Preface

We are pleased to bring you this book in the “MeToo” era with the contributions of seasoned employment law practitioners from across the country. This book is a best practices guide for attorneys who litigate cases on behalf of plaintiff/employees and defendant/employers. While Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination against individuals in several protected classes, this book focuses only on gender harassment and retaliation. But many, if not most, of the techniques addressed in this book can be applied to cases involving alleged discrimination on the basis of other protected classes.

In a way, this book has been a work in progress since the American Bar Association published *Litigating the Sexual Harassment Case* to guide practitioners after sexual harassment litigation increased in the 1990s as a result of highly publicized allegations of sexual harassment against a U.S. Supreme Court nominee and the sitting President. In 2000 the American Bar Association published the second edition of *Litigating the Sexual Harassment Case*.

In 2010, the ABA published *Litigating the Workplace Harassment Case*, recognizing that the courts had expanded the concept of harassment to include protected criteria other than sex but still focusing in the book on sexual harassment, which is a form of discrimination on the basis of sex. Since 2010, retaliation claims have increased, expanding claims of harassment on the basis of sex, beyond sexual conduct or language, and making them more difficult to defend on an overall basis.

This book provides best practices for attorneys to apply to claims alleging harassment on the basis of all aspects of sex discrimination. Chapter 1 provides the platform to assess and handle gender harassment and retaliation cases by discussing the elements which have to be proven and should be kept in mind throughout the litigation of a claim, including planning and defending depositions. Chapter 2 assists the practitioner in investigating allegations before and after they become internal or administrative claims. Chapter 2 also assist the practitioner in examining the relevant policies which may become defenses or liabilities to overcome. Chapters 5 on Employment Practices Liability Insurance reminds the practitioner to consider insurance coverage from the beginning of the claim. Chapter 7 on Arbitration educates the practitioner on arbitration, including that arbitration must be timely asserted or can always be pursued by
agreement in lieu of court litigation. The remaining chapters guide the practitioner through the process of litigation and trial, including assessment of damages and use of experts and trial consultants.

Although this book focuses on gender harassment and retaliation under Title VII, which is of national applicability, practitioners are cautioned to not overlook the applicable state anti-discrimination statutes and common law which may provide more favorable venues and remedies for claimants, as is the case in California.

We consider our work on this book as a contribution to the profession and a partnership of two seasoned employment law practitioners who have been ABA, TIPS, and LEL colleagues and collaborators for over 25 years. We hope this book empowers you in your employment law practice and sparks passion for the practical application of the law.

Roxella T. Cavazos, Co-Editor
Sandra R. McCandless, Co-Editor