



## Episode 50: “Anniversary Edition: Greatest Hits From the First 49 Episodes”

Speakers: Ari Kwiatkowski, Maureen Kielt, Rosemary Enright, Randy Oppenheimer, and Scott Rogoff

**[Ari Kwiatkowski]:** Hi, everyone, this is a *Barclay Damon Live* broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

**[Ari]:** Hey, everyone, welcome to episode 50 of the Barclay Damon Live Labor and Employment podcast. I just wanted to say thank you so much to our listeners for all of your support over the last year or so. And for episode 50, we’re going to switch it up a bit. What we thought would be a fun thing to do is if we kind of give you guys snippets or little excerpts from our top five episodes or the episodes that you guys seem to enjoy the most. So for this episode, we’re going to run through, like I mentioned, those top five episodes. We’re going to kick it off with giving you a couple of snippets from “All Your EEOC Questions Answered,” part one and part two. If you listened to these episodes, you know, that’s the regional director of the EEOC for the Buffalo Local Office, Maureen Kielt, came on the podcast and she really gave us a great rundown on everything you need to know about handling a discrimination charge before the EEOC.

**[Maureen Kielt]:** Need to try and get out there to employers and tell them educate, educate, educate.

**[Ari]:** What laws did the EEOC enforce?

**[Maureen]:** Lots. Okay. Let’s go: Age, race, sex, national origin, religion, Americans with Disabilities Act. Lots.

**[Ari]:** Next, we are going to give you a snippet or a few minutes from an episode that we did with Randy Oppenheimer. Randy is a partner in the Barclay Damon team Buffalo office, and Randy and I went through best practices for defending discrimination in lawsuits in federal court. It was a couple episodes, but if that interests you, you should definitely listen to both, because it really gives you the run of the full gamut of what you need to know if you unfortunately are an employer who sued in federal court.

**[Randy Oppenheimer]:** Once you know or have a reasonable basis to suspect that you are being sued, relevant evidence must be preserved. Absolutely must be preserved. The failure to preserve evidence, even innocent destruction of evidence for failure to issue a litigation hold can result in some significant negative consequences in the litigation.

**[Ari]:** One of our other really popular episodes this past year was “Guide to Employee Handbooks: What’s New in 2022?” Barclay Damon partner Rosemary Enright joined me for those episodes and went through with me what was new for 2022.

**[Rosemary Enright]:** We advise our clients to have handbooks for a whole host of reasons. The first is, quite frankly, if you end up with a wrongful termination claim or a discrimination claim, one of the first things the agencies investigating that claim are going to ask is, “Do you have a policy, and did you follow the policy?” And it’s certainly.

**[Ari]:** Did the employee acknowledge the policy...

**[Rosemary]:** The policy. Exactly. That's exactly right. And did the employee receive a copy? Did they know about it and so forth? So that's absolutely right. So that's the first thing they're going to ask. Think about your unemployment. Well, how did the employee know that this was a violation, you know, or did you do an investigation? Do you have an investigative process? So they're always... the first thing the agencies are going to ask. So we always want that, you know, because again, we've got policies, we've got procedures. They're also going to ask, did you have an EEO policy? Do you have an anti-discrimination policy? You know, and so all of those things help should you end up in the unfortunate position of being the subject of a wrongful termination claim, but the other thing I also think it helps is for the employees to know they want to know what's expected of them. Right. And so by putting that in a handbook, so these are our attendance requirements. These are our standards of conduct. This is, you know, what you do if your if there's an error on your paycheck, you know, this is this is this is what happens at the time of termination relative to your pay-out of sick time or your pay-out of vacations, forfeiture language. So it really, you know, it serves as a source of information for the employees and it serves as a source of protection for the employer and, of course, the employee.

**[Ari]:** And if you listen to the podcast pretty regularly, stay tuned because we will be doing the exact same thing for 2023. Obviously, January, February is the time of year where we're really encouraging employers to look at their employee handbooks just to make sure that everything's up to date. So stay tuned for that. We'll round it out with "Can I Ask That: Job Postings and Applications." So if you're a listener of the podcast, you know that we did a whole segment on "Can I Ask That," where I was joined with Barclay Damon partner Scott Rogoff. Scott's in our Rochester office, we did three episodes for that segment and basically went through what you can and cannot ask in job postings, job applications, job interviews. Really, really good stuff in there. Give it a listen. If you like what you hear here in this episode, listen to that whole segment.

**[Scott Rogoff]:** From the beginning, when you post a job, let alone when you invite somebody in for interview, there are various protected classes, both under state law here in New York and also under federal law. So just to give you a broad range of them, there are protected classes such as race, sex, disability, age, family status, military status, predisposing genetic status. So in other words, if a particular illness or a disease runs in your family and you disclose that, the employer can't discriminate against you thinking, oh, well, since it runs in your family, this person might get it too, so we're not going to hire them. So there's a whole host of protected classes, including just, you know, some more, more, some more recent ones; on conviction record, you know, arrest record, let's see, marijuana now is a relatively new one. So there's a whole panoply of protected classes that come into play here that employers have to be cognizant, cognizant of when they're conducting interviews.

**[Ari]:** So that's it, everyone, those were snippets or pieces from our most listened to, most enjoyed top five episodes this past year. If you like what you heard, definitely tune in for 2023 because we're going to go through some similar topics. Like I mentioned, we're going to do a 2023 handbook update segment, but we're also going to delve into some new topics, some new content. Hopefully, that will be really helpful for you guys. We're going to talk about unionization issues, really hot button topic, right now in this area. And you know, we're really going to take a deep dive into restrictive covenant litigation, non-competition, things like that. And I think this year is going to be even better than last. So thank you so much again for the support over the last year. We so appreciate it. I'm so thrilled to celebrate 50 episodes and I will see you guys for the next one.

**[Ari]:** The *Labor & Employment Podcast* is available on [barclaydamon.com](http://barclaydamon.com), YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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