

# Labor and employment law essay example

[Business](#), [Company](#)



## **Situation A**

The family and Medical Leave Act (FMLA) of 1993 govern the rights of employees who are eligible to its protection. This law provides flexibility to employees' working life so as to meet unplanned for events in their life such as illness of a family member as one is entitled to a 12 week leave. It entitles the employees' to leave, maintain health benefits on leave and get their jobs restored after leave and clearly outlines the requirements for notice and certification of the need for leave and also protects employees' who request for leave (Ford, 2000). This law applies to both private and public employers in America. Employers in the private sector who are bound by this law have at least fifty employees who have worked for at least twenty workweeks in the current or preceding financial year. There are several conditions that an employee should fulfill so as to be eligible; first, their employer must be covered with the FMLA. Secondly, the employee must have worked with the current employer for a period of twelve months or more of which 1250 hours must have been spent working there prior to the commencement of the leave. Thirdly, there must be a minimum of 50 employees in that location (Ford, 2000).

Employee A is an eligible member as he has been employed for two years by a covered employer, company X, which has 74 employees and also complies with pertinent federal law. The basis of taking a leave is valid as Employee's A spouse gave birth to premature twins thus need to take care of the newborn babies and the spouse. The maximum duration of leave that an

employer can grant an employee is 12 weeks in a year , and since Employee A took an 11 week leave, it is within the limits governing the FMLA.

Employee A should be aware that the leave granted is entitled to a total of 12 workweeks of unpaid leave thus the claims made to be paid the withheld salary is against the Family and Medical Leave Act. The manager has honored FMLA by reinstating Employee A to the previous job after the leave. Company X has not violated any law associated with Family and Medical Leave Act.

Some people tend to discriminate and prejudice against elder people. The value that old people contribute to the corporate world remains a matter of debate. Old people are known to add value to the company because of their vast experience. However, many people still believe that people who are above 50 years do not make substantial contributions at work place and thus regard their futures as uncertain. Some companies have unethical practices that allow discrimination against old people in terms of promotion and job security. When such company's announce their intentions of laying off some staff, the elder people are subjected to intense uncertainties about their careers. Such systematic discrimination is unfair and unlawful. People who feel they have been unfairly discriminated against, on the basis of age may seek legal redress in a court of law. To avoid such cases of age discrimination in the first place, all employees especially the old ones should ensure they have diverse and perfect knowledge on legal rights. All companies should ensure that they have a code of conduct that protects against all forms of work place discrimination related to age. Employees are

protected against work place age discrimination by the legislation.

The Age Discrimination in Employment of 1967 prohibits discrimination against persons 40 years of age or older (Cihon, 2011). Employee B is 68 years thus protected by this law. It was found out as stated in Congressional Statement of Findings and Purpose SEC. 621. {Section 2} that; first, older workers find it hard to retain employment due to the rise in productivity and affluence. Second, Job performance is being overlooked by setting arbitrary age limits. Also, Long-term unemployment among the older workers is increasing. Lastly, discrimination in employment due to age burdens commerce and the free flow of services and goods (Cihon, 2011). Situation B clearly illustrates the various discriminations that older employs face.

It can be argued that company X, is discriminatory against employee B. The information on the company's annual review suggests that employee B has a superior performance to the co-employee who was promoted. Employee B was rated as above average whereas the 32 year employee was rated as just adequate. Based on this performance review and in the absence of any further information to suggest otherwise, employee B deserved the promotion. Promotion should be based on performance not age. It is evident that Employee B has more experience thus could be more skilled and, therefore, deserves the promotion. Company X has looked down upon the Age Discrimination in Employment Act 1967, by overlooking the performance aspect in favor of a younger employee. The company should ensure that it complies with this legislation by setting promotion criteria that are fair and just.

Americans with Disabilities Act of 1990 (ADA) define a disabled individual as one with a mental and physical impairment that substantially limits one or more major life activities or a person who has a record of such an impairment or is perceived to have such an impairment (Cihon, 2011). The ADA protects qualified persons with disability from job discrimination. ADA has different titles I-V that addresses issues concerning discrimination of duties. It covers employment, public services, public accommodations, telecommunications and other miscellaneous provisions pertaining persons with disability (Cihon, 2011). Applicant C was qualified to be employed by company X thus has a right like all other persons to be employed regardless of the disability. Company X should have provided the wheel chair to enhance Applicant A movement from one locality to another. The facilities in the company X should be adjusted to meet the needs of Applicant C rather than dismiss one on the basis of disability. The company has the responsibility of facilitating a working environment that is conducive to all including those with disabilities. The Act has put it clear that structural changes to existing buildings may be required, and that newly constructed local government and state buildings must be accessible by individuals with disabilities.

Company X has violated the Americans with Disability Act of 1990 by discriminating Applicant C due to disability. Americans with Disability Act of 1990, Title I-Employment, states that an institution shall not at any time discriminate against any individual qualified on a basis of disability. This applies to hiring, job application procedures, discharge of employees and advancement. Company X manager should provide reasonable

accommodation, these calls for adjusting the working environment to meet the needs of persons with disabilities.

## **References**

Ford, K. E., Notestine, K. E., Hill, R. N., & American Bar Association. (2000). Fundamentals of employment law. Chicago, Ill: Tort and Insurance Pra

Cihon, P. J., & Castagnera, J. (2011). Employment & labor law. Mason, OH: South-Western Cengage Learningctice, American Bar Association.