

WRITING A FINAL AGENCY DECISION

BEST PRACTICES

1. All Legal Theories Explored and Exhausted (hostile work environment, medical inquiries and examinations, constructive discharge, disparate treatment, medical inquiries, medical disclosure, per se retaliation)
2. Agency-Speak explained so outsiders understand. Assumes reader knows nothing about the particular workplace.
3. Uses Subheadings
4. Cites to Record
5. Cites pertinent OFO/US Supreme Court precedent and EEOC Guidance
6. Distinguishes/Compares Legal Precedent
7. Acknowledges Problematic or Unsound Agency Actions even if there was no discrimination
8. Clearly identifies all prior EEO activity, includes dates of activity and the identity of responsible management officials
9. Describes Duties of Complainant in detail (and any restrictions)
10. Uses Footnotes to add depth or clarify

WORST PRACTICES

1. Acronym Hell
2. Fragmenting of Hostile Work Environment Claims
3. No Breach found without supporting Affidavit and Documentary Evidence
4. Fails to explain calculations, time records
5. Glossing over Complainant's Arguments/Contentions/Pretext Evidence, especially when Complainant gave Rebuttal Statement
6. Unclear when Complainant received the FAD (no receipt confirmation)
7. Decisions that fail to grasp that Reprisal has a distinct Merits Standard (reasonably likely to deter; also interference with the EEO process)
8. Lacks Comprehensive Background of Facts and Context (complainant's work bio, history)
9. Misframing of Issues. Not Capturing all the claims alleged.
10. Fails to Sanction or Find against Agency for Inadequate Investigations (burden of production, information on comparatives, no affidavits from necessary witnesses)