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INTRODUCTION

This book is a practical guide for conducting EEO Investigations and producing effective Reports of Investigation (ROI).

Conducting EEO Investigations can be a rewarding career where an Investigator's effort can make a difference in mitigating alleged employment discrimination. EEO Investigators can impact people's lives because employment law applies to every U.S. employee of working age. People are diverse in race, color, age, sex, gender or sexual orientation, national origin, religion, disability, genetic condition, and if they have participated in protected activity. Employment discrimination is a pertinent topic for discussion, discovery, instruction, and implementation.

The origins of employment law can be traced back to the Industrial Revolution. However, many employees do not know their employment rights, have never met an EEO Investigator, and are not aware that Investigations are conducted into discrimination complaints in the workplace.

Let's start with the basics.

Certified EEO Investigators are neutral fact finders for complaints of discrimination. Although EEO Investigators

are qualified to handle management inquiries, while others are skilled to facilitate workplace investigations and private sector discrimination complaints, this book will focus on aspects specific to federal EEO complaints under Title VII.

Certified EEO Investigators take an initial 32 hours of required training on Employment Law theories and statutes, and eight hours each year going forward. EEO Investigators are independent consultants that should be qualified to produce a sufficient investigation and ROI.

Industry concern

Advanced EEO Solutions (AES) has found that only 3 of 10 Investigators are proficient in investigating and submitting a sufficient ROI without assistance. AES has worked with hundreds of Investigators over the last 15 years and AES's founder has deemed it necessary to customize a quality control system due to the amount of poor-quality draft ROIs regularly submitted. The work product was not sufficient to submit to our federal government clients. Not only new Investigators, but Investigators with varying years of experience have struggled to produce a quality work product. Inadequate training and a lack of specific skills which will be discussed in this book, is the reason many Investigators perform poorly.

Solution

This is **not** one of those books that excites you with fluff, presents a problem, and then provides a solution which is a sales pitch for an expensive training that the author happens to offer. This **is** the book that will provide EEO professionals with both practical

instructions on how to produce effective EEO Investigations and valuable insight into the skills required to succeed. Investigators must invest in themselves if they desire to be successful.

Who will benefit?

Now that you have obtained a copy of this book, if you invest time in skills training by following our instructions, we guarantee that you will elevate your career as an EEO Investigator or acquire invaluable insight on EEO investigations that will help your career in a related industry. Our instruction is not only for the novice; seasoned practitioners have also benefited from our method of conducting EEO Investigations. This book is not meant to imitate a 32-hour training requirement but is rather a “beyond the 32 hours” instructional guide to delivering a high-quality product.

Our instructions are beneficial to many different people and professions: EEO Investigators and Counselors, EEO Specialists/Managers/Directors/DEIA, etc., Employment Law Attorneys, Private Sector HR Professionals, Employment Law School students, Complainants filing a discrimination complaint, and Investigators in other industries.

Understanding some specific skills required, and implementing some key techniques provided in this book will improve EEO Investigations and generate quality Reports of Investigation. Qualified EEO professionals have noteworthy careers, as they can directly impact and play a part in addressing workplace discrimination.

CHAPTER 6

Comparators

Comparators/Circumstantial Evidence

One of the most confusing and difficult topics to grasp is the identity of a true comparator, and understanding how they are relevant in an EEO Investigation. A significant percentage of Investigators struggle to understand this key piece of circumstantial evidence.

The ability to master this skill set is a differentiator among Investigators and separates the great ones from the pack. This chapter will be a deep dive into different scenarios and strategies and will explain how comparator information is beneficial and can be utilized to improve the quality of ROIs.

Additionally, references on comparators are in **Chapter 5** (how to find comparators), and **Chapter 7** (how to draft questions for comparators).

Let's go over a few facts about circumstantial evidence/comparators.

- Investigations are more likely to extract, identify, and accumulate circumstantial evidence than direct evidence. This makes comparators a key piece of evidence.
- Documented and properly presented circumstantial evidence is sufficient for a case file, compared to accumulating fluff testimony, gossip and hearsay, and non-related details.
- Investigators are expected to find or inquire about a similarly situated comparator(s) for every disparate treatment case; An element of the Prima Facie specifically notes this key point.
- By understanding the importance of comparators and comparative evidence/data, Investigators are equipped to address the required element of the Prima Facie for alleged disparate treatment.
- Not every case will have a comparator, but efforts must be made to identify them if they exist.

Keynote: *In the case where no comparator is identified, it is helpful if the Investigator drafts a memorandum to the file stating why a comparator cannot be identified.*

We are going to provide multiple scenarios below and address the way an Investigator can effectively extract accurate information on comparators for the case file.

Circumstance #1:

One witness stated that every woman at the facility made plenty of mistakes, some serious in nature, but the Complainant (male) was the only employee fired by Charlie (Supervisor) for making similar mistakes. Unfortunately for the Complainant, there is

no evidence on Agency record for extensive mistakes made by the female employees at the facility or what discipline they received, if any.

The Investigator needs to identify a comparator for the example above. How can the Investigator extract the facts for the record that address the alleged disparate treatment between the Complainant and the co-workers at the facility?

Below is information that has been obtained by the Investigator through multiple interrogatories:

Information #1: Sharon (Witness) said the Supervisor Charlie loves having women around to flirt with, so they are never held accountable for their actions.

Information #2: Keisha (Witness) relays that Charlie does not like the Complainant; they have a personality conflict and Charlie “steps on his toes” whenever he gets a chance.

Information #3: Mr. Martin, Safety Supervisor (Witness) provided a letter explaining there are five employees in the same position and unit under Charlie’s supervision that did not respond to the safety alarm, including Complainant. Complainant received a reprimand that went into his personal file; the other four employees who were female were provided with a verbal warning.

Information #4: Jessica (Witness) stated that Charlie should never have been a supervisor; he is always late to work and submits his performance evaluations for employees past the allocated timeframe.

The Investigator has identified four comparators based on evidence (Information #3) he received from the Safety

Supervisor, Mr. Martin. The comparators were four women in Complainant's unit, who did not respond to the safety alarm and were not disciplined.

Why was Complainant reprimanded but the four comparators were given a verbal warning?

Next, the Investigator will now need to find out why these comparators were treated differently in a similar situation.

The Investigator can now focus on asking the decision maker, Charlie (Supervisor) how and why he made his decision to reprimand the Complainant, and why he gave the other four employees, who were female, verbal warnings for the same employment infraction.

Circumstance #2:

Below are comments from Administrative Law Judges (AJs) regarding comparators after reading Reports of Investigations:

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If you have found value so far, click the button to learn even more by purchasing your copy on [Amazon.com](https://www.amazon.com).

Please consider sharing it with your friends and colleagues.