

# Employment and lower court assignment

[Sociology](#)



**ASSIGN  
BUSTER**

HRM 546NAME: \_\_\_Melissa Merchut\_\_\_\_\_ Jeff C.

HerringDATE: \_\_\_\_\_11/28/11\_\_\_\_\_ General Instructions: Read

the specific instructions for each section carefully before you begin the section. You have until the end of class to finish this test. The questions should be fairly self-explanatory, however, if you have a question ask. The test is worth 20 points and will be graded accordingly: Multiple Choice = 20%, True/False = 20%, Matching = 10%, and Short Answer = 50%. I will have the grades posted within 7 days. I have enjoyed getting to know and working with all of you over the last few weeks.

As always, I learn as much if not more from all of you than vice versa. Best of luck in all of your future studies and careers. Please do not hesitate to call me if you have any question or concerns. Thank you all again. Good luck.

Multiple Choice Instructions: Circle the letter of the best choice. 1)Jill is a marketing manager for Beta Co. , located in a state recognizing at-will employment as well as its exceptions. Jill cooperates with a police investigation of her supervisor, Sam, who is being charged with the crime of burglary. The next day, Jill is fired for “ not being a good team player. ”

Based on these facts, Jill most likely:

A) has a claim for wrongful discharge based on the public policy exception.

2)Which of the following workers is the most likely to be considered an independent contractor rather than an employee? A) A graphic designer hired to design a company’s logo. 3)Which of the following employment practices is most likely to give rise to a successful Title VII disparate impact claim against ABC Law Firm which has 25 employees? D) All of the above would result in successful Title VII disparate impact claims. 4)Title VII applies

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to private employers which have: A) 15 employees or more. 5) Which of the following categories is not protected under Title VII?

D) A and B. 6) Acme Inc. has 100 employees. It has recruited two equally qualified candidates for the available position of Strategic Alliances Director. One candidate is female, the other male. Which of the following statements is most accurate? D) None of the above. 7) Which of the following

statement(s) about reference checks is/are true? B) Failure to complete reference checks may lead to liability for negligent hiring. 8) The following does not occur when affirmative action is applied properly: G) A, B and C.

9) Jane, a dark-skinned black woman, is constantly belittled by her supervisor, Mary, a light-skinned black woman, who calls Jane such names as “darkie.” Mary fires Jane and replaces her with a light-skinned black woman. Under these facts: A) Jane may have a Title VII claim based on color discrimination.

10) Maya, a black female student at Winston University (a historically black university), auditions as a trumpet player for the campus “pep” band and is rejected. Maya believes she was rejected based on race. Under these facts:

A) Maya may bring a successful Title VII claim against Winston University if she can prove the band’s discriminatory intent. 1) Which of the following

entitle employees protected under the FMLA to take FMLA leave? D) All of

the above. 12) Joe, a male personal trainer, applies to Our Gym, a “women’s only” gym for an available position as a personal trainer and is rejected. He is told that the gym’s female clientele “feel more comfortable” with female personal trainers. Joe contacts the EEOC to file a complaint against Our Gym.

Joe: B) may succeed in his Title VII claim against Our Gym. 13) Ed, a male,

works as a receptionist at Acme, Inc., which has 200 employees. Acme

customer, Joe, often makes sexual advances on Ed during his weekly visits to Acme.

Ed has complained to Acme HR Manager Sam about Joe's conduct. Under these facts: A) Acme may be liable for sexual harassment under Title VII.

14) Patrick is a manager and is having a consensual affair with his secretary.

He forces a married male employee to hear details and view pictures of his exploits. He has also forced this employee to participate in on a threesome, under threat of losing his job. A) Hostile environment sexual harassment has occurred. 15) Howard believes that he is a woman trapped in a male body. He has begun the initial process necessary to undergo gender discrimination.

D) Howard, under these circumstances receives no protections under Title VII based solely on his transsexuality. 16) A construction worker has recently converted to Sikhism. He tells his supervisor that he must wear a turban at all times as part of his religious practice, which means he cannot wear the construction hat required by safety regulations. Which of the following is most accurate? C) The employer should explore alternatives with the worker.

17) Which of the following will a court consider in determining whether an employer reasonably accommodated an employee's religious practice in the workplace?

D) Both B and C 18) Amy is HR Assistant Manager for Acme Inc. Amy is processing paperwork for two new hires, Julio, a Mexican-American male, and Betty, an Anglo-Saxon American female. Which of the following statement(s) regarding the I-9 forms is/are most accurate? A) Amy should ask both Julio and Betty for documentation verifying employment eligibility per the I-9

form. 19) Al is a 66-year-old worker who is replaced by a 41-year-old worker. Which of the following statements is most accurate: C) Al might be able to make a claim under the ADEA. 20) According to the United States Supreme Court in *Toyota Manufacturing Co. v. Williams*, which of the following could be considered a “major life activity” under the ADA? D) Neither A nor B. 21) In terms of medical examinations: C) both A and B. 22) Which of the following may be an employer’s defense to an employee’s defamation claim? D) None of the above. 23) Requiring all employees of the bargaining unit to pay union dues, whether they join the union or not is called: A) an agency shop. 24) Where no OSHA standard has been developed to address a particular circumstance: C) the courts will apply the general duty clause. 25) Lakesha is a secretary and works full time in an office.

She makes \$10.00 per hour and although she works a 37 1/2 hour week, she is paid on the basis of 40 hours. She therefore grosses \$400.00 per week. Her boss Mike has asked her to work on a Saturday, one of her normal days off. If she works 8 hours, how much should her gross pay be that week? B) \$480.00. True and False Instructions: Mark either “True” or “False” for each of these statements. 1) To ensure fairness and equity at the workplace, Congress passed legislation requiring employers to hire certain groups of individuals, such as women, using a quota system. B) False 2) Joe, an attorney with Weil Defen Yoo law firm, applied for a promotion to Senior Associate and was rejected. Joe believes he is the victim of national origin discrimination. Joe will not be able to bring a claim against the law firm because he is considered an exempt employee. B) False 3) Word-of-Mouth recruiting using referrals from within a company’s workforce cannot lead to discriminatory

hiring practices because the employees themselves are doing the recruiting.

B) False 4) Title VII requires that employers take affirmative action to hire women and minorities. A) True 5) According to a recent study, white males are more predominant in today's workplace than women or non-Europeans. A) True 6) Title VII protects white males from discrimination. A) True 7) FMLA does not entitle protected employees to leave for adoption or foster care of a child. B) False 8) Any request for a date or romantic relationship between co-workers is considered "sexual harassment" under Title VII. B) False 9) Jokes about sex over workplace email are not considered sexual harassment since no touching is involved. B) False 10) Title VII does not protect against sexual orientation discrimination.

A) True 11) Reasonable accommodation does not mean that employers must provide any accommodation requested by their employees. A) True

12) Citizenship is a protected category under Title VII. A) True 13) The ADEA was originally enacted to protect both old and young from age discrimination B) False 14) If an individual with a disability applies for a job in the private sector, then the employer must hire him or her. B) False 15) An employer can successfully prohibit employees from living with someone without benefit of marriage if the employer can show a true work related reason for such a policy.

B) False 16) According to a 2004 U. S. Department of Labor report, unionization has steadily increased since the early 1980s. B) False

17) Employers need only train employees on workplace safety at the time of hire. B) False 18) Generally, employers have the right to reduce or modify employee benefits as long as similarly situated plan participants are treated

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alike. A) True 19) COBRA requires that employers extend employee health insurance coverage for up to 18 months for legally terminated employees. A) True 20) Louis works full time in the tech department at Whatsamatter U.

He is on call for a ten hour period every Saturday. If called, he is expected to be on campus within one hour. His activities are so restricted during these on call times that he cannot effectively use the time to do anything other than stay at or very near his home. According to *Casserly, et al. v. Colorado*, during his on call periods, he is working for purposes of the FLSA. A) True

Matching Instructions: Mark the correct letter of the definition that describes the word or phrase. c 1) affirm a) nullify the decision of a lower court

j 2) claimant b) send a case back to a lower court to be decided again

s 3) quote c) confirm or uphold a lower court's decision x 4) statute of limitations d) money awarded to compensate a party for direct losses

d 5) compensatory damages e) decide a case; settle by judicial decree

h 6) vacate f) set free; judicially discharge from an accusation

t 7) rescind g) party who is sued in a civil case; party who is prosecuted in a criminal case k 8) precedent h) remove from effect the ruling of a lower court

e 9) adjudicate i) illegal adverse treatment of an employee because he pursued his rights under Title VII u 10) whistleblower j) one who brings a charge of discrimination before the EEOC

i 11) retaliation k) a past judicial decision relied on as authority in a present case w 12) pretext l) evidence showing that a test evaluates what it says it evaluates

b 13) remand m) person to whom EEOC claim is directed, usually an employer

o 14) quid pro quo n) at first sight; presumed to be true unless disproved by contrary evidence

r 15) subpoena o) this for that; sexual

harassment where harasser requests sexual activity in exchange for workplace benefit \_\_m\_\_16)respondentp)private civil wrong against a person or his/her property \_\_q\_\_17)punitive damagesq)monetary award designed to punish intentional wrongdoers \_\_n\_\_18)prima facier)process for compelling witnesses to appear before a court and give testimony

\_\_y\_\_19)contracts)rarely used remedy for discrimination

\_\_l\_\_20)validationt)overtun the decision of a lower court

\_\_v\_\_21)plaintiffu)person who reports an employer for alleged wrongdoing, fraud, waste, or abuse \_\_f\_\_22)acquity)party who sues in a civil case

\_\_p\_\_23)tortw)a legal excuse to do something which otherwise would be

illegal \_\_a\_\_24)reversex)law that requires certain classes of lawsuits to be

brought within defined time limits \_\_g\_\_25)defendanty)a legally enforceable

promise or set of promises Short Answer Instructions: Write a well-developed

answer to the following questions. 1) Please discuss what the “ employment

at will” doctrine is, and two exceptions to that doctrine. Why do courts want

to find exceptions? The “ employment at will” doctrine is also known as at-

will employment. What they both mean is that in the employment

relationship there is no contractual obligation to remain in the relationship.

Either party may terminate the relationship at any time, or for any reason.

However, the reason cannot be prohibited by law, such as for discriminatory

purposes. Two exceptions to the employment at will doctrine are the Public

Policy exception and the Implied Contract Exception. For a terminated

employee to sustain a cause of action against her or his employer based on

public policy, the ex-employee must show that the employers actions were

motivated by bad faith, malice, or retaliation. Implied contract is a contract



that is not expressed, but, instead, is created by other words or conduct of the parties involved.

Courts want to find these exceptions because even though an employer can terminate an employee for any legal reason, if the reason is one that is determined to fall within an exception to the at-will doctrine, the employee can assert a claim for wrongful termination or discharge, for which the employee can receive damages or reinstatement. 2) Discrimination on the basis of disability is prohibited (ADA). What IS a disability? Please also discuss what the employer's duties are when faced with an otherwise qualified person who has a disability – what is reasonable accommodation?

What is not? The ADA defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of having such impairment; or being regarded as having such an impairment. " The EEOC has regulations that determine what a reasonable accommodation is. The first regulation is, any modification or adjustment to a job application process that enables a qualified individual with a disability to be considered for the position such qualified individual desires.

The second is any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position. The third accommodation is any modification or adjustment that enables a covered entity's employee with a disability to enjoy the same benefits and privileges of employment

that are enjoyed by its other similarly situated employees without disabilities. All of these cannot impose an undue hardship on the covered entities business.

Reasonable accommodation may include making facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities. 3) Describe the difference between disparate treatment and disparate impact and give an example of each.

What employment law lessons should you learn and implement as a result of your new found knowledge regarding this subject? Disparate treatment is based on an employee's allegations that he or she was treated differently as an individual based on a policy that is discriminatory. An example of this is a female employee receiving a different yearly review over a male employee who has the same position. Disparate impact is when an employer uses a screening device to decide who receives the benefit of any type of employment decision. An example of this is when an employer requires the passing of a credit check in order to receive a promotion.

The employment law lessons that I need to become more familiar with is the four-fifths rule, pre-employment interviews and the employment applications. Disparate impact is a very broad topic. Knowing the information

I do now I am aware that my current agency does not know what to look for to prevent disparate impact. My goal is to review our policies and procedure book and to update it along with our training programs. 4) Is there an underlying theory behind all of the anti-discrimination laws we have looked at? What is that? Why is that important? And have we made much headway in achieving the goal of the theory (in your own opinion)?

The underlying theory is that laws will create equality. Without the anti-discrimination laws there would not be the equality there is today within the workplace. The anti-discrimination laws are important because they have leveled the employment field. People who would have been overlooked in the past because of their race, color, gender, sexual orientation or religion are now accepted. In my opinion we have made headway. We are just getting started though when it comes to transgender's in the workplace. I feel that we will be seeing changes in legislature in the near future. )What have you learned from this course that MOST surprised you? What most surprised me was the amount of information that I was not aware of as an employee. The section about misrepresentation and fraud was an eye opener. I have been that employee that was promised/quoted a specific wage but was then given something totally different when I started the job. Knowing now that I could have brought this violation up with the employer at the time and possibly received the pay I was originally promised has encouraged me to educate my current employer and my friends of the laws so they are also educated.