

TABLE OF CONTENTS

Preface	iii
---------------	-----

CHAPTER 1

The Administrative Stage: The Agency Complaint and Response

§ 1.01	Requirement to File with an Administrative Agency	1-2
§ 1.02	The Agency Complaint.....	1-3
	[1] Sample Sexual Harassment Complaint	1-3
	[2] Sample Transgender and Race Discrimination Complaint	1-6
	[3] Sample Race Discrimination Complaint-State Agency Complaint.....	1-8.1
	[4] Sample Systemic Gender Discrimination Charge.....	1-10
§ 1.03	The Response/Statement of Position	1-13
	[1] Sample Response to Sexual Harassment Complaint.....	1-13
	[2] Sample EEOC Position Statement in Response to Claim of Disability Discrimination, Failure to Accommodate Disability, and Retaliation.....	1-17
	[3] Sample Response to Gender Discrimination Charge	1-20.2
§ 1.04	[Reserved]	1-20.10
§ 1.05	National Labor Relations Board Petitions or Proceedings	1-21
	[1] Post-Hearing Brief	1-21

EMPLOYMENT LITIGATION

[2]	Additional NLRM Submissions	1-46
[a]	Sample Response to Petition	1-46

CHAPTER 2**The Federal Court Complaint**

§ 2.01	General Commentary Regarding the Federal Complaint	2-3
§ 2.02	Sample Federal Court Complaints and Pleadings	2-6
[1]	Age Discrimination Complaint	2-6
[2]	Gender Discrimination Complaints	2-11
[a]	Pregnancy Discrimination Complaints/Coronavirus Act Violations	2-11
[i]	Termination	2-11
[ii]	Failure to Accommodate, Termination, Violation of the FMLA	2-15
[b]	Promotion and Wage Discrimination Complaint	2-23
[c]	Equal Pay Complaint	2-26.2
[3]	Sexual Harassment Complaints	2-26.8
[a]	Complaint Based on Title VII and Alleged Intentional Infliction of Emotional Distress	2-26.8
[b]	Disparate Treatment Sexual Harassment Complaint Based on Gender and/or Actual or Perceived Sexual Orientation in Light of the #metoo Movement	2-26.11
[i]	Sexual Harassment Complaint Based on Gender and/or Sexual Orientation	2-26.11
[ii]	Sexual Harassment Claims Against High-Level Executives	2-26.19
[c]	Employment Discrimination Complaint Based on Transgender Identity	2-26.26
[4]	Race Discrimination Complaints	2-26.33
[a]	Termination	2-26.33
[b]	Failure to Promote	2-26.38

TABLE OF CONTENTS

vii

[5]	Religious Discrimination Complaints	2-27
	[a] Discrimination, Harassment and Failure to Accommodate Complaint Involving Uncommon Religion	2-36.4
	[b] Discrimination Based on Hostile Working Environment and Termination for Violating Employer Policy Regarding Social Networking Site	2-40.12
[6]	Discrimination and Retaliation Complaints	2-40.17
	[a] Discrimination and Retaliation Complaint.	2-42
	[b] Retaliation Complaint by Employee Who Provided Information During Internal Investigation.	2-58
	[c] Retaliation Complaint by Employee Who Merely Voiced Opposition to Misconduct	2-64
[7]	Disparate Impact Complaint	2-70
[8]	Reverse Discrimination Complaint	2-77
	[a] Complaint Brought on Behalf of an Individual for Reverse Discrimination	2-77
	[b] Defendants' Motion to Dismiss Counts Two Through Five Against the Individual Defendants and Counts Six Through Eleven of Plaintiff's Complaint Against All Defendants	2-83
	[c] Defendants' Memorandum of Law in Support of Their Motion to Dismiss Counts Two Through Five Against the Individual Defendants and Counts Six Through Eleven of Plaintiff's Complaint Against All Defendants.	2-85
	[d] Motion to Intervene.	2-90.8
	[e] Memorandum of Law in Support of Motion to Intervene	2-92
[9]	[Reserved].	2-94.1
[10]	Contract Based Complaint	2-94.1
[11]	Americans with Disabilities Act Complaints	2-97

EMPLOYMENT LITIGATION

	[a] ADA Complaint Accompanied by Claim Pursuant to Comparable State Laws	2-97
	[12] Causes of Action Based on Statutory Failure to Pay Wages.	2-108.24
	[13] Causes of Action Based on Violation of Family and Medical Leave Act.	2-109
	[a] FMLA Claim	2-110
	[b] FMLA Claim Involving “Serious Health Condition” Subsequent to Revised Regulations	2-112
	[14] “Caregiver” Complaints/FFCRA	2-118
	[a] Complaint by Employee Subject to Quarantine/Caregiver Status.	2-118
	[b] Complaint by Caregiver of Disabled Child.	2-126
	[15] Genetic Information Nondiscrimination Act Complaint	2-144
	[16] False Claims Act Complaint	2-151
	[17] Complaints Under Anti-Retaliation Provision of Dodd-Frank Act	2-155
	[a] Employee Who Contacted SEC	2-156
	[b] Employee Who Did Not Contact SEC	2-161
	[c] Employee Contacted SEC But No Violation Found.	2-166
	[18] Action by Employer for Declaratory Judgment Regarding Employment Contract	2-172
	[19] Action by Employer to Protect Trade Secrets	2-176
§ 2.03	Amending the Complaint	2-176.17
§ 2.04	Conclusion.	2-184

CHAPTER 3**The State Court Complaint**

§ 3.01	Introduction	3-2
§ 3.02	Removal to Federal Court	3-3
§ 3.03	Motion to Remand	3-6
§ 3.04	Sample Complaints with Breach of Contract, Wrongful Discharge Claims.	3-8

TABLE OF CONTENTS

ix

[1]	Sample Complaint for Discrimination, Harassment and Retaliation in Violation of the NYC Code as Amended in 2023.	3-8
[2]	Sample Sexual Harassment Complaint Under State Law with Common Law Claims.	3-13
[3]	Defamation Complaint and Motion to Strike Complaint	3-14.6
§ 3.05	Sample Complaint and Memoranda of Law Regarding Non-Compete or Non-Solicitation Agreements	3-15
[1]	Sample Complaint	3-16
[2]	Plaintiff’s Memorandum of Law in Support of Application for a Preliminary Injunction	3-29
[3]	Memorandum of Law in Further Support of Plaintiff’s Motion for a Temporary Restraining Order and/or Pre-liminary Injunction	3-44
[4]	Defendant’s Reply to Plaintiff’s Memorandum of Law in Support of Application for Temporary Injunction.	3-54
§ 3.06	Sample Whistleblower Complaint	3-56
§ 3.07	Workplace Speech.	3-97
[1]	Sample Complaint	3-98
[2]	Sample Motion to Dismiss and Supporting Memorandum of Law.	3-102
§ 3.08	Sample Memorandum of Law in Support of Summary Judgment on Claim of Breach of Contract, Retaliation for Filing a Sexual Harassment Complaint, and Related Claims.	3-109

CHAPTER 4

Pre-Answer Motions

§ 4.01	Introduction	4-2
§ 4.02	Motions to Dismiss.	4-4
[1]	Federal Court Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted and Supporting Memo	4-4.1

EMPLOYMENT LITIGATION

[2]	Memo in Support of State Court Motion to Dismiss for Lack of Subject Matter Jurisdiction	4-12
[3]	Supporting Memo for Federal Court Motion to Dismiss for Failure to Exhaust Administrative Remedies or Expiration of Statute of Limitations	4-15
[4]	Supporting Memo for Federal Court Motion to Dismiss for Failure to Obtain Right to Sue Letter and Failure to Exhaust Administrative Remedies	4-19
[5]	Federal Court Motion to Dismiss for Failure to State a Tort Claim Upon Which Relief Can Be Granted and Supporting Memo	4-24
[6]	Federal Court Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and to Strike References to Title VII and ADEA and Supporting Memo	4-32
[7]	Federal Court Motion to Dismiss Tort Claims After Removal from State Court and Supporting Memo	4-42
[8-9]	State Court Motions to Dismiss Causes of Action or Failure to Pay Wages Required by Statute	4-51
[a]	Motion for Summary Judgment Because Employee Was Exempt	4-51
[b]	Motion for Summary Judgment Because Compensation at Issue Did Not Constitute “Wages”	4-54
[c]	Memo Supporting Motion to Strike Claim Involving Wrongful Discharge and State Wage Law Coverage of Bonuses	4-56
[10]	Memo in Support of State Court Motion to Strike Complaint for Tortious Interference with Contractual Relations and Related Causes of Action	4-65
[11]	Motion to Compel Arbitration and for Partial Stay and Supporting Memo	4-74
§ 4.03	Motion for a More Definite Statement	4-75

CHAPTER 5

Answer, Affirmative Defenses, and Counterclaims

§ 5.01	Introduction	5-2
§ 5.02	Defenses.	5-3
	[1] Defenses to Discrimination and Sexual Harassment Claims.	5-3
	[2] Defenses to Retaliation Claims	5-6.1
	[3] Defenses to Fair Labor Standards Act (FLSA) Claims.	5-6.2
	[4] Defenses to Common Law State Claims.	5-6.3
	[5] Defenses to Contract Claims	5-6.3
§ 5.03	Sample Answers and Affirmative Defenses	5-7
	[1] Answer and Affirmative Defenses to Claim of Discrimination Based on Pregnancy	5-7
	[a] Answer and Affirmative Defenses	5-7
	[2] Affirmative Defenses to Claim of Discrimination Based on Disability	5-28
	[3] Affirmative Defenses and Answer to Claims of Discrimination Based on Religion.	5-28
	[a] Generally	5-28
	[b] Answer and Affirmative Defenses to Claim of Discrimination Based on Failure to Accommodate Religious Practices	5-31
	[4] Answer and Affirmative Defenses to Claims of Disparate Impact Discrimination	5-32.3
	[5] Answer and Affirmative Defenses to Claim of Gender and/or Sexual Orientation Discrimination.	5-32.9
	[6] Answer and Affirmative Defenses to FMLA and ADA Complaint.	5-32.18
	[7] Affirmative Defenses to a Whistleblower Claim	5-32.31
§ 5.04	Counterclaims by Defendants.	5-33
	[1] Sample: Counterclaim for Improper Accessing of Electronic Documents	5-33
	[2] Reply to Opposition to Leave to Amend to Add Counterclaims.	5-41

CHAPTER 6

Discovery

§ 6.01	Introduction—The Importance of the Discovery Process	6-3
§ 6.02	Interrogatories and Requests for Production	6-5
[1]	Interrogatories	6-5
[a]	Generally	6-5
[b]	Sample First Set of Interrogatories in Systemic Gender Discrimination Case	6-7
[c]	Plaintiff’s Sample Interrogatories and Request for Production in Disparate Impact Case	6-8.5
[2]	Requests for Production	6-8.11
[a]	Plaintiffs’ Requests for Production Generally	6-9
[b]	Plaintiff’s Request for Production in Age Discrimination Case	6-11
[c]	Plaintiff’s Request for Production in Gender/Pregnancy Discrimination and FMLA Case	6-15
[d]	Plaintiff’s Request for Production in Equal Pay Case	6-22
[e]	Defendant’s Request for Production in Religious Discrimination and Refusal to Accommodate Case	6-22.9
[f]	Defendant’s Request for Production in Discrimination, Harassment and Retaliation Case	6-22.22
[g]	Defendants’ Request for Production in Equal Pay Act Case	6-22.29
[h]	Defendant’s Request for Production in Action for Pregnancy Discrimination, Failure to Accommodate and Violation of the FMLA	6-22.36
[i]	Defendant’s Request for Production in State Court Action for Age and Gender Discrimination	6-22.44
[j]	Plaintiff’s Request for Production of Documents and Tangible Things	6-22.49

TABLE OF CONTENTS

xiii

	[k]	Defendant’s Request for Production in Case Involving Claim of Discrimination After Filing for Workers’ Compensation Benefits	6-22.53
	[l]	Defendant’s Request for Production in State Court Whistleblower Case.....	6-22.59
	[m]	Defendant’s Request for Production in Whistleblower Case Under Dodd-Frank Act.	6-22.65
§ 6.03		Depositions	6-22.71
	[1]	Deposition of the Plaintiff	6-22.71
	[2]	Depositions of Defense Witnesses.....	6-25
	[3]	Depositions of Third-Party Fact Witnesses	6-27
	[4]	Depositions of Expert Witnesses.....	6-28
	[5]	Notice of Deposition and Request for Documents for Expedited Discovery Where Injunctive Relief Enforcing Non-Compete or Non-Solicitation Agreement Requested	6-30
§ 6.04		Discovery Disputes and Motion Practice.....	6-31
	[1]	Plaintiff’s Motion to Compel and Motion for Sanctions	6-31
	[2]	Plaintiff’s Memo in Support of Its Motion to Compel Forensic Examination of Defendant’s AOL Account and iPhone Content.....	6-33
	[3]	Defendant’s Motion to Compel, for Costs and for Protective Order	6-36.7
	[4]	Objections to Motions to Compel	6-43
	[4A]	Motions for Sanctions for Spoliation of Evidence.....	6-59
	[5]	Objection to Motion for Adverse Inference for Spoliation of Evidence.....	6-60.8
	[6]	Motion and Supporting Memo Opposing a Request for Sanctions for Spoliation of Evidence.....	6-66.1
§ 6.05		Discovery Plans for Federal Court Under Federal Rule of Civil Procedure 26(f).....	6-67
§ 6.06		Instructions for Preserving Electronic Documents.....	6-72

CHAPTER 7

**The Dispositive Motion—Motion for
Summary Judgment**

§ 7.01	Introduction	7-2
§ 7.02	Filing for Summary Judgment in Discrimination Actions	7-4
[1]	Gender Discrimination and FMLA Interference and Retaliation	7-4
[2]	Memo of Law in Support of Motion for Summary Judgment in Complaint Alleging Gender and Age Discrimination, Hostile Environment and Retaliation	7-25
[3]	Claim of Disability Discrimination	7-41
[4]	Claim of Racial Discrimination	7-87
[5]	Claim of Ethnic Origin Discrimination	7-97
[6]	Claims of Sexual Harassment	7-129
[a]	Claim of Hostile Environment Sexual Harassment and Retaliation	7-129
[b]	Claim of Hostile Environment Sexual Harassment Raising Faragher/Ellerth Defense and Issue of Employer’s Constructive Knowledge	7-142
[7]	Memo of Law in Support of Summary Judgment in Claim of Pregnancy and Disability Discrimination, and Retaliation, in Covid-19 Related Circumstances	7-161
[7A]	Defendant’s Motion for Summary Judgment	7-174
[8]	Claims of Race, Color and Age Discrimination Based on a Failure to Promote	7-183
[9]	Claims of Discrimination Based on State Law Causes of Action	7-196
[10]	Statute of Limitations with Respect to Anti-Discrimination Laws	7-220
§ 7.03	Summary Judgment Motion Based on Equal Pay Act and Title VII	7-236

CHAPTER 8

Preparing for Trial

§ 8.01	Introduction	8-2
§ 8.02	Jury Instructions	8-3
	[1] Sample: Employment Discrimination Case	8-3
	[2] Sample: Hostile Work Environment Based on Race	8-13
	[3] Sample: Wrongful Discharge Case	8-43
§ 8.03	<i>Voir Dire</i>	8-52
	[1] Generally	8-52
	[2] Sample <i>Voir Dire</i> by Defendant in Disability Discrimination Case	8-65
	[3] Sample <i>Voir Dire</i> by Defendant in Contract Case	8-70
§ 8.04	Motions <i>in Limine</i>	8-76
	[1] Motion <i>in Limine</i> to Preclude Evidence Related to Damages	8-76
	[2] Motion <i>in Limine</i> to Preclude Evidence and Witness Regarding Culture of Harassment and Discrimination Toward Women	8-82
	[3] Motion <i>in Limine</i> to Allow Admission of Evidence	8-91
	[4] Motion <i>in Limine</i> to Preclude Evidence or Testimony Regarding Issues Previously Decided by the Court in Employment Contract Case	8-93
	[5] Opposition to Motion <i>in Limine</i> to Preclude Evidence Relating to Character	8-96
	[6] Motion <i>in Limine</i> to Preclude Inadmissible Evidence	8-97
	[7] Motion <i>in Limine</i> to Preclude Introduction of Evidence of Comments or Conduct After Recommendation to Terminate Made	8-104
§ 8.05	Sample Joint Trial Memorandum	8-106.3

EMPLOYMENT LITIGATION**CHAPTER 9****The Settlement Agreement**

§ 9.01	Introduction	9-1
	[1] Employee Forty or Older; Non-Reduction in Force.	9-2
§ 9.02	Sample Settlement Agreement in Employment Discrimination Case/Former Employee Younger Than Forty	9-10
§ 9.03	Sample Pre-Litigation Settlement Agreement/Employee Older Than Forty Years of Age.	9-18
§ 9.04	Memo in Opposition to Motion to Enforce Alleged Settlement Agreement.	9-25

CHAPTER 10**The Appeal**

§ 10.01	Appeals in Discrimination Cases	10-1
	[1] Case Involving Claim of National Origin Discrimination After Discharge for Sexual Harassment.	10-2
	[2] Case Involving Claim of Racial Discrimination After Discharge for Refusing Assignment.	10-30
§ 10.02	Appeals in Cases Involving Employment Agreements	10-55
§ 10.03	Appeals to the Supreme Court	10-61

CHAPTER 11**Class Actions**

§ 11.01	Introduction	11-3
§ 11.02	Complaints.	11-4

TABLE OF CONTENTS

xvii

[1] Sample Gender Discrimination
Complaints 11-4

[a] Complaint for Discrimination in
Hiring, Promotion and Job
Assignments 11-4

[b] Complaint for Intentional
Discrimination and Disparate
Impact Discrimination in
Assignments 11-10

[c] Complaint for Intentional
Discrimination and Disparate
Impact Discrimination in
Compensation and Promotions 11-14.5

[2] Sample Criminal Conviction and
Disparate Impact Discrimination
Complaint 11-14.14

[3] Sample Wage Case Complaints 11-14.24

[a] State Court Complaint for Failure
to Pay Overtime and Unlawful
Deductions from Wages 11-14.24

[b] Federal Court Complaint for Failure
to Pay for Compensable
Work Time 11-14.29

[c] Complaint for Time Rounding 11-14.38

[d] Federal Court Complaint for
Misclassification of Outside
Sales Employees as Exempt
Employees 11-14.46

[e] Federal Court Complaint for
Retaliation for Employee
Complaints to Management
Regarding FLSA Violations 11-14.54

[4] Sample Independent Contractor
Overtime and Employee
Benefits Complaint 11-14.60

[5] Sample FLSA Unpaid Intern Class
Action Complaint 11-14.67

§ 11.03 Sample Answers to Class Action Complaints 11-15

[1] Sample Answer to Complaint Alleging
Failure to Pay Overtime and Other
Wage Law Violations 11-15

[2] Sample Answer to Complaint Alleging
Retaliation for Employee Complaints
to Management Regarding FLSA
Violations 11-20

EMPLOYMENT LITIGATION

	[3] Sample Memorandum in Support of Motion for Summary Judgment Based on Waiver in Arbitration Agreement of Class Action Claim for Systemic Gender Discrimination	11-20.6
§ 11.04	Sample Memorandum in Support of a Motion for Class Action Certification	11-20.30
§ 11.05	Sample Memoranda in Opposition to Request for Class Action Certification	11-27
	[1] Sample Memorandum in Case Involving Alleged Wage-Hour Violations	11-27
	[2] Sample Memorandum in Case Involving Alleged Gender Discrimination	11-36
§ 11.06	Sample Notice of Class Action Lawsuit	11-37
§ 11.07	Discovery	11-41
	[1] Sample Interrogatories	11-41
	[a] Defendant's Interrogatories in Case Involving Improper Time Rounding and Accompanying Overtime Pay Due	11-41
	[b] Plaintiffs' Interrogatories in Case Involving Improper Time Rounding and Overtime Claim	11-43
	[2] Sample Requests for Production of Documents	11-45
	[a] Defendant's Request for Documents in Case Involving Time Rounding and Overtime Claim	11-45
	[b] Plaintiffs' Request for Documents in Case Involving Independent Contractors' Claim for Overtime, Meal/Rest Periods and Employee Benefits	11-50
	[3] Sample Request for Production of Documents in Connection with Class Certification	11-56

CHAPTER 12**Arbitration**

§ 12.01	Introduction	12-2
	[1] Generally	12-2
	[2] Selection of Arbitrators	12-3

TABLE OF CONTENTS

xix

	[3] Arbitration Hearings	12-4
§ 12.02	Sample Memo of Law to Compel Arbitration	12-5
§ 12.03	Sample Statement of Claim for Breach of Contract	12-10.2
§ 12.04	Sample Answer and Affirmative Defenses to Statement of Claim	12-15
§ 12.05	Post-Arbitration Memorandum of Law in Support of Summary Judgment on Claim of Breach of Contract, Retaliation for Filing a Sexual Harassment Complaint, and Related Claims	12-23
§ 12.06	Motions to Stay Arbitration, Confirm or Vacate Arbitration Awards	12-42
	[1] Memorandum in Support of Petition to Stay Arbitration Because of Conflict of Interest	12-42
	[2] Petition to Confirm Arbitration Award	12-43
	[3] Notice of Petition to Vacate Arbitration Award	12-46
	[4] Memo in Opposition to Petition to Vacate Arbitration Award	12-47
§ 12.07	Discovery	12-59
	[1] Respondent’s First Request for Information	12-59
	[2] Respondent’s Response and Objections to Claimant’s Request for Documents	12-63
INDEX	I-1