

# EMPLOYMENT

# 7



## 7.1 OVERVIEW

The bulk of litigation directed against schools and colleges involves claims by faculty, administrators, and staff. These claims cover a broad range of issues, from unpaid-premium-overtime wages to wrongful termination. In recent years the majority of claims has involved allegations of discrimination on the basis of race, gender, nationality, age, or disability. Given the great exposure that institutions face from employment decisions, it is critical that relevant staff pay careful attention both to compliance with technical employment-law requirements *and* to making sure that actions are even-handed, nondiscriminatory, and have an appearance of overall fairness to an unbiased observer.

## Chapter 7 Employment

This chapter sets out the governing law generally applicable to all educational employees. Along the way, we look at specific steps that employers can take to increase their compliance with these laws and avoid common pitfalls. We also discuss the very practical problems regarding employment decisions, including evaluating, documenting, and disciplining employees.

Specifically, Section 7.2 builds the essential framework for putting specific employment problems in context, while Section 7.3 summarizes administrative enforcement through the statutory and common-law sources of claims and identifies the key administrative “players” in the employment-law regulatory process. Sections 7.4 through 7.11 then discuss in more detail the specific employment issues most important to a successful preventive law strategy: employment discrimination (Section 7.4), affirmative action and discrimination (Section 7.5), sexual harassment (Section 7.6), accommodating employees with disabilities (Section 7.7), evaluating and documenting performance (Section 7.8), employment decisions (Section 7.9), reference letters (Section 7.10), and personal liability of administrators (Section 7.11). (Chapter 8 addresses issues specific to faculty members.)

