 5.2 ACTIVITIES IN THE PUBLIC INTEREST

- § 5.2.1—Associations
- § 5.2.2—Political Activity And Access To Lawmakers
- § 5.2.3—Whistleblower Protection In The Public Sector
- § 5.2.4—Jury Duty
- § 5.2.5—Voting
- § 5.2.6—Military Duty
- § 5.2.7—Complaints About Wages

§ 5.3 OTHER ACTIVITIES PROTECTED BY COLORADO STATUTE

- § 5.3.1—Garnishment And Income Assignment
- § 5.3.2—Time Off For Adoption
- § 5.3.3—Inquiry Into Sealed Criminal Records Prohibited
- § 5.3.4—Testing Limitations
- § 5.3.5—Activities Of Volunteer Firefighters

TORT CLAIMS FOR WRONGFUL DISCHARGE AGAINST PUBLIC POLICY Chapter 6 § 6.1 INTRODUCTION § 6.2 HISTORICAL DEVELOPMENT OF THE TORT § 6.2.1—United States Case Law § 6.2.2—Colorado Case Law § 6.3 MARTIN MARIETTA v. LORENZ — THE TORT AND ITS **ELEMENTS** § 6.3.1—The *Lorenz* Decision And The Rationale For The Cause Of Action § 6.3.2—Elements Of The Tort — As Applied Before, In, And Since *Lorenz* § 6.3.3—Three Contexts Recognized In *Lorenz* And Beyond **§ 6.4 DAMAGES § 6.5** OTHER UNRESOLVED ISSUES § 6.5.1—Exclusive Remedies — Is There A Common Law Tort If The Employee Has Another Remedy For Wrongful Discharge? § 6.5.2—Can A Claim Be Asserted By In-House Counsel? § 6.5.3—Does The Employee Actually Have To Be Discharged, Or Can The Claim Be Asserted On The Basis Of Employer Conduct Other Than Termination? § 6.5.4—Can Independent Contractors Pursue A Claim? § 6.5.5—Employee Misconduct § 6.6 SUGGESTIONS TO PLAINTIFF AND DEFENSE REPRESENTATIVES § 6.6.1—Plaintiff § 6.6.2—Defense Chapter 7 **DEFAMATION** § 7.1 INTRODUCTION ELEMENTS OF A CAUSE OF ACTION FOR DEFAMATION § 7.2

§ 7.2.1—Elements Under Colorado Law § 7.2.2—"A Defamatory Statement . . ."

TOC-8 (11/14)

- § 7.2.3—"... Concerning Another ..."
- § 7.2.4—"... Published To A Third Party ..."
- § 7.2.5—". . . With Fault Amounting To At Least Negligence . . ."
- § 7.2.6—". . . And Either Actionability Of The Statement Irrespective Of Special Damages Or The Existence Of Special Damages To The Plaintiff Caused By The Publication."

§ 7.3 PER SE VERSUS PER QUOD

- § 7.3.1—Per Se Versus Per Quod Generally
- § 7.3.2—Requirement Of Special Damages For A Claim Of Defamation *Per Quod*

§ 7.4 ACTUAL MALICE, PUBLIC VERSUS PRIVATE FIGURES, AND MATTERS OF PUBLIC CONCERN

- § 7.4.1—The Requirement Of Malice
- § 7.4.2—Heightened Burden Of Proof Required
- § 7.4.3—When Must Malice Be Demonstrated?
- § 7.4.4—What Is Malice?

§ 7.5 PLEADING REQUIREMENTS

§ 7.6 DEFENSES TO DEFAMATION

- § 7.6.1—Truth
- § 7.6.2—Consent
- § 7.6.3—Privilege

§ 7.7 DAMAGES IN DEFAMATION CASES

- § 7.7.1—Damages Presumed On *Per Se* Claims
- § 7.7.2—Mitigation Of Damages

§ 7.8 STATUTE OF LIMITATIONS

§ 7.9 APPELLATE ISSUES IN DEFAMATION LAW

§ 7.10 IMMUNITY FROM CIVIL LIABILITY FOR EMPLOYER DISCLOSING INFORMATION

Chapter 8 WORKPLACE PRIVACY

§ 8.1 INTRODUCTION

§ 8.2 CONSTITUTIONAL PRIVACY INTERESTS

- § 8.2.1—Interests Protected By The Constitutional Right Of Privacy
- § 8.2.2—Substantive Due Process
- § 8.2.3—Fourth Amendment Office Searches
- § 8.2.4—Fourth Amendment Electronic Communications
- § 8.2.5—Fourth Amendment Drug Testing
- § 8.2.6—The Colorado Constitution

§ 8.3 COMMON LAW PRIVACY CLAIMS

- § 8.3.1—Generally
- § 8.3.2—Intrusion Upon Seclusion
- § 8.3.3—Appropriation
- § 8.3.4—Unreasonable Publicity
- § 8.3.5—False Light

§ 8.4 OPEN RECORDS LAWS

- § 8.4.1—Colorado's Open Records Laws
- § 8.4.2—The Colorado Open Records Act
- § 8.4.3—Personnel File Exemption
- § 8.4.4—General Privacy Interests
- § 8.4.5—Colorado Criminal Justice Records Act
- § 8.4.6—Federal Freedom Of Information Act

§ 8.5 FORMAL DISCOVERY

- § 8.5.1—Specific Privacy-Related Discovery Issues In Employment Cases
- § 8.5.2—Relationship To Open Records Statutes
- § 8.5.3—Personnel Files
- § 8.5.4—Medical Information
- § 8.5.5—Financial And Tax Information
- § 8.5.6—Anonymous Speech
- § 8.5.7—Protective Orders

§ 8.6 MISCELLANEOUS PRIVACY PROTECTIONS

- § 8.6.1—Generally
- § 8.6.2—Health Insurance Portability And Accountability Act
- § 8.6.3—Privacy Act

TOC-10 (11/14)

Table of Contents

§ 8.6.7—Pseudonymous Pleadings

§ 8.6.4—Privacy Under The Americans With Disabilities Act

§ 8.6.5—The Genetic Information Non-Discrimination Act Of 2008 (GINA) § 8.6.6—Legal Off-Duty Activities Under The Colorado Civil Rights Act

Chapter 9	INTER	FERENCE WITH CONTRACT
	§ 9.1	THE ELEMENTS OF INTERFERENCE WITH CONTRACT
	§ 9.2	THE CONTRACT ELEMENT
		§ 9.2.1—Basic Contract Principles
		§ 9.2.2—Prospective Contracts
		§ 9.2.3—Void Contracts — Oral And Illegal Employment Agreements
		§ 9.2.4—At-Will Contracts
	§ 9.3	DEFENDANTS
		§ 9.3.1—Parties To The Contract
		§ 9.3.2—Supervisors, Officers, And Directors
		§ 9.3.3—Subsidiaries
	§ 9.4	THE KNOWLEDGE ELEMENT
	§ 9.5	THE INTENTIONAL AND IMPROPER CONDUCT ELEMENTS
	§ 9.6	DAMAGES FOR INTERFERENCE WITH CONTRACT
	§ 9.7	PRIVILEGE TO INTERFERE
		§ 9.7.1—Qualified Privilege
		§ 9.7.2—Absolute Right To Interfere
		§ 9.7.3—Relevant Court Decisions
	§ 9.8	GOVERNMENTAL IMMUNITY
		§ 9.8.1—Public Entities
		§ 9.8.2—Public Employees
		§ 9.8.3—Attorney Fees Against Plaintiff
		§ 9.8.4—Notice Of Claim
	§ 9.9	EXHAUSTION OF REMEDIES
	§ 9.10	STATUTE OF LIMITATIONS

Chapter 10	NEGLI DISTRI	GENT AND INTENTIONAL INFLICTION OF EMOTIONAL ESS
	§ 10.1	INTRODUCTION
	§ 10.2	NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
	§ 10.3	INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
		§ 10.3.1—Elements Of The Claim § 10.3.2—Applicability To The Employment Relationship § 10.3.3—Employer Liability § 10.3.4—Exclusivity Bar Of The Workers' Compensation Act § 10.3.5—Pleading A Claim For Outrageous Conduct § 10.3.6—Role Of Judge And Jury; Damages
Chapter 11	MISCE	LLANEOUS TORTS
	§ 11.1	INTRODUCTION
	§ 11.2	NEGLIGENT TORTS
		 § 11.2.1—Negligent Hire § 11.2.2—Negligent Supervision And Retention § 11.2.3—Negligent Investigation § 11.2.4—Negligent Misrepresentation
	§ 11.3	INTENTIONAL TORTS
		§ 11.3.1—False Imprisonment § 11.3.2—Assault And Battery § 11.3.3—Civil Conspiracy
	§ 11.4	FRAUD
		 § 11.4.1—Employer Misrepresentations § 11.4.2—Employee Misrepresentations § 11.4.3—Fraud Distinguished From Negligent Misrepresentation
	§ 11.5	DOCTRINE OF RESPONDEAT SUPERIOR
		 § 11.5.1—Employment And Agency Applications § 11.5.2—Course And Scope Limitation § 11.5.3—Additional Liability Under Agency Principles § 11.5.4—Negligent Hiring Is Not Based On <i>Respondeat Superior</i>

TOC-12 (11/14)

Chapter 12 COMMON LAW DUTIES OF EMPLOYERS AND EMPLOYEES

§ 12.1 INTRODUCTION

§ 12.2 EMPLOYEE'S DUTY TO EMPLOYER

- § 12.2.1—Duty Of Loyalty
- § 12.2.2—Fiduciary Duty
- § 12.2.3—Duty To Exercise Care And Skill
- § 12.2.4—Duty To Obey Reasonable Instructions
- § 12.2.5—Potential Other Duties

§ 12.3 EMPLOYER'S DUTY TO EMPLOYEE

- § 12.3.1—Duty To Pay Compensation
- § 12.3.2—Duty To Provide Work
- § 12.3.3—Duty Of Good Faith And Fair Dealing
- § 12.3.4—Duty To Indemnify
- § 12.3.5—Duty Not To Repudiate Or Terminate In Violation Of Contract
- § 12.3.6—Potential Other Duties

Chapter 13 NONCOMPETITION AGREEMENTS AND TRADE SECRET PROTECTION

§ 13.1 INTRODUCTION

§ 13.2 NONCOMPETITION AGREEMENTS

- § 13.2.1—History Of Noncompetition Agreements
- § 13.2.2—Colorado Statute Restricting Noncompetition Agreements
- § 13.2.3—Contracts For The Purchase And Sale Of A Business Or The Assets Of A Business
- § 13.2.4—Contracts For The Protection Of Trade Secrets
- § 13.2.5—Contracts Providing For Recovery Of Education Or Training Expense
- § 13.2.6—Contracts Concerning Executive And Management Personnel And Professional Staff
- § 13.2.7—Noncompetition Agreements Involving Physicians
- § 13.2.8—Restriction On Scope Of Noncompetition Agreements
- § 13.2.9—Enforcement Of Noncompetition Agreements
- § 13.2.10—Choice Of Law

§ 13.3 TRADE SECRET PROTECTION

- § 13.3.1—Definition Of "Trade Secret"
- § 13.3.2—Misappropriation Of Trade Secrets
- § 13.3.3—Enforcement Of Trade Secret Protections
- § 13.3.4—Criminal Prosecution
- § 13.3.5—Misappropriation Of Trade Values
- § 13.3.6—Unjust Enrichment
- § 13.3.7—Breach Of Loyalty/Fiduciary Duty
- § 13.3.8—Preemption Of Common Law Claims By The Uniform Trade Secrets Act

§ 13.4 NON-SOLICITATION

- § 13.4.1—Contractual Prohibition Of Solicitation
- § 13.4.2—Common Law Prohibition Of Solicitation
- § 13.4.3—Breach Of Fiduciary Duty/Duty Of Loyalty
- § 13.4.4—Tortious Interference
- § 13.4.5—Unfair Competition
- § 13.4.6—Employee Raiding
- § 13.4.7—Statutory Prohibition Of Solicitation

Chapter 14 WAGE, HOUR, AND BENEFITS ISSUES

§ 14.1 INTRODUCTION

§ 14.2 COLORADO LAW ON WAGES

- § 14.2.1—The Colorado Wage Act
- § 14.2.2—Colorado Minimum Wage Order No. 30

§ 14.3 THE FAIR LABOR STANDARDS ACT

- § 14.3.1—Employees And Employers Subject To The FLSA
- § 14.3.2—Exemptions Under The FLSA
- § 14.3.3—Employers' Obligations
- § 14.3.4—Retaliation
- § 14.3.5—Damages, Defenses, And Penalties

§ 14.4 EMPLOYEE RETIREMENT INCOME SECURITY ACT

- § 14.4.1—ERISA Coverage
- § 14.4.2—ERISA § 510 Benefits Discrimination

TOC-14 (11/14)

Chapter 15 REPRESENTING CLAIMANTS AND EMPLOYERS IN COLORADO **UNEMPLOYMENT HEARINGS** § 15.1 **INTRODUCTION** BEGINNING THE UNEMPLOYMENT INSURANCE BENEFITS § 15.2 **CLAIM PROCESS** § 15.3 ELIGIBILITY GUIDELINES FOR UNEMPLOYMENT INSURANCE BENEFITS § 15.3.1—Eligibility Criteria § 15.3.2—Exceptions To Eligibility — Employees Of Educational Institutions § 15.3.3—Exceptions To Eligibility — Undocumented Immigrants § 15.3.4—Exceptions To Eligibility — Seasonal Workers § 15.4 ENTITLEMENT TO UNEMPLOYMENT INSURANCE BENEFITS § 15.4.1—Full Award Of Benefits (C.R.S. § 8-73-108(4)) § 15.4.2—Disqualification From Benefits § 15.5 DECISION MAKERS IN THE ADMINISTRATIVE PROCESS AND **BEYOND** § 15.5.1—The Deputy Level § 15.5.2—Showing Good Cause For A Late Appeal § 15.5.3—The Hearing Officer Level § 15.5.4—Appeal To The Industrial Claim Appeals Office § 15.5.5—Appeal To The Court Of Appeals § 15.6 PREPARING FOR THE UNEMPLOYMENT INSURANCE BENEFITS **HEARING** § 15.6.1—Decide On The Legal Theory § 15.6.2—Direct And Proximate Cause Of The Separation § 15.6.3—The Concept Of Fault § 15.6.4—Subpoening Witnesses Or Production Of Documents THE UNEMPLOYMENT INSURANCE BENEFITS HEARING § 15.7 § 15.7.1—Overview Of The Hearing Process

§ 15.7.2—Using Documents At The Hearing

§ 15.7.4—Common Types Of Objections

§ 15.7.3—Hearsay Evidence

§ 15.8 PRECEDENTIAL CASES

- § 15.8.1—The Effect Of Additional Remuneration On UI Benefits
- § 15.8.2—Separations Caused By Off-The-Job Use Of Medical Marijuana
- § 15.8.3—Interpretation Of C.R.S. § 8-73-108(4)(b)(II) Inability To Provide Notification Of Sudden Illness Or Injury
- § 15.8.4—Interpretation Of C.R.S. § 8-73-110(3)(a)(I) Receipt Of Retirement Money Contributed To By A Base Period Employer
- § 15.8.5—Interpretation Of C.R.S. § 8-73-110(1) Receipt Of Retention Bonus, Whether It Is "Other Remuneration," And Its Impact On The Unemployment Claim
- § 15.8.6—Interpretation Of C.R.S. § 8-73-110(3)(a) Effect Of Partial Use Of Lump-Sum Retirement Benefits On Postponement Of Unemployment Benefits
- § 15.8.7—Interpretation Of C.R.S. § 8-73-110(3)(a)(III) Concerning The Retroactive Or Prospective Application Of The 2013 Statutory Amendments

§ 15.9 CONCLUSION

VOLUME 2

Chapter 16 PUBLIC EMPLOYERS AND EMPLOYEES

§ 16.1 INTRODUCTION

§ 16.2 FEDERAL CIVIL RIGHTS STATUTES

- § 16.2.1—42 U.S.C. § 1983
- § 16.2.2—42 U.S.C. § 1981
- § 16.2.3—42 U.S.C. § 1985
- § 16.2.4—42 U.S.C. § 1986

§ 16.3 ACTIONS TO ENFORCE THE COLORADO CONSTITUTION

§ 16.4 COLORADO GOVERNMENTAL IMMUNITY ACT

TOC-16 (11/14)

§ 16.5 ADDITIONAL CONSIDERATIONS FOR GOVERNMENTAL EMPLOYEES

- § 16.5.1—Federal Employees And Retaliation Claims Under The Age Discrimination In Employment Act (ADEA)
- § 16.5.2—Educators
- § 16.5.3—Colorado Open Records Act

§ 16.6 CONCLUSION

Chapter 17 THE FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY PROCESS

§ 17.1 INTRODUCTION

§ 17.2 OVERVIEW OF THE EEO FORUM

- § 17.2.1—Regulatory Background
- § 17.2.2—Rights And Remedies
- § 17.2.3—Overlap With The Merit Systems Protection Board
- § 17.2.4—Exhaustion Of Remedies

§ 17.3 FILING AN EEO COMPLAINT

- § 17.3.1—Informal Complaint/Counseling Process
- § 17.3.2—Formal Complaint Process
- § 17.4 INVESTIGATION
- § 17.5 HEARING REQUEST
- § 17.6 SETTLEMENT/ADR
- § 17.7 DISCOVERY
- § 17.8 PRE-HEARING CONFERENCE
- **§ 17.9 HEARING**
- § 17.10 POST-HEARING DECISIONS
- § 17.11 APPEALS
 - § 17.11.1—Appeals Process
 - § 17.11.2—Proposed Rule Change

§ 17.12 **RELIEF**

	§ 17.13	OVERVIEW OF THE MSPB FORUM
	§ 17.14	CONCLUSION
Chapter 18	THE CO	DLORADO STATE PERSONNEL SYSTEM
	§ 18.1	INTRODUCTION
	§ 18.2	FUNDAMENTAL CONCEPTS FOR REPRESENTATION BEFORE THE STATE PERSONNEL BOARD
	§ 18.3	PROPERTY RIGHT TO EMPLOYMENT AND MANDATORY HEARING
	§ 18.4	PROGRESSIVE DISCIPLINE PROCESS
	§ 18.5	APPEALS OF ADVERSE AGENCY ACTION
	§ 18.6	THE BOARD'S SETTLEMENT PROGRAM
	§ 18.7	MOTION PRACTICE BEFORE THE BOARD
	§ 18.8	PRETRIAL PRACTICE: MANDATORY DISCLOSURES AND DISCOVERY
	§ 18.9	APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT AND THE COLORADO RULES OF EVIDENCE
	§ 18.10	DISCRETIONARY HEARINGS BEFORE THE BOARD
	§ 18.11	ALLEGATIONS OF DISCRIMINATION
	§ 18.12	PROTECTION FOR WHISTLEBLOWERS
	§ 18.13	ATTORNEY FEES AND COSTS
	§ 18.14	THE ALJ'S INITIAL DECISION
	§ 18.15	REVIEW OF THE ALJ'S INITIAL DECISION

TOC-18 (11/14)

8	
18	
.16	
ĺ	
JUL	
)[(
CIA	
L	
R	
$\mathbf{E}^{\mathbf{V}}$	
VI	
E١	
W	
0	
F	
S	
\mathbf{T}	
T	
E	
P	
\mathbf{E}	
R۶	
SC	
N	
N	
ÎΕ	
L	
B	
O	
) A	
ΙF	
SI	
) (
\mathbf{O}	
RI	
)F	
CR	
25	
١	

§ 18.17 INFORMATION AND RESOURCES: STATE PERSONNEL BOARD

§ 18.18 CONCLUSION

Chapter 19 WORKERS' COMPENSATION AND DISABILITY ISSUES

§ 19.1 INTRODUCTION

§ 19.2 WORKERS' COMPENSATION EXCLUSIVE-REMEDY PROVISION

- § 19.2.1—The "No Fault" Workers' Compensation Scheme
- § 19.2.2—Negligence And Intentional Torts
- § 19.2.3—Tort Liability Based On Bad Faith Processing Of A Worker's Claim For Compensation
- § 19.2.4—Denial Of Temporary Disability Benefits To An Employee Who Is Found Responsible For His Or Her Termination Of Employment

§ 19.3 WORKERS' COMPENSATION, AMERICANS WITH DISABILITIES ACT, AND FAMILY AND MEDICAL LEAVE ACT — HARMONIZING THE STATUTES, REASONABLE ACCOMMODATION, AND MODIFIED DUTY

- § 19.3.1—Summary Of The Statutes
- § 19.3.2—Eligibility Criteria: Workers' Compensation
- § 19.3.3—Major Revisions To ADA And New Emphasis On Reasonable Accommodation
- § 19.3.4—Interrelationship Of Workers' Compensation, ADA, And FMLA—Issues And Conflicts
- § 19.3.5—An Action Plan For Employers

Chapter 20 WORKPLACE VIOLENCE

§ 20.1 INTRODUCTION

§ 20.2 WORKPLACE VIOLENCE STATISTICS

- § 20.2.1—Numbers Of People Injured
- § 20.2.2—Cost To Employers

§ 20.3 DEFINING WORKPLACE VIOLENCE AND ITS INCREASING PREVALENCE

- § 20.3.1—Creating A Workable Definition
- § 20.3.2—Prevalence Of Violence: A Psychological Perspective

§ 20.4 ADVISING EMPLOYERS

- § 20.4.1—Assessing The Degree Of Risk Common Risk Factors
- § 20.4.2—When And How To Take Threats Seriously
- § 20.4.3—Preventative Strategies
- § 20.4.4—Preventative Policies
- § 20.4.5—Responsive Policies
- § 20.4.6—Agency Recommendations

§ 20.5 THEORIES RELATING TO EMPLOYER LIABILITY

- § 20.5.1—The Colorado Workers' Compensation Act Exclusivity Provision
- § 20.5.2—Evolving Liability Theories
- § 20.5.3—OSHA General Duty Clause
- § 20.5.4—Employers' Potential Liability To Victims
- § 20.5.5—Colorado Statutes Regarding Threats Of Violence
- § 20.5.6—Employers' Potential Liability To Accused
- § 20.5.7—Employers' Potential Criminal Liability

§ 20.6 OTHER RELEVANT FEDERAL STATUTES

- § 20.6.1—The Americans With Disabilities Act
- § 20.6.2—The Employee Polygraph Protection Act
- § 20.6.3—The Violence Against Women Act

§ 20.7 OSHA GUIDELINES AND RECOMMENDATIONS

- § 20.7.1—Recognition And Controls
- § 20.7.2—Training
- § 20.7.3—Other

§ 20.8 CONCLUSION

EXHIBIT

Exhibit 20A—Checklist For Drafting A Workplace Violence Policy

TOC-20 (11/14)

Chapter 21 PREVENTATIVE MAINTENANCE FOR EMPLOYERS

§ 21.1 INTRODUCTION

§ 21.2 GOOD MANAGEMENT PRACTICES

- § 21.2.1—How Juries Decide Employment Cases
- § 21.2.2—Top Ten List: Managing And Avoiding Employment-Related Liability
- § 21.2.3—What Employees Expect
- § 21.2.4—Hiring And Selection Process
- § 21.2.5—Employee Handbooks And Personnel Policies
- § 21.2.6—Personnel Files
- § 21.2.7—Training Problems
- § 21.2.8—Performance Reviews
- § 21.2.9—Managing Absenteeism, Poor Performance, And Other Workplace Problems
- § 21.2.10—Joint Employment Issues

§ 21.3 RESPONDING TO EMPLOYEE COMPLAINTS

- § 21.3.1—Open-Door Policies
- § 21.3.2—Conducting Workplace Investigations

§ 21.4 LAYOFFS AND REDUCTIONS IN FORCE

§ 21.4.1—Planning A Reduction In Force

§ 21.5 DISCHARGING EMPLOYEES

- § 21.5.1—Discharging Employees Without Liability
- § 21.5.2—Unemployment Compensation Claims

§ 21.6 EMPLOYEE ASSISTANCE PROGRAMS

Chapter 22 LITIGATION OF EMPLOYMENT CASES

§ 22.1 INTRODUCTION

§ 22.2 INITIAL PREPARATION

- § 22.2.1—Plaintiff's Perspective
- § 22.2.2—Defendant's Perspective

§ 22.3 CHARGES OF DISCRIMINATION

- § 22.3.1—Initial Contacts And Filing The Charge
- § 22.3.2—What Constitutes A Charge
- § 22.3.3—The Employer's Response
- § 22.3.4—Further Proceedings
- § 22.3.5—The Agency Determination And Notice Of Right To Sue

§ 22.4 CASE MANAGEMENT

- § 22.4.1—State Court
- § 22.4.2—Federal Court
- § 22.4.3—Arbitrations

§ 22.5 USE OF EXPERT WITNESSES

- § 22.5.1—Expert Witness Discovery
- § 22.5.2—Types Of Experts

§ 22.6 TRIAL

- § 22.6.1—The Theme Of The Case
- § 22.6.2—Litigation Technology
- § 22.6.3—Voir Dire
- § 22.6.4—Opening Statement
- § 22.6.5—Presentation Of Witnesses
- § 22.6.6—Exhibits
- § 22.6.7—Closing Argument
- § 22.6.8—Jury Instructions And Verdicts
- § 22.6.9—Polling The Jury
- § 22.6.10—Laying Groundwork For An Appeal

EXHIBITS

- Exhibit 22A—Sample Telephone Intake Form
- Exhibit 22B—Sample Appointment Confirmation Letter
- Exhibit 22C—Contingency Disclosure Statement
- Exhibit 22D—Sample Contingency Fee Agreement
- Exhibit 22E—Sample Hourly Rate Fee Agreement
- Exhibit 22F—EEOC/CCRD Worksharing Agreement
- Exhibit 22G—Courtroom Technology Manual
- Exhibit 22H—Examples Of Article III Judges' Summary Judgment Motion Requirements
- Exhibit 22I— Article III Judges' Practice Standards

TOC-22 (11/14)

Chapter 23 DISCOVERY

§ 23.1 DISCOVERY STRATEGY

- § 23.1.1—Plaintiff's Perspective
- § 23.1.2—Defendant's Perspective

§ 23.2 DISCOVERY TOOLS

- § 23.2.1—Initial Disclosures
- § 23.2.2—Summary Judgment
- § 23.2.3—Obtaining Admissions
- § 23.2.4—Interrogatories
- § 23.2.5—Requests For Production
- § 23.2.6—Depositions
- § 23.2.7—Rule 35 Examinations
- § 23.2.8—Informal Discovery

§ 23.3 DISCOVERY LIMITS

§ 23.4 MOTIONS TO COMPEL AND RELATED ISSUES

- § 23.4.1—Motions To Compel
- § 23.4.2—Motions To Determine The Sufficiency Of Answers To Requests For Admissions
- § 23.4.3—Sanctions In Regard To Motions To Compel
- § 23.4.4—Motions For Protective Order

§ 23.5 PRIVILEGES

§ 23.6 ELECTRONIC DISCOVERY

- § 23.6.1—Electronically Stored Information Comes In Many Forms
- § 23.6.2—Rules Governing Electronic Discovery
- § 23.6.3—Emerging Law On Electronic Discovery
- § 23.6.4—Practice Pointers For Electronic Data Retention
- § 23.6.5—Counsel's "Best Practices" List

EXHIBITS

- Exhibit 23A—Sample Request For Production
- Exhibit 23B—Sample Motion To Compel
- Exhibit 23C—Stipulation And Protective Order
- Exhibit 23D—Sample Preservation Letter

Chapter 24 SETTLEMENT AND MEDIATION

§ 24.1 SETTLEMENT

- § 24.1.1—Introduction
- § 24.1.2—Timing Of Settlement Discussions
- § 24.1.3—Settlement Conferences

§ 24.2 MEDIATION

- § 24.2.1—Colorado Law Applicable To Mediation Of Employment Matters
- § 24.2.2—Instructive Decisions From Other Jurisdictions
- § 24.2.3—Mediation Venues
- § 24.2.4—Strategic Considerations For Mediation

§ 24.3 SETTLEMENT AGREEMENTS AND RELEASES

- § 24.3.1—Typical Settlement Agreement Provisions
- § 24.3.2—Enforcement
- § 24.3.3—The Older Workers Benefit Protection Act

EXHIBIT

Exhibit 24A—Sample Settlement Agreement And Release

Chapter 25 ARBITRATION

§ 25.1 INTRODUCTION

§ 25.2 STATUTORY OVERVIEW

- § 25.2.1—Federal Arbitration Act
- § 25.2.2—Colorado Uniform Arbitration Act

§ 25.3 ARBITRABILITY OF FEDERAL AND STATE CLAIMS

- § 25.3.1—Supreme Court
- § 25.3.2—Tenth Circuit
- § 25.3.3—Other Federal Cases
- § 25.3.4—Colorado Cases

TOC-24 (11/14)

§ 25.4 TERMS OF ARBITRATION AGREEMENTS

- § 25.4.1—Scope Of Claims
- § 25.4.2—Remedies
- § 25.4.3—Cost-Sharing Provisions
- § 25.4.4—Punitive Damages
- § 25.4.5—Form Of Arbitration Agreement
- § 25.4.6—Discovery
- § 25.4.7—Limitations On The Timing Of An Award
- § 25.4.8—Class Action Procedures

§ 25.5 DEFENSES TO ARBITRATION

- § 25.5.1—Common Law Contract Defenses
- § 25.5.2—Responsibility For Costs
- § 25.5.3—Interference With Protected Rights
- § 25.5.4—The Agreement To Arbitrate Must Be Entered Knowingly And Voluntarily
- § 25.5.5—Matters Not Arbitrable
- § 25.5.6—Waiver Of Arbitration
- § 25.5.7—Severability Of Offending Provisions
- § 25.5.8—FAA Exemptions

§ 25.6 COLLECTIVE BARGAINING AGREEMENTS

§ 25.7 CHALLENGING THE ARBITRATION AWARD

§ 25.8 POLICY CONSIDERATIONS

EXHIBIT

Exhibit 25A—The Binding Arbitration Agreement — Checklist Of Clauses
To Consider

Chapter 26 ETHICS AND PROFESSIONALISM ISSUES IN EMPLOYMENT LAW CASES

§ 26.1 INTRODUCTION

§ 26.2 ETHICAL ISSUES IN EMPLOYMENT LAW CASES

- § 26.2.1—The Obligation To Practice Competently
- § 26.2.2—Limiting The Scope Of Representation
- § 26.2.3—Fee Agreements

- § 26.2.4—Avoiding Conflicts Of Interest
- § 26.2.5—Lawyer Behavior During The Discovery Process
- § 26.2.6—Ex Parte Contacts
- § 26.2.7—Dealing With Unrepresented Persons

§ 26.3 CONCLUSION

Chapter 27 RESERVED

APPENDICES

- Appendix 1: Colorado Principles of Professionalism
- Appendix 2: Frequently Requested Websites
- Appendix 3: Employment Law Forms Resources
- Appendix 4: Websites for State and Federal Employment Law Information
- Appendix 5: State Laws Affecting Employment and Posting Requirements
- Appendix 6: Federal Laws Affecting Employment and Posting Requirements
- Appendix 7: Sample Employment Law Jury Instructions

TABLE OF CASES

SUBJECT INDEX

TOC-26 (11/14)