

## Chapter 02

### The Employment Law Toolkit: Resources for Understanding the Law and Recurring Legal Concepts

#### True/False Questions

1. An appellee is a person who appealed a legal case to the court of appeals.

Answer: False

LO: 02-01 Understand how to read and digest legal cases and citations.

Topic: Guide to Reading Cases

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: At the court of appeals level, the person who appealed a legal case to the court of appeals is known as the appellant and the other party is known as the appellee. At the Supreme Court level they are known as the petitioner and the respondent.

2. A defendant in a legal case will make a motion to dismiss when he or she thinks there is enough evidence to constitute a violation of law.

Answer: False

LO: 02-01 Understand how to read and digest legal cases and citations.

Topic: Guide to Reading Cases

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: If a defendant makes a motion to dismiss, the court will decide that issue and say either that the motion to dismiss is granted or that it is denied. A defendant will make a motion to dismiss when he or she thinks there is not enough evidence to constitute a violation of law.

3. If a motion to dismiss is granted by a court, the decision favors the plaintiff and the legal case proceeds to trial.

Answer: False

LO: 02-01 Understand how to read and digest legal cases and citations.

Topic: Guide to Reading Cases

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: If a motion to dismiss is granted, the decision favors the defendant in that the court dismisses the legal case. If the motion to dismiss is denied, it means the plaintiff's case can proceed to trial.

4. The American legal system is based on *stare decisis*, a system of using legal precedent.

Answer: True

LO: 02-02 Explain and distinguish the concepts of *stare decisis* and precedent.

Topic: Guide to Reading Cases

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: The American legal system is based on *stare decisis*, a system of using legal precedent. Once a judge renders a decision in a case, the decision is generally written and placed in a law reporter and must be followed in that jurisdiction when other similar cases arise.

5. Whistle-blowing occurs when an employer reports an employee's wrongdoing.

Answer: False

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Some states have included terminations based on whistle-blowing under the public policy exception. Whistle-blowing occurs when an employee reports an employer's wrongdoing.

6. Hannah was fired by Friendly Catering Company (FCC) without a valid reason. The company's employee handbook stated that employees would only be terminated for good cause. Hannah's job position was later filled by her former supervisor's niece. In this scenario, Hannah cannot file a wrongful discharge lawsuit against FCC because she is an at-will employee.

Answer: False

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Hannah can file a wrongful discharge lawsuit against Friendly Catering Company. If there is no express agreement or contract to the contrary, employment is considered to be at-will; that is, either the employer or the employee may terminate the relationship at her or his discretion. Nevertheless, even where a discharge involves no statutory discrimination, breach of contract, or traditional exception to the at-will doctrine, the termination may still be considered wrongful and the employer may be liable for "wrongful discharge," "wrongful termination," or "unjust dismissal."

7. Promissory estoppel is an exception to the employment-at-will doctrine if an employee can show that he or she relied on the employer's promise to his or her detriment.

Answer: True

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Promissory estoppel is an exception to the employment-at-will doctrine. For a claim of estoppel to be successful, the plaintiff must show that the employer or prospective employer made a promise upon which the worker reasonably relied to her or his detriment.

8. Major Tire Inc.'s manufacturing plant in Charleston, South Carolina was destroyed when Hurricane Hazel hit the coast. The company officially closed the facility after reviewing the damage and terminated all 500 workers. The company did not give the employees 60 days' notice, and thus, it is liable under the Worker Adjustment and Retraining Notification Act.

Answer: False

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Major Tire Inc. is not liable under the Worker Adjustment and Retraining Notification (WARN) Act. An action arising out of a "natural disaster" such as a flood, earthquake, or drought is an exception to the 60-day notice requirement.

9. In comparison to her fellow employees, Serena is subjected to more severe disciplinary action for the same act of misconduct because she is a member of a protected group. Thus, Serena is a victim of disparate treatment discrimination.

Answer: True

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Serena has a disparate treatment discrimination claim in this scenario. Disparate treatment is considered intentional discrimination, but the plaintiff need not actually know that unlawful discrimination is the reason for the difference. The plaintiff employee (or applicant) bringing suit alleges that the employer treated the employee in a way different from other similarly situated employees based on one or more of the prohibited categories.

10. Questions asked during idle conversational chat in preemployment interviews or included on job applications may unwittingly be the basis for disparate impact discrimination claims under Title VII of the Civil Rights Act of 1964.

Answer: True

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Quite often questions asked during idle conversational chat in preemployment interviews or included on job applications may unwittingly be the basis for discrimination claims. Such questions or discussions should therefore be scrutinized for their potential

impact, and interviewers should be trained in potential trouble areas to be avoided. Only questions relevant to legal considerations for evaluating the applicant should be asked.

11. An employer can successfully defend a charge of disparate treatment discrimination under Title VII of the Civil Rights Act by offering a legitimate, non-discriminatory reason for the action taken against the charging party.

Answer: True

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: In the context of employment discrimination claims, an employer may defend against the *prima facie* case of disparate treatment by showing that there was a legitimate, non-discriminatory reason for an employment decision. That reason may be virtually anything that makes sense and is not related to prohibited criteria.

12. In the context of employment discrimination remedies, punitive damages can be recovered from governmental employers.

Answer: False

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Punitive damages are permitted when it is shown that an employer's action was malicious or was done with reckless indifference to federally protected rights of the employee. They are not allowed under the disparate/adverse impact or unintentional theory of discrimination and may not be recovered from governmental employers.

## Multiple Choice Questions

13. Which of the following is the function of a motion for summary judgment?

A) If a party wins a motion for summary judgment, the case is remanded to a lower court.

B) If a court grants a motion for summary judgment, it means that it has determined that there is a need for the case to proceed to trial.

C) If a court grants a motion for summary judgment, it means that it will determine the issues and grant a judgment in favor of one of the parties.

D) If a party wins a motion for summary judgment, it means one of the parties did not like the facts found in the court and may appeal based on errors of law.

Answer: C

LO: 02-01 Understand how to read and digest legal cases and citations.

Topic: Guide to Reading Cases

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: If a court grants a motion for summary judgment, it means that the court will determine the issues and grant a judgment in favor of one of the parties. If the court dismisses a motion for summary judgment, the court has determined that there is a need for the case to proceed to trial. This, too, can be appealed.

14. Marc, an African-American, is a chemical engineer with a graduate degree from a reputed university. He applied for the position of an industrial chemist at Verono Company. Although he was qualified for the job and performed well in the job interview, he was not offered the position. Marc saw the job advertised again in the newspaper two weeks after he was rejected. Which of the following holds true in this scenario?

- A) Marc does not have a cause of action as *stare decisis* cannot be applied for such cases.
- B) Marc can offer evidence to satisfy the elements of a *prima facie* case of disparate treatment.
- C) Marc can seek remedy under the bona fide occupational qualification defense.
- D) Marc is not eligible to file a discrimination claim under Title VII of the Civil Rights Act of 1964.

Answer: B

LO: 02-01 Understand how to read and digest legal cases and citations.

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Guide to Reading Cases

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: In this scenario, Marc can offer evidence to satisfy the elements of a *prima facie* case of disparate treatment. Each cause of action has certain requirements that the law has determined constitute the cause of action. If it can be shown in court that those requirements are met, then the party bringing the cause of action is said to have established a *prima facie* case for that cause of action. In the context of disparate treatment, the plaintiff employee (or applicant) bringing suit alleges that the employer treated the employee in a way different from other similarly situated employees based on one or more of the prohibited categories.

15. Which of the following best relates to the employment-at-will doctrine?

- A) An employer is free to discriminate against employees based on their gender, race, religion, or national origin.
- B) Highly paid skilled workers in building and construction trades can pass their jobs on to a family member when they retire.
- C) An employer can terminate an employee for any reason as long as the reason is not prohibited by law.
- D) A government employee usually loses his or her constitutional rights when on the job.

Answer: C

LO: 02-03 Evaluate whether an employee is an at-will employee.

Topic: Employment-At-Will Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: At-will employment is an employment relationship where there is no contractual obligation to remain in the relationship; either party may terminate the relationship at any time, for any reason, as long as the reason is not prohibited by law, such as for discriminatory purposes. Both parties are free to leave at virtually any time for any reason.

16. Courtney was a permanent employee at a public elementary school and had been working in the school's administrative department for more than two years. She worked for close to 30 hours a week. Her supervisor, along with a few other administrative workers, routinely took stationery and other supplies home for personal use. After Courtney reported the theft to the police and local newspaper, she was fired from her job without being given a notice. Which of the following is true in this scenario?

- A) Courtney does not have a cause of action for wrongful discharge.
- B) Courtney may have a cause of action pursuant to the whistle-blower protection statutes.
- C) Courtney is an at-will employee and can be terminated at any time for any reason.
- D) Courtney cannot sue her employer for retaliatory discharge as she is not engaging in a protected activity.

Answer: B

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Courtney may have a cause of action pursuant to the whistle-blower protection statutes. At least 43 states, including California, Florida, New York, and Texas, provide some additional and general form of legislative protection for whistle-blowers. Almost half of these state whistle-blower protection statutes protect both public and private sector employees who report wrongdoings of their employer. If there is a statute permitting an employee to take certain action or to pursue certain rights, the employer is prohibited from terminating employees for engaging in such activity.

17. Jonas was employed by Barker Apparel as a sewing machine repairman in one of the company's manufacturing plants. He, along with 500 other employees, was informed that the plant had been permanently shut down through a written notice on the manufacturing unit's gate when he arrived at work one day. In the context of Worker Adjustment and Retraining Notification (WARN) Act, which of the following statements is true?

- A) Jonas can file a retaliation claim against the employers.
- B) Jonas has no recourse because he does not belong to a protected group.
- C) Jonas can recover pay and benefits for the next 60 days.
- D) Jonas has no recourse because this does not constitute employment discrimination.

Answer: C

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Before termination, the Worker Adjustment and Retraining Notification (WARN) Act requires that employers with over 100 employees must give 60 days' advance notice of a

plant closing or mass layoff to affected employees. If an employer does not comply with the requirements of the WARN Act notices, employees can recover pay and benefits for the period for which notice was not given, up to a maximum of 60 days.

18. Constructive discharge exists when an:

- A) employee sees no alternative but to quit her or his position; that is, the act of leaving was not truly voluntary.
- B) employer terminates a group of employees together for a legitimate, non-discriminatory reason.
- C) employee is fired for engaging in constitutionally protected activities.
- D) employer terminates an employee after providing 90 days' advance notice.

Answer: A

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Constructive discharge exists when the employee sees no alternative but to quit her or his position; that is, the act of leaving was not truly voluntary. Therefore, while the employer did not actually fire the employee, the actions of the employer caused the employee to leave.

19. According to the Worker Adjustment and Retraining Notification (WARN) Act, \_\_\_\_.

- A) all but small employers and public employers are required to provide written notice of a plant closing or mass layoff no less than 60 days in advance.
- B) employers who have less than 500 full-time employees are not covered under the act.
- C) employers are not required to give an advance notice in case of mass layoffs.
- D) all actions arising out of a natural disaster such as a flood, earthquake, or drought require an employer to provide 60 days' advance notice to the employees.

Answer: A

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: If an employer does not comply with the requirements of the Worker Adjustment and Retraining Notification (WARN Act) notices, employees can recover pay and benefits for the period for which notice was not given, up to a maximum of 60 days. All but small employers and public employers are required to provide written notice of a plant closing or mass layoff no less than 60 days in advance.

20. Akira resigned from her position as a floor supervisor at Peter's Department Store. The store manager falsely told the other employees that Akira had been fired for coming to work drunk. He also communicated the same information to someone calling to verify Akira's previous employment with Peter's Department Store. Which of the following is true about this scenario?

A) Akira has no recourse against her former employer because she voluntarily resigned from her job.

B) Akira was an at-will employee and therefore has no cause of action against Peter's Department Store.

C) Akira may have a cause of action against Peter's Department Store for defamation.

D) Akira may have an employment discrimination claim under Title VII of the Civil Rights Act of 1964.

Answer: C

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Akira may have a cause of action against Peter's Department Store for defamation. Claims of defamation usually arise where an employer makes statements about the employee to other employees or her or his prospective employers.

21. Sarah was employed at Carvon Printing Company as a marketing executive. The company wanted to fire her because some senior employees did not want work with a female employee. To avoid being sued for wrongful termination, Sarah's supervisors started pressuring her with tight project schedules and isolating her from meetings and other office events. When the working conditions were made intolerable to an even greater extent, Sarah decided to quit her job. In this scenario, Sarah:

A) has a valid claim under the bona fide occupational qualification defense.

B) has a valid claim for constructive discharge.

C) cannot sue the employer because she voluntarily quit her job.

D) cannot sue the employer because she was an at-will employee.

Answer: B

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Sarah has a valid claim for constructive discharge. Constructive discharge usually evolves from circumstances where an employer knows that it would be wrongful to terminate an employee for one reason or another. So, to avoid being sued for wrongful termination, the employer creates an environment where the employee has no choice but to leave.

22. Cara works as a customer service representative at MK Electronics Arcade. A few mobile phones and other electronic items are missing from the store's inventory room. The management decides to check the purses and bags of all its employees. During the check, a small bottle of alcohol is found in Cara's purse. After a few days the company terminates Cara although she had never come to the office drunk. Which of the following will hold true in this scenario?

A) Cara has no legal recourse against her former employer because of the bona fide occupational qualification defense.



B) Cara has no legal recourse because the doctrine of promissory estoppel defends her former employer.

C) Cara may have a cause of action against her former employer for wrongful invasion of privacy.

D) Cara may have a cause of action against her former employer under constructive discharge.

Answer: C

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Cara may have an action against MK Electronics Arcade for wrongful invasion of privacy. Where the termination results from a wrongful invasion of privacy, an employee may have a claim for damages. For instance, where the employer wrongfully invades the employee's privacy, searches her purse, and consequently terminates her, the termination may be wrongful.

23. Gloria was employed by Miles Consultancy. While off duty, she participated in a rally protesting U.S. participation in the Iraq war. When Gloria's supervisor learned that Gloria had participated in the rally, he decided not to promote her in the upcoming financial year. Which of the following statements is true of this scenario?

A) Gloria has no recourse because the protection of employees' constitutional rights does not apply to employees subjected to adverse action by private employers.

B) Gloria cannot sue her employers because she is an at-will employee.

C) Gloria can file an employment discrimination charge against her employers under the bona fide occupational qualification defense.

D) Gloria has a cause of action for constructive discharge.

Answer: A

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: In this scenario, Gloria has no recourse because the protection of employees' constitutional rights does not apply to employees who are subjected to adverse action by private employers. Though perhaps it goes without saying, an employer is prohibited from terminating a worker or taking other adverse employment action against a worker on the basis of the worker's engaging in constitutionally protected activities. However—and this is a significant limitation—this prohibition applies only where the employer is a public entity, since the Constitution protects against government action rather than action by private employers.

24. To avoid charges of wrongful termination and employment discrimination, the management of Genkee Inc. started introducing new rules and regulations that would create an unfavorable work environment specifically for female employees. Unable to cope with the new rules, many female employees quit. This is an example of \_\_\_\_\_.

- A) a violation of the disparate impact theory
- B) retaliatory discharge
- C) constructive discharge
- D) a violation of a bona fide occupational qualification

Answer: C

LO: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: This is an example of constructive discharge. Constructive discharge usually evolves from circumstances where an employer knows that it would be wrongful to terminate an employee for one reason or another. So, to avoid being sued for wrongful termination, the employer creates an environment where the employee has no choice but to leave.

25. Ms. Lee was employed as a secretary at Billion Trucking Company. She was fired from her job when she refused to perjure herself at a court trial where her employer was the defendant. She sued Billion Trucking Company for wrongful discharge. Which of the following is most likely to happen in this scenario?

- A) Ms. Lee's case will prevail if the state where the lawsuit was filed recognizes a violation of public policy.
- B) Ms. Lee's case will prevail only if she proves she was telling the truth.
- C) Ms. Lee will lose the case because the employment-at-will doctrine completely insulates the employer from liability.
- D) Ms. Lee will lose the case because her testimony provided the basis for a defamation lawsuit by her former employer.

Answer: A

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Ms. Lee's case will prevail if the state where the lawsuit was filed recognizes a violation of public policy. One of the most visible exceptions to employment at-will that states are fairly consistent in recognizing, either through legislation or court cases, has been a violation of public policy; at least 44 states allow this exception. Violations of public policy usually arise when the employee is terminated for acts such as refusing to violate a criminal statute on behalf of the employer, exercising a statutory right, fulfilling a statutory duty, or reporting violations of statutes by an employer.

26. Janet is an employee of DF Infra Inc., a private building contractor. She discloses to the Department of Justice information relating to fraud in carrying out a construction assignment on which she is working. DF Infra subsequently fires her. Janet then files a lawsuit against DF Infra for violating the Federal Whistleblower Statute. Which of the following is most likely to happen in this scenario?

- A) Janet's case will be dismissed.
- B) Janet can only win compensatory damages.

- C) Janet can win both compensatory and punitive damages.
- D) Janet's claim is invalid as she is an at-will employee.

Answer: A

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Janet's case will be dismissed as the Federal Whistleblower Statute does not apply to private sector workers. In 1982, Congress enacted the Federal Whistleblower Statute, which prohibits retaliatory action specifically against defense contractor employees who disclose information pertaining to a violation of the law governing defense contracts. Additionally, in 1989, Congress amended the Civil Service Reform Act of 1978 to include the Whistleblowers Protection Act, which expands the protection afforded to federal employees who report government fraud, waste, and abuse. Of course, none of these statutes apply to other private sector workers.

27. Marcus was an employee at Nebula Commercial Realty. Per Marcus' work agreement, his monthly income was supplemented by substantial commissions that the company promised to pay based on his performance. Marcus had been working on a major real estate deal for five months and had almost seized the deal when he was fired from his job. Even though his employer got the major deal, Marcus was not paid any commission for his hard work on that deal. Thus, it can be concluded that Marcus has a:

- A) cause of action for breach of implied covenant of good faith.
- B) cause of action for retaliatory discharge.
- C) legitimate claim under bona fide occupational qualification (BFOQ).
- D) legitimate claim under the business necessity defense available to employees.

Answer: A

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Marcus has a cause of action for breach of implied covenant of good faith and fair dealing. An exception to the presumption of an at-will employment relationship is the implied covenant of good faith and fair dealing in the performance and enforcement of the employee's work agreement. The implied covenant of good faith and fair dealing means that any agreement between the employer and the employee includes a promise that the parties will deal with each other fairly and in good faith.

28. Carl has been working as a sales executive with All Fame Cosmetics Inc. for more than a year. His work has been appreciated by his seniors and he regularly meets his sales targets. However, he has not received any incentive or commission that was promised to him by his employer during his preemployment interview. If Carl decides to file a case against All Fame Cosmetics, he has:

- A) a cause of action under whistle-blower protection.
- B) a cause of action for breach of implied contract.

C) no recourse because he is an at-will employee.

D) no recourse because the incentives were not mentioned in a written contract.

Answer: B

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Carl has a cause of action for breach of implied contract. An implied contract is not expressed but, instead, is created by other words or conduct of the parties involved.

Courts have found contracts implied from off-hand statements made by employers during preemployment interviews, such as a statement that a candidate will become a “permanent” employee after a trial period, or quotes of yearly or other periodic salaries, or statements in employee handbooks.

29. Which of the following is true of disparate treatment?

A) It is a broad term that encompasses terminations in response to an employee exercising rights provided by law.

B) It occurs when intentional discrimination among employees is reasonably necessary for an employer’s particular business.

C) It mandates that employers should provide religious accommodations and accommodations for those with disabilities even if they result in undue hardship for the employer.

D) It is a theory of discrimination where the plaintiff employee bringing suit alleges that the employer treated the employee in a way different from other similarly situated employees based on one or more of the prohibited categories.

Answer: D

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Disparate treatment is the theory of discrimination used in cases of individual and overt discrimination. The plaintiff employee (or applicant) bringing suit alleges that the employer treated the employee in a way different from other similarly situated employees based on one or more of the prohibited categories.

30. Maker Goods Inc. has a published workplace policy. It reads “Promotions to the level of supervisor and higher are limited to individuals with at least a bachelor’s degree from an accredited college or university.” Which of the following is true of this policy?

A) This is a facially neutral employment policy.

B) This is a form of disparate treatment.

C) The clause is a violation of Title VII of the Civil Rights Act of 1964.

D) The clause violates the bona fide occupational qualification defense.

Answer: A

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: This is a facially neutral employment policy. A facially neutral policy is a workplace policy that applies equally to all appropriate employees. If such a policy impacts protected groups more harshly than others, illegal discrimination may be found if the employer cannot show that the requirement is a legitimate business necessity. Federal law prohibits employment discrimination on the basis of race, color, gender, religion, national origin, age, and disability.

31. In the context of discrimination in employee selection procedures, which of the following is true of the four-fifths rule?

- A) It states that only 40 percent of the applicants affected by an employment test can be minorities or there is a presumption of disparate impact discrimination.
- B) It states that minorities must do at least 80 percent as well as the majority on the employment screening device or there is a presumption of disparate impact discrimination.
- C) It states that after a discrimination claim has been filed and won by an employee, the employer must pay four-fifths of the employee's monthly salary for a year.
- D) It states that disparate impact is statistically demonstrated if the selection rate for groups protected by the law is equal to that of the higher-scoring majority group.

Answer: B

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Disparate impact is statistically demonstrated when the selection rate for groups protected by the law is less than 80 percent, or four-fifths, that of the higher-scoring majority group. According to the four-fifths rule, the minority must do at least 80 percent, or four-fifths, as well as the majority on a screening device or a presumption of disparate impact arises, and the device must then be shown to be a legitimate business necessity.

32. Jessica wants to file a discrimination claim against her current employers. She consults her lawyer and learns that she cannot directly file a case in court. She needs to first file a case with the Equal Employment Opportunity Commission (EEOC). This is called \_\_\_\_\_.

- A) the doctrine of promissory estoppel
- B) exhaustion of administrative remedies
- C) affirmative action
- D) the bona fide occupational qualification defense

Answer: B

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: The need to first file a discrimination claim with the Equal Employment Opportunity Commission is called exhaustion of administrative remedies. The statutory schemes set out for employment discrimination claims require that claimants first pursue their grievances within the agency created to handle such claims, the Equal Employment Opportunity Commission (EEOC). All of the protective statutes provide for courts to hear employment discrimination claims only after the claimant has done all that can be done at the agency level.

33. Emmanuel & Petersen LLP is a reputed law firm that specializes in litigation. The firm is looking for a qualified person to fill the secretary position. A criterion for selection is that the person should be able to type at least 65 words a minute. If a group of male applicants challenges this policy as being discriminatory against generally slower-typing males, the company could defend the typing-speed requirement as a:

- A) bottom-line defense.
- B) disparate treatment defense.
- C) business necessity.
- D) promissory estoppel.

Answer: C

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Emmanuel & Petersen LLP could defend the typing-speed requirement as a business necessity. In a disparate impact claim, the employer can use the defense that the challenged policy, neutral on its face, that has a disparate impact on a group protected by law is actually job related and consistent with business necessity.

34. Northern Sun Airlines is a regional carrier that flies a variety of aircraft. Northern Sun advertisements for flight attendants state that an applicant “must be between 5’0” and 5’8” without shoes due to the internal dimensions of our aircraft.” As per the criteria, James cannot apply for the job because he is 6’1”. He complains that the height restriction has a disparate impact on men. Which of the following is most likely to happen in this scenario?

- A) James can use the height requirement as a bona fide occupational qualification to win the lawsuit.
- B) Northern Sun has a valid defense if it can explain and justify that a height requirement is a legitimate business necessity.
- C) James will prevail on his complaint because height restriction has nothing to do with the primary responsibility of a flight attendant, which is the safety of the passengers.
- D) Northern Sun will win the lawsuit because James does not belong to the protected group under Title VII of the Civil Rights Act.

Answer: B

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: NorthernSun Airlines has a valid defense if it can explain and justify that height requirement is a legitimate business necessity. It is important for employers to ensure that any employment screening device is explainable and justifiable as a legitimate business necessity if it has a disparate impact on protected groups.

35. Angus, a recent university graduate of Scottish descent, was refused employment at Barlen Inc. because he failed to achieve a high enough score on a valid, reliable skills test. Believing that he has been the victim of employment discrimination, Angus sues Barlen Inc. He asks the court to order Barlen Inc. to use different cutoff scores for all Scottish-descent test-takers, claiming that no one of Scottish descent had ever achieved a satisfactory score. In this scenario, can the court grant the relief Angus seeks?

A) No, because the Fair Labor Standards Act makes it an unfair employment practice for an employer to use different cutoff scores in an employment-related test on the basis of a protected trait.

B) Yes, because the Fair Labor Standards Act requires an employer to use different cutoff scores in an employment-related test on the basis of a protected trait if the effect of the test is to exclude certain groups from a certain minimum level of employment.

C) No, because the Civil Rights Act of 1991 makes it an unfair employment practice for an employer to use different cutoff scores in an employment-related test on the basis of a protected trait.

D) Yes, because the Civil Rights Act of 1991 requires an employer to use different cutoff scores in an employment-related test on the basis of a protected trait if the effect of the test is to exclude certain groups from a certain minimum level of employment.

Answer: C

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: The court cannot grant the relief Angus seeks because the Civil Rights Act of 1991 makes it an unfair employment practice for an employer to adjust the scores of, or to use different cutoff scores for, or to otherwise alter the results of, an employment-related test on the basis of a prohibited category. Employers' policies should ensure that everyone has an equal chance at the job, based on qualifications.

36. Sasha was employed at Pentagon Inc. as an associate manager in the purchasing department. Prior to the arrival of her new supervisor, she received the highest employee rating on her yearly evaluation. Her new supervisor, Jacob, was overheard saying that he did not believe women were smart enough to manage a department. Sasha was fired for poor work performance six months later. If she wins her claim for gender discrimination, which of the following will Sasha be entitled to?

A) Back pay only.

B) Back pay and reinstatement to the former position.

C) Nonpecuniary punitive damages up to \$600,000.

D) Nonpecuniary compensatory damages up to \$600,000.

Answer: B

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: If Sasha wins her claim for gender discrimination, she will be entitled to back pay and reinstatement to the former position. If the employee in an Equal Employment Opportunity Commission (EEOC) case is successful, the employer may be liable for back pay of up to two years before the filing of the charge with the EEOC; for front pay for situations when reinstatement is not possible or feasible for claimant; for reinstatement of the employee to his or her position; for retroactive seniority; for injunctive relief, if applicable; and for attorney fees. Gender discrimination (including sexual harassment) and religious discrimination have a \$300,000 cap total on nonpecuniary (pain and suffering) compensatory and punitive damages.

37. Which of the following forms a basis for an employer to use a bona fide occupational qualification defense (BFOQ) to defend employment discrimination claims under the Civil Rights Act of 1964?

A) Economic status.

B) Color.

C) Race.

D) Religion.

Answer: D

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Employers may defend against disparate treatment cases by showing that the basis for the employer's intentional discrimination is a bona fide occupational qualification (BFOQ) reasonably necessary for the employer's particular business. This is available only for disparate treatment cases involving gender, religion, and national origin and is not available for race or color.

38. Ethan applies for a housekeeping job at the Moon Swan Hotel. His application is rejected on the basis that the hotel is looking for female housekeepers as the job primarily involves maintaining the ladies restrooms. If Ethan files an employment discrimination claim against the Moon Swan Hotel, which of the following defenses can the hotel use to protect itself?

A) The bona fide occupational qualification defense.

B) The doctrine of promissory estoppel.

C) The constructive discharge defense.

D) The disparate impact theory.

Answer: A

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts



Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: If Ethan files an employment discrimination claim against the Moon Swan Hotel, the hotel can use the bona fide occupational qualification defense. Employers may defend against disparate treatment cases by showing that the basis for the employer's intentional discrimination is a bona fide occupational qualification (BFOQ) reasonably necessary for the employer's particular business. This is available only for disparate treatment cases involving gender, religion, and national origin and is not available for race or color.

39. In order to prove a retaliatory discharge claim, an employee must show that:

A) he or she was participating in a protected activity.

B) he or she belongs to a prohibited category.

C) there is no causal connection between his or her protected activity and the employer's adverse action.

D) there is a chance that the employer may seek protection under the bona fide occupational qualification defense.

Answer: A

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: In order to prove a retaliatory discharge claim, an employee must show that he or she was participating in a protected activity, there was an adverse employment action toward the employee by the employer, and there is causal connection between the employee's protected activity and the adverse action taken by the employer.

40. Lia files an employment discrimination case against her employer. She can also file a retaliation claim if she:

A) is demoted to a lower-level job after filing the discrimination case.

B) is not satisfied with the compensatory damages recovered from her employer.

C) can prove that she is fighting discrimination against a protected group.

D) can prove that she did not engage in any protected activity.

Answer: A

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Lia can file a retaliation claim against her employer if she is demoted to a lower-level job after filing the discrimination case. Retaliation can take any number of forms. For instance, an employer may be angry that an employee filed a sexual harassment claim and begins to give the employee less responsibility than before, exclude the employee from meetings in which the employee may once have been included, assign the employee to less prestigious assignments than the employee has always had, change hours to a much less desirable schedule, or even demote or terminate the employee.

41. In the context of employment discrimination, which of the following is true of retaliation claims?

- A. Retaliation claims can be filed only for the adverse action taken while an employee was employed, not for actions taken later that may impact the former employee.
- B. Retaliation claims may be filed not only by an employee who filed the discrimination claim, but also by others against whom the employer allegedly retaliated because of the claim.
- C. If a substantive claim of discrimination is not proved to a court's satisfaction, an employee cannot win on the retaliation claim.
- D. Employers are legally allowed to retaliate against employees for filing workplace discrimination claims.

Answer: B

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Retaliation claims may be filed not only by the employee who filed the discrimination claim, but also by others against whom the employer allegedly retaliated because of the claim, for instance the spouse of the claimant who is terminated because his or her spouse filed a claim. They can be filed not only for the adverse action taken while the employee was employed, but also for actions taken later to negatively impact the former employee (such as trying to block the employee's later re-employment).

42. If an employee in an Equal Employment Opportunity Commission (EEOC) case is successful, the employer will be liable for:

- A) nonpecuniary compensatory damages up to \$500,000 for gender discrimination and religious discrimination.
- B) punitive damages under the disparate/adverse impact.
- C) front pay for situations when reinstatement is not possible.
- D) back pay of up to four years before the filing of the charge with the EEOC.

Answer: C

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment Discrimination Concepts

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: If the employee in an Equal Employment Opportunity Commission (EEOC) case is successful, the employer may be liable for back pay of up to two years before the filing of the charge with the EEOC; for front pay for situations when reinstatement is not possible or feasible for claimant; for reinstatement of the employee to his or her position; for retroactive seniority; for injunctive relief, if applicable; and for attorney fees.

43. Eric testified for the plaintiff in a racial discrimination lawsuit brought by a female employee against their employer, Sincere Bank. He had been advised by his manager not to

get involved. Shortly thereafter, Eric was fired. Which of the following is the most likely outcome in this scenario?

- A) Eric has no case for retaliatory discharge because he is not a member of the protected class.
- B) Eric has no case for retaliatory discharge because he was merely testifying on behalf of someone else and this is insufficient involvement to get protection under anti-discrimination law.
- C) Eric may use the bona fide occupational qualification (BFOQ) defense to file a discrimination case against Sincere Bank.
- D) Eric may have a case because Title VII of the Civil Rights Act protects an employee who participates in any manner in an investigation, proceeding, or hearing on a colleague's complaint of discrimination.

Answer: D

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Eric may have a case because Title VII of the Civil Rights Act protects an employee who participates in any manner in an investigation, proceeding, or hearing on a colleague's complaint of discrimination. Under Title VII of the Civil Rights Act, it is an unlawful employment practice for an employer to discriminate against an employee "because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." Also, if an employee is given a right to serve jury duty but is terminated by the employer for doing so, with no other apparent reason for the termination, that employee has a basis for a retaliation claim.

44. Which of the following is true of retaliatory discharge?

- A) It is a broad term that encompasses terminations in response to an employee exercising rights provided by law.
- B) It exists when an employee sees no alternative but to quit her or his position; that is, the act of leaving was not truly voluntary.
- C) It is a way of penalizing employees due to some legitimate, non-discriminatory reasons.
- D) It includes failure on an employer's part to accommodate a disability or a religious belief at the workplace.

Answer: A

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment-At-Will Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Retaliatory discharge is a broad term that encompasses terminations in response to an employee exercising rights provided by law. In order to protect an employee's right to protest adverse employment actions, courts are sensitive to claims of retaliation. If workers are not protected against retaliation, there would be a strong deterrent to asserting one's rights.

45. At Nevu Systems Inc.'s office, Nathan's workstation is next to Karen's. One day, Nathan overhears Karen's supervisor, Paul, say to Karen that women should just stick to being homemakers. Karen, who was subjected to such comments at work earlier as well, files a complaint of gender discrimination with the Equal Employment Opportunity Commission (EEOC). After the investigation and the EEOC's ruling in Karen's favor, Nathan is ill-treated at work simply for supporting Karen during the trial. Which of the following holds true in this scenario?

- A) Nathan can prove a constructive discharge claim.
- B) Nathan cannot sue his employers because he is an at-will employee.
- C) Nathan cannot sue his employers because he is not in the same protected group as Karen.
- D) Nathan can prove a case of retaliation against his employers.

Answer: D

LO: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.

Topic: Employment-At-Will Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Nathan can prove a case of retaliation against Nevu Systems Inc. In order to prove a retaliatory discharge claim, an employee must show that there was an adverse employment action toward the employee by the employer. For instance, if an employee is given a right to serve jury duty but is terminated by the employer for doing so, with no other apparent reason for the termination, that employee has a basis for a retaliation claim.

## Essay Questions

46. Explain the public policy exception to the doctrine of employment at-will, and also describe what an ex-employee must demonstrate to prevail.

Answer: One of the most visible exceptions to employment at-will that states are fairly consistent in recognizing, either through legislation or court cases, has been a violation of public policy; at least 44 states allow this exception. Violations of public policy usually arise when the employee is terminated for acts such as refusing to violate a criminal statute on behalf of the employer, exercising a statutory right, fulfilling a statutory duty, or reporting violations of statutes by an employer. The public policy exception protects an employee who has engaged in conduct that society wants to encourage. The ex-employee must show that the employer's actions were motivated by bad faith, malice, or retaliation.

LO: 02-05 Recite and explain at least three exceptions to employment-at-will.

Topic: Employment-At-Will Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

47. Describe the two theoretical bases for lawsuits alleging employment discrimination under Title VII of the Civil Rights Act of 1964.

Answer: Disparate treatment is the theory of discrimination used in cases of individual and overt discrimination. The plaintiff employee (or applicant) bringing suit alleges that the

employer treated the employee in a way different from other similarly situated employees based on one or more of the prohibited categories. Disparate treatment is considered intentional discrimination, but the plaintiff need not actually know that unlawful discrimination is the reason for the difference. That is, the employee need not prove that the employer actually said that race, gender, and so on was the reason for the decision. In disparate treatment cases, the employer's policy is discriminatory on its face, such as a policy of not hiring women to load boxes. Disparate treatment is based on an employee's allegations that she or he is treated differently as an individual based on a policy that is discriminatory on its face.

Disparate impact cases are generally statistically based group cases alleging that the employer's policy, while neutral on its face (facially neutral), has a disparate or adverse impact on a protected group. If such a policy impacts protected groups more harshly than others, illegal discrimination may be found if the employer cannot show that the requirement is a legitimate business necessity.

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

48. Natalie was employed with the Southern Talk Company as a telephone operator for ten years. Bored with this job, she applied for a job position within the same company as a telephone repairman which paid \$10 per hour more than she was currently earning. This position required the employee to be able to climb to the top of a telephone pole wearing a tool belt weighing approximately 15 to 20 lbs to make repairs. The Southern Talk Company refused to admit Natalie into the training program for the position claiming that she was incapable of performing the duties of the position because she was female. Discuss this scenario from both Natalie's and the Southern Talk Company's point of view. Include the basis for the relevant claims and defenses.

Answer: Natalie can file a claim with the Equal Employment Opportunity Commission (EEOC) alleging disparate treatment discrimination in violation of Title VII of the Civil Rights Act of 1964. Specifically, Natalie would allege that she was denied training for the new position because she was female, thus, she was treated differently because of her gender in violation of Title VII. The Southern Talk Company can use the bona fide occupational qualification (BFOQ) defense to defend against Natalie's disparate treatment claim of discrimination. The BFOQ defense allows an employer to engage in discriminatory practices if it can be shown that the discrimination is necessary to the employer's business. In this instance, the company can argue that it excludes women from training for the position as telephone repairman because women would be unable to climb the telephone pole carrying the weight of the tool belt. Furthermore, the employer could argue that while there may occasionally be a woman who would be able to perform the job, it would be impractical to allow women to enter the training program only to later be excluded due to the inability to climb the pole wearing the tool belt.

LO: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims

Topic: Employment Discrimination Concepts

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

49. Distinguish the business necessity defense from the bona fide occupational qualification defense in the context of employment discrimination claims.

Answer: Employers may defend against disparate treatment cases by showing that the basis for the employer's intentional discrimination is a bona fide occupational qualification (BFOQ) reasonably necessary for the employer's particular business. This is available only for disparate treatment cases involving gender, religion, and national origin and is not available for race or color. BFOQ is legalized discrimination and therefore very narrowly construed by the courts. To have a successful BFOQ defense, the employer must be able to show that the basis for preferring one group over another goes to the essence of what the employer is in business to do and that predominant attributes of the group discriminated against are at odds with that business. The evidence supporting the qualification must be credible and not just the employer's opinion. The employer also must be able to show it would be impractical to determine if each individual member of the group who is discriminated against could qualify for the position.

In a disparate impact claim, the employer can use the defense that the challenged policy, neutral on its face, that has a disparate impact on a group protected by law is actually job related and consistent with business necessity. For instance, an employee challenges the employer's policy of requesting credit information and demonstrates that, because of shorter credit histories, fewer women are hired than men. The employer can show that it needs the policy because it is in the business of handling large sums of money and that hiring only those people with good and stable credit histories is a business necessity. Business necessity may not be used as a defense to a disparate treatment claim.

LO: 02-07 Provide several bases for employer defenses to employment discrimination claims.

Topic: Employment Discrimination Concepts

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

50. Describe the role of law libraries as a legal resource.

Answer: Law libraries can be found everywhere from private firms to public courthouses and can contain only a few necessary legal resources or vast ones. In addition to reporters containing law cases, there will also be law journals from around the world, legal treatises on any area of law, books on legal issues, legal research updating sources, and local, state, federal, and international legal resources. One does not need to be a lawyer or law student to be able to access most libraries and find what one is looking for. Most institutions open their doors to everyone, and that is certainly the case at public institutions. Depending on the nature of inquiry, a person may be able to simply place a call to the law librarian and ask for help with what he or she needs. Law librarians are incredible founts of knowledge about legal resources available, how best to access them, and where to find what one needs.

LO: 02-09 Identify sources for further legal information and resources.

Topic: Additional Legal Resources

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking