

Employment law 3

Law



1. Major Industries has a published workplace policy that reads: " Promotions to the level of supervisor and higher are limited to individuals with at least a bachelors degree from an

accredited college or university." This is a " facially neutral" policy. (T)

2. The company HR policy manual has been construed by some courts to contain enforceable terms in the contract with employees. (F)

3. Anita Byrum is an employee in an at-will employment state. One day, she discovers her regional manager, Lothario, kissing his employee Lois. That afternoon, Anita calls Lothario's wife and informs her of her husband's actions. The next day, Anita is fired. She has sued for unjust dismissal:

A)Anita will win because she is protected by the federal Whistleblower Protection Act.

B)Anita will win because her firing constitutes a violation of her right to free speech.

C)Anita will lose because her firing does not fall under any recognized exceptions to the at-will doctrine.

D)Anita will win because her firing violates the WARN Act.

4. The Internal Revenue Service may not successfully challenge a workers classification as an independent contractor if the worker knowingly and voluntarily agreed to the independent contractor designation. (T)

5. A persuasive indicator distinguishing an independent contractor from an employee is the degree of control exercised by the employer over the performance of the

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work. (F)

6. Which of the following is/are required in proving a claim under the doctrine of respondeat superior?

- A. Employee was acting within the scope of her employment
- B. Employer could have foreseen the negligence in question
- C. The act in question was performed under the specific orders of management
- D. A and C above
- E. None of the above.

7. A prima facie case of discrimination means that:

- A. The organization is guilty of blatant discrimination and has no reasonable defense.
- B. On the face of it, there is evidence of discrimination, but some justification may exist.
- C. The organization was wrongly accused of discrimination.
- D. The organization must develop a set-aside system to correct past discriminatory practices.
- E. None of the above.

8. Harrison works in a cubicle at a window next to Karen Ravenwoods cubicle at Tabernacle Insurers. One day, Harrison overhears Karens supervisor make a comment that shed be more successful if she spent as much time on shaping her list of prospective customers as she does on shaping her body. Karen files a complaint of sex/gender discrimination with the EEOC and Harrison is called to testify during the investigation. The EEOC decides not to pursue the matter. A month and a half after the investigation is closed, Tabernacle management moves Harrison from his cubicle to a cubicle on a <https://assignbuster.com/employment-law-3/>

vacant floor. All other aspects of his job remain the same. Harrison files a complaint of retaliation.

A. Harrison cannot pursue a case of retaliation because the relocation of his work area between cubicles did not materially affect the terms, conditions, or privileges of his employment at Tabernacle.

B. Harrison cannot prove a case of retaliation because the investigation uncovered no wrongdoing.

C. Harrison cannot prove a case of retaliation, as he is not in the same protected group as Karen.

D. Harrison can prove a case of retaliation.

9. Which of the following is Not a factor important in determining whether a worker is an employee or an independent contractor?

A. Location of the work

B. Denomination of pay (hourly vs. output)

C. Profit/loss risk related to the work

D. Liability for breach of contract for failure to uphold duties related to the work.

E. None of the above.

10. Randi has been placed by a staffing firm in a temporary secretarial position with USD Industries. Randi is an employee solely by the staffing firm. The day after she reports, USD calls the staffing firm and requests that she be replaced due to her race.

A) Randi may sue USD as a third party interferer

B) Randi may not sue USD unless she is unable to be placed in a new position within 10 days.

C) Randi's only recourse is to sue the staffing firm who is her employer.

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D) Randi may not sue USD because as a temporary worker and non-employee, she does not enjoy Title VII protections.

11. In order to win a “quid pro quo” case, but not a “hostile work environment” case of sexual harassment, plaintiff must prove that some psychological injury resulted from the harassment. (F)

12. Maxwell Corp. distinguishes between applicants that it is willing to interview for any position, and those that it is not, on the degree to which an applicant's handwriting is determined, by a qualified graphologist, to indicate high emotional stability and ambition. On the basis of this test, 70% of male applicants are deemed interviewable, while 45% of female applicants are deemed interviewable. The use of the handwriting analysis as a distinguishing factor has a disparate impact on women. (T)

13. Title VII does not prohibit the use of testing:

A) if the test is professionally developed and validated, but only if no disparate impact is evident.

B) if the test is professionally developed and validated, even when disparate impact is evident.

C) if the test is professionally developed but not validated, because validation is not required when professionals develop the test.

D) only when no disparate impact is evident, regardless of how the test is developed, and whether the test is validated or not.

14. The EEOC:

A. Is responsible for enforcing Title 7 of the Civil Rights Act of 1964

B. Attempts to resolve issues via conciliation or litigation

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- C. May Issue a right-to-sue letter, allowing an employee to file a discrimination lawsuit
- D. All of the above

15. Chip Onsholder is a welder for Mac's Machine Tools. He cannot seem to please his new boss, Ms. Perfection. He suspects she doesn't like him because she's a liberal Democrat, and he's a rock-ribbed Republican. One day, Chip makes a joke about the stupidity of donkeys and she fires him. When Chip sues for discrimination under Title 7, he will probably:

- A. Win, because his free speech rights have been abridged
- B. Win, as political affiliation is a non-job related reason for firing
- C. Lose, as Democrats are not a protected class under Title 7
- D. Win, as this constitutes "retaliation" under Title 7.

16. Assume that 50% more Asian applicants than Caucasian applicants flunk a standard typing test used qualify applicants for Megacorp's word processing pool. Under the authority of Griggs v. Duke Power, this test may continue to be used in making hiring decisions. (T)

17. If an employee in CA has signed a non-solicitation agreement with her former employer, sending out her new business card and advertising her new position are illegal solicitations of new business. (F)

18. Minerva accepts a job sanding and painting boats at a large marina. She is offended because the rest of the employees constantly tell sexually explicit jokes, use profanity, and call her "galley wench." When she objects, they tease her until she cries in frustration and begins taking prescription tranquilizers. Which of the following is probably true about her legal rights?

- A. She assumed the risk of this verbal behavior where 'cussing like a sailor'

is standard practice; since there was no physical touching, she has no claims

- B. She has a quid pro quo claim of sexual harassment
- C. She has a hostile work environment claim of sexual harassment
- D. She has a sexual harassment claim, unless some of the participating employees were women.

19. Assume that Minerva is encouraged by a co-worker to report her concerns to her management per shipyard policy, but Minerva declines, stating, “ It’s just too embarrassing.” Under Title 7, can Minerva collect damages against the shipyard? (F)

20. On the facts above, assume that Minerva is the only female employee, and she’s getting paid less than the other workers. What is a legally justifiable reason to pay her differently?

- A. She is new and the pay scale is based on seniority
- B. Gender is a BFOQ under the Equal Pay Act
- C. They are paid according to output and she produces fewer units than anyone else.
- D. A and C above.

21. Minerva quits her job at the shipyard, and applies for an assembly line position at the YUMMI auto plant. The company has an affirmative action plan, and hires Minerva over Bob. Bob sues, believing he was equally qualified. Which of the following is true of affirmative action plans?

- A. They are legal if permanent and ongoing.
- B. They can provide a basis for reverse discrimination claims
- C. They are “ compelled” by the 14th Amendment Equal Protection clause.
- D. They are expressly mandated for all private employers by Title 7.

22. Endrun Corp. has been cooking the books. Debra Debbits, an accounting supervisor at Endrun, digs up the dirt and secretly meets with World Commercial Times, which publishes an exposee. Endrun's stock plummets. Debbits' disclosures are protected by the First Amendment guarantee of free speech. (F)

23. MegaWidget Corp. of Houston, TX, invites Jobe Seeker, ace LA-based widget salesman, to their headquarters for a round of interviews. They are so impressed that they offer him a job on the spot, to sell widgets in CA, Nevada and Arizona. The terms of his offer, which he signs over drinks after hours, include a restrictive covenant against his working as a widget salesman within his assigned territory for any competitor for 6 months after he leaves Mega. Thirteen months later, Jobe resigns to go sell for a competitor, WorldWidgets, in CA. Which of the following is true:

- A. Megawidget may sue WorldWidget for interference with its contract with Seeker
- B. MegaWidget may enforce its restrictive covenant against Seeker under TX law
- C. Megawidget may enforce its restrictive covenant against Seeker under Nevada law
- D. Seeker may void his contract because it was signed after hours and he was drunk
- E. None of the above.

24. Froelich, a janitor, picks a lock and steals the keys to his employer Drye Cleaners' truck and negligently injures Banter with it. Drye is liable for Banter's injuries under the doctrine of respondeat superior (F)

25. Same facts as above. Drye may be liable for negligent hiring of Froelich if
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the employee had a suspended driving license, and Drye failed to inquire about that fact. (T)

26. Weaver is an employee of Happytime, Inc., a Delaware corporation. She will not be covered by Title VII if:

A) Happytime is a religious organization and she carries on a religious activity.

B) she is a citizen of Costa Rica and she is working in the Costa Rica office.

C) Happytime has fewer than 15 employees..

D) a, b and c.

E) none of the above, all employees of U. S. domestic corporations are protected under Title VII.

27. Weber has been arrested four times for, and convicted twice, of fraud. He is hired as a teller by Port Alice State Bank. He consistently underpays customers making large withdrawals, and keeps the unpaid funds for himself. When a customer attempts to later recover her unpaid funds from Weber, she discovers that Weber has disappeared. Port Alice State Bank will have:

A) no liability since it is not liable for the crimes of its employees.

B) no liability since it will be unable to recover from the now absent Weber.

C) liability to the customer only if it can be shown that the bank had knowledge of Weber's past.

D) liability to the customer, because it has negligently hired a thief.

28. A U. S. company employing female U. S. citizens abroad must comply with Title VII, with respect to its female U. S.-citizen employees:

A) unless the culture of the foreign country does not permit women to work with men.

B)unless it is a religious taboo to allow women to work professionally with women in the country in question.

C)even if the culture of the foreign country does not permit women to work with men, unless doing so would constitute a violation of the foreign countrys law.

D)regardless of the law or custom of the foreign country in question.

29. A seniority system is not " bona fide" within the meaning of Title VII, if:

A)it was set up before the Civil Rights Act of 1991.

B)benefits under the plan are obtainable solely on the basis of longevity in the job.

C)it is designed to perpetuate a system that fostered discrimination.

D)it has not been approved by the EEOC.

30. Wod Chemical excludes black males from certain jobs at its plant, indicating that exposure to one of its chemicals used there has been linked to sickle cell anemia, a disease to which African American men are particularly susceptible. When sued for employment discrimination, Wod may successfully invoke the BFOQ defense. (T)

31. Coughlan is a heroin addict, although he has not used heroin for over 15 years. He credits much of his success in avoiding heroin use to his regular attendance at a meeting of recovering drug addicts, conducted at a nearby hospital. He has applied for a job with King Co. The daily work period for the job he seeks will overlap, about 30 minutes, once a week, with the meeting at the hospital.

A)King can refuse to employ him on the grounds that those addicted to illegal drugs are not considered disabled within the meaning of the ADA, and he would not, therefore, be entitled to reasonable accommodation.

B) King may not refuse to employ him on the basis of his addiction, because being free of addiction is not a BFOQ for any job.

C) King may not refuse to employ him on the basis of his addiction, because the ADA provides that non-using addicts of illegal drugs are protected against discrimination on the basis of their addiction, and are, therefore, entitled to reasonable accommodation, as long as they are pursuing a rehabilitation program

D) King can refuse to employ him on the grounds that those addicted to illegal drugs will never be able to pass a pre-employment drug screening test.

32. An employer's duty to accommodate the religious practices of an employee is limited by:

A) the concepts of reasonableness and undue hardship.

B) the degree to which the religion involved is widely recognized.

C) the First and Fourteenth Amendments to the U. S. Constitution.

D) expectations and demands by the employee.

33. Maria is a lesbian, working as a sales clerk in the shoe department of Banks Department Store. Frank, her supervisor, refuses to give her a raise unless she agrees to have sex with him. Maria refuses and is denied the raise. She, thereafter, brings a claim of sex discrimination against Frank. Her claim is:

A) not actionable. Harassment of a lesbian by a male is regarded, in the eyes of the law, as same-sex harassment, which is generally not a recognized claim.

B) actionable, since her affinity orientation makes her more amenable to

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psychological injury.

C) actionable, since the gravamen of her complaint is discrimination on the basis of her gender, not on the basis of her affinity orientation.

D) not actionable, since homosexuals are not protected against discrimination by Title VII.

34. The plaintiff's claim in the case above would be based on

A. Disparate treatment

B. Disparate impact

C. Breach of contract

D. All of the above.

35. Paul is being subjected to severe, pervasive and unwelcome sexual behavior in the workplace, by Greg. Can Paul bring a successful suit against Greg, for sexual harassment, under Title VII?

A) No, because same-sex harassment is never covered under Title VII

B) Yes, because same-sex sexual harassment is recognized in all federal jurisdictions.

C) Maybe. If the harassment can be shown to be based on sex, then yes, but if the harassment is based on affinity orientation, then no.

D) No, since men are not protected against sexual harassment, under Title VII.

36. Porter seeks accommodation for a religious practice unique to the Heavenly Masters religion. Porter's employer has never heard of this religion. In order to determine whether Porter's demand for accommodation is truly based on religion, the employer must determine whether:

A) Porter joined the religion before or after commencing employment.

B) it is a registered religion.

C)it is based on a closely-held belief, and whether the belief occupies the place of religion in the employees life.

D)it is based on a popularly-held belief, and whether the belief occupies the place of religion in the employees life.

37. Margaret comes to work in clothes highly reflective of the national origin of her ancestors, and which also happen to violate her employers dress code. She is told to return home, and change into clothing that comports with the dress codes. She is correct when she claims that Title VIIs prohibition against national origin discrimination makes the dress code unenforceable, as it prevents her from expressing her heritage at work. (F)

38. Go Orange Electronics has been manufacturing computers since 1979. It employs approximately 2700 employees. In 1987, the companys EEO Department advised management that 97% of the companys supervisors were White, although the companys workforce was 38% other than White. The company decided to implement a voluntary affirmative action plan which would reserve 25% of each supervisory training class for blacks and other minorities until such time as the percentage of minorities that were supervisors was representative of the available minorities in the local labor force.

A. this affirmative action plan is illegal because sets a quota for the number of minorities allowed in the class

B. this affirmative action plan is illegal because it discriminates against white men

C. this affirmative action plan is legal because it is temporary, doesnt unnecessarily infringe on the rights of white employees, and is designed to eliminate the racial imbalance in supervisory positions.

D. this affirmative action plan is legal because it only sets aside 25% of the class for minorities.

39. Grace is a police officer with the Washington County Police Department. Anti-abortion protestors announce that they are going to hold rallies at medical clinics where abortions are performed in Washington County. The police department decides to assign police officers to guard the clinics. Grace tells the chief of police that her strong religious beliefs opposing abortion prevent her from guarding a clinic. The chief tells Grace that he will not assign her to guard a clinic and that she can patrol elsewhere during the rallies. During one of the rallies a riot occurs at one of the clinics and police reinforcements are called to the scene. Grace is one of the officers who is called to assist the officers already guarding the clinic. She refuses to respond to the emergency call and is fired. Grace claims religious discrimination.

A. Grace will prevail because the police department reneged on its offer of a reasonable accommodation.

B. The department will prevail because the department could not excuse her from responding to the emergency call without causing an undue hardship.

C. Grace will prevail because other officers responded to the emergency call.

D. The department will prevail because Grace only told the chief about her aversion to guarding the clinic and did not mention anything about other duties.

40. Megacorp is incorporated in DE and has its principal place of business in Minneapolis, MN. The terms of Megacorp's "reasonable" non-compete

clause in its offer letters and employee handbook are therefore enforceable against its workers at its Oakland, CA plant. (T)