

# Defenses to EEO Claims: Key Considerations

A Practical Guidance® Practice Note by Colin Barnacle and Joshua Autry,  
Greenspoon Marder LLP



Colin Barnacle  
Greenspoon Marder LLP



Joshua Autry  
Greenspoon Marder LLP

This practice note summarizes defenses that apply broadly to Equal Employment Opportunity Commission (EEOC) claims outside of disparate treatment, disparate impact, harassment, or retaliation contexts. Common defenses include procedural bars—such as the statute of limitations, failure to exhaust administrative remedies, and enforcement of arbitration **or** CBA grievance provisions. Substantive defenses include prior waiver or release, bona fide occupational qualification (BFOQ), voluntary resignation versus constructive discharge, and the after-acquired evidence rule which limits damages.

Employers may also assert failure to mitigate damages, same actor **or** same class inferences against discriminatory intent, and defenses based on independent contractor status or lack of individual liability. Additional defenses include third-party misconduct, workers' compensation exclusivity, good-faith compliance negating punitive damages, and equitable doctrines such as laches, estoppel, and unclean hands. Together, these defenses provide employers with multiple procedural and substantive strategies to limit or defeat liability in EEO litigation.

Click [here](#) for full access to this Practical Guidance® content.

---

---

**Colin Barnacle, Partner, Greenspoon Marder LLP**

Colin Barnacle is a partner in the Labor and Employment and Litigation practice groups at Greenspoon Marder LLP. With over 20 years of experience, he specializes in traditional labor issues such as elections, collective bargaining, and arbitration, as well as employment matters regarding discrimination, harassment, disability, FMLA, non-compete agreements, and trade secret misappropriation. Mr. Barnacle has also successfully represented clients in federal and state wage and hour class actions across the country.

Mr. Barnacle provides strategic advice and litigation support, serving a diverse client base from Fortune 500 companies to small businesses. His practical, business-oriented approach is informed by his in-house experience as head of international labor and employment for two large, publicly traded corporations, allowing him to align legal strategies with business goals.

He is also a skilled trainer, frequently working with executives and human resource professionals to develop proactive policies that minimize legal risks while fostering positive workplace environments. He regularly advises clients on workforce restructuring, compliance with evolving employment laws, and best practices for handling sensitive workplace investigations.

Outside of work, Mr. Barnacle is a passionate sports fan, particularly of the Denver Broncos, and enjoys attending various sporting events. He also considers himself to be a dog whisperer and is an avid admirer of Frank Lloyd Wright's architectural legacy.

**Joshua Autry, Associate, Greenspoon Marder LLP**

Joshua Autry is an associate in Greenspoon Marder LLP's Labor and Employment practice group, where he represents both employees and employers in all stages of employment litigation. His practice spans a wide range of matters, including discrimination, harassment, retaliation, wrongful termination, and FMLA claims.

Mr. Autry has extensive experience handling collective and class actions under the Fair Labor Standards Act (FLSA), with particular focus on issues involving exemption status, joint employment, and wage and hour coverage under state and federal law. He is also skilled in complex legal research, drafting, and managing discovery in cases involving payroll, timekeeping, and employment policies.

In addition to his litigation work, Mr. Autry is adept at advising businesses on compliance and risk management strategies. He frequently conducts payroll audits, reviews exemption classifications, and develops training programs for HR professionals on wage and hour compliance, timekeeping, and overtime calculations.

Prior to joining Greenspoon Marder, he practiced at a boutique employment law firm with a national presence, where he litigated wage and hour disputes and workplace claims.

Outside of the office, Josh enjoys following sports, especially cheering on the Tennessee Vols and Manchester City. Staying active is a big part of his life as he enjoys spending time at the gym, skiing in the winter, hiking new trails, or simply taking a walk in the park.

This document from Practical Guidance®, a comprehensive resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Practical Guidance includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practical-guidance](https://www.lexisnexis.com/practical-guidance). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.

---