*Chapter 18*

# Employment Law

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What is the employment-at-will doctrine?*** Under the employment-at-will doctrine, an employer may hire and fire employ­ees at will (regardless of the employees’ performance), and an employee may quit em­ployment, without liability, unless the action violates an employment contract or statutory law. Because of the harsh effects of this doctrine for em­ployees, courts have carved out exceptions to apply when it would seem equita­ble to mitigate those effects (abusive discharge procedures, for example).

**2A.** ***Under the Family and Medical Leave Act, in what circumstances may an employee take family or medical leave?*** Under the Family and Medical Leave Act, an employee may take family leave to care for a newborn baby, an adopted child, or a foster child, and medical leave when the employee or the employee’s spouse, child, or parent has a “serious health condition” requiring care. For most absences, the health condition must require continued treatment by a health-care provider and include a period of incapacity of more than three days.

**3A.** ***What are the two most important federal statutes governing immigration and employment today?*** The most important federal statutes governing immigration and the employment of noncitizens are the Immigration Reform and Control Act (IRCA) and the Immigration Act.

**4A.** ***What is required to establish a* prima facie *case of disparate-treatment discrimination?*** (1) The employeeis a member of a protected class, (2) applied and was qualified for the job in question, (3) was rejected by the employer, and (4) The employer continued to seek applicants for the position or filled the position with a person not in a protected class.

**5A.** ***What federal act prohibits discrimination based on age?*** The Age Discrimination in Employment Act prohibits discrimination on the basis of age.

## Answers to Critical Thinking Questions

**in the Features**

# Adapting the Law to the Online Environment—Critical Thinking

***Can you think of a way a company can obtain information via an applicant’s social media posts without running the risk of being accused of hiring discrimination?*** The EEOC has recommended the use of a third party to conduct social media screenings of applicants. In this way, the perspective employer will not receive any information about an applicant’s protected characteristics. A third-party report can be created without disclosing the applicant’s race, age, disability status, or other protected characteristics.

# Beyond Our Borders—Critical Thinking

***Why do you think U.S. corporations are more aggressive than European com­panies in taking steps to prevent sexual harassment in the workplace?*** One an­swer is that the U.S. fed­eral and state governments pursue sexual harassment more aggressively than other governments, and so U.S. companies are simply reacting to the legal environment in which they operate.

**Linking Business Law to Corporate Management—Critical Thinking**

***What are some types of actions that an HRM professional can take to reduce the probability of harassment lawsuits against her or his company?*** HRM professionals within an organization can create short scenarios that depict harassment actions on the part of employees and then explain why such actions will not be tolerated within the organization. These scenarios can be e-mailed to all employees on a regular (but not too frequent) basis. In the alternative or in addition, an HRM professional can hold mandatory seminars for line managers to explain to them what constitutes acceptable and unacceptable behavior by their respective teams. Managers should be taught to be able to spot offending behavior.

Additionally, an HRM professional can post on company bulletin boards and on the company’s Web site information pertaining to recent court cases involving improper employee (or even manager) behavior. The HRM specialist can offer a short interpretation to help employees and managers to understand how the law against employment discrimination is evolving. For example, it used to be perfectly acceptable for workers in steel mills to paste pinups on the inside of their lockers. Today, such behavior is no longer legally acceptable.

## Answers to Critical Thinking Questions

**in the Cases**

**Case 18.1—Critical Thinking—Legal Consideration**

***Congress enacted the FLSA in 1938. More than eight thousand FLSA suits are filed in federal district courts each year. How do these facts support the court’s reasoning in this case?*** TitleMax contended that it should not be held liable because Bailey underreported his won hours. Of course, Bailey acted at the behest of his supervisor. The court held that what the supervisor knew about Bailey’s underreporting could be imputed to their employer. And TitleMax could not cite a single case in which a federal appellate court had allowed the defense’s contention to bar an employee’s claim for unpaid overtime when the employer knew that the employee had underreported his or her hours.

The question notes that the FLSA has been the law since 1938—a long time—and suits based on the FLSA are numerous. In this context, as the court stated, “the dearth of precedent supporting TitleMax's \*  \*  \* argument is persuasive, if not conclusive, evidence that its argument is misguided.”

**Case 18.2—Critical Thinking—Legal Consideration**

***Could UPS have succeeded in this case if it had claimed simply that it would be more expensive or less convenient to include pregnant women among those whom it accommodates? Explain.*** No, UPS could not have succeeded in this case if it had claimed that it would be more expensive or less convenient to include pregnant women among those whom it accommodates.

After an employee has made a *prima facie* showing that the employer’s denial of an accommodation constituted disparate treatment under the Pregnancy Discrimination Act, an employer can attempt to justify its refusal to accommodate by offering legitimate, nondiscriminatory reasons for denying the accommodation. But a simple claim that it would be more expensive or less convenient to accommodate pregnant women while accommodating others subject to similar limitations would not be sufficiently strong to overcome the burden imposed on those women by the denial of accommodation.

**Case 18.3—Critical Thinking—Ethical Consideration**

***Was Culbertson’s conduct at any point unethical? Discuss.***Culbertson’s initial remarks might have been considered ill-conceived, or described as boorish or uncouth, or characterized as “guy stuff.” They might have been laughed at or ignored, or at worst have been perceived as insensitive. “Unethical” is not likely to have been used to label Culbertson’s comments. But if asked about the ethics in the circumstances, most persons would agree that as Culbertson’s comments and conduct became increasingly worse and more frequent, he crossed an ethical line.

An obvious point at which this can be said to have occurred is when Roberts first asked Culbertson to stop and he did not. This shows more than a taste for “bad” behavior or a poor consideration for others’ feelings. This indicates a deeper lack of regard for other people altogether. Under almost any standard, Culbertson’s continuing conduct would have then been unethical.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Intentional or unintentional discrimination***

Because Lyle has no direct evidence of discriminatory intent, her claim would likely be for unintentional, disparate impact discrimination. She could argue that the employer’s requirement that she type as fast as the writers of typing speed disproportionately affected those in a protected class using the EEOC’s “four-fifths” rule.

**2A.** **Prima facie *case***

It is unlikely that Lyle could establish a *prima facie* case of unintentional dis­crimination. To do so, she would have to prove that the employer’s typing speed requirement had a discriminatory effect, excluding members of a protected class at a substantially higher rate than nonmembers. Under the EEOC’s “four-fifths” rule, she would have to show that the selection (or retention) rate for members of a protected class was less than four-fifths, or 80 percent, of the selection rate for nonmembers. This would be difficult to show given these facts.

**3A.** ***After-acquired evidence***

Evidence that Lyle had misrepresented how fast she could type at the time of her interview would not substantially impact her claim of racial discrimina­tion, because it would be considered after-acquired evidence of employee mis­conduct. The United States Supreme Court has held that such evidence can­not shield an employer entirely from liability for discrimination. It could, how­ever, be used to limit the amount of damages that she could obtain if she was successful in her lawsuit.

**4A.** ***Employer’s defense***

Warner Brothers can assert the writer’s sexually explicit conduct during the meetings was a business necessity, because it was necessary for the writers to freely discuss plot ideas and themes in creating the script for *Friends.* The television series has been popular largely because of its adult humor and sex­ual innuendos, and without those elements, the show would not be the same. Thus, some sexually explicit banter is necessary to write the script and Warner Brothers would be able to claim this in their defense.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***The U.S. labor market is highly competitive, so state and federal laws that require overtime pay are unnecessary and should be abolished.*** In a competitive market, arrangements for overtime pay would be dictated by the forces of supply and demand for labor.  There is no need for the government to step in to regulate this market.

Most employees have little bargaining power in the labor mar­ket.  Consequently, without government regulations with respect to overtime pay, employers would exploit the weakest employees, the ones that cannot seek alter­native employment.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***Erin, an employee of Fine Print Shop, is injured on the job. For Erin to obtain workers’ compensation, does her injury have to have been caused by Fine Print’s negligence? Does it matter whether the action causing the injury was intentional? Explain.*** Workers’ compensation laws establish a pro­cedure for compensating workers who are injured on the job. Instead of suing to collect benefits, an injured worker notifies the employer of an injury and files a claim with the appropriate state agency. The right to re­cover is normally deter­mined without regard to negli­gence or fault, but intentionally inflicted injuries are not cov­ered. Unlike the potential for recovery in a lawsuit based on negli­gence or fault, recovery under a workers’ compensation statute is lim­ited to the specific amount designated in the statute for the employee’s injury.

**2A.** ***Ruth is a supervisor for Subs & Suds, a restaurant. Tim is a Subs & Suds employee. The owner announces that some employees will be discharged. Ruth tells Tim that if he has sex with her, he can keep his job. Is this sexual harassment? Why or why not?*** Yes. One type of sexual harass­ment occurs when a re­quest for sexual favors is a condition of employ­ment, and the person making the request is a supervisor or acts with the authority of the em­ployer. A tangible employment action, such as continued employment, may also lead to the employer’s liability for the supervisor’s conduct. That the injured employee is a male and the supervisor a female, instead of the other way around, would not affect the outcome. Same-gender harassment is also actionable.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**18–1A. *Wages and hours***

Calzoni is concerned about the Fair Labor Standards Act of 1938, as amended. That act provides that any employer affecting interstate commerce must pay any employee who works more than forty hours during a workweek not less than one-and-a-half times that employee’s regular pay (for hours worked beyond forty). There are no provisions for over­time pay for an employee who works more than eight hours per day. Therefore, Calzoni can approve the employee plan without having to pay time and a half.

**18–2A . *Religious discrimination***

Gomez cannot establish a *prima facie* case of religious discrimination. The facts show only a bona fide religious belief that she needs to go to Medjugorje at some time, not at a particular time. When an employee claims that religious beliefs require a particular pilgrimage, or some other duty, the employee must prove that this mandate is part of a bona fide religious belief. Otherwise, an employer would be forced to accom­modate the employee’s personal preference (in this problem, the timing of the trip). If the visions of the Virgin Mary were expected to be more intense in October, for example, or the Catholic Church urged her to go at that time, she would have a stronger case. But without such factors, she cannot satisfy a crucial element of a *prima facie* case: a conflict between her relig­ious belief and her employment duties.

**18–3A . Spotlight on Dress Code Policies—*Discrimination based on gender***

Yes. The dress code policy was illegal discrimination based upon gender. Unlike hair and grooming codes, which are based on well-established social expectations, there is no justifiable basis for women to wear smocks in the workplace. There is a natural tendency to believe that uniformed women wearing smocks have lower professional status than their male colleagues in business attire. The smock requirement thus perpetuated sexual stereotypes of inferiority. Therefore, the dress code policy violated Title VII of the Civil Rights Act.

**18–4A . *Workers’ compensation***

Fairbanks’s claim qualifies for workers’ compensation benefits. To recover benefits under state workers’ compensation laws, the requirements are that an injury (1) was accidental and (2) occurred on the job or in the course of employment. Fault is not an issue. The employee must file a claim with the appropriate state agency or board that administers local workers’ compensation claims.

In this problem, Fairbanks’s claim for workers’ compensation benefits ap­pears to have been timely filed with the appropriate state agency. The focus of the dispute is on the second requirement listed above—an accidental injury that oc­curred on the job or in the course of employment. Dynea required its employees to wear certain boots as a safety measure. One of the boots caused a sore on Fairbanks’s leg. The sore developed into a pustule and broke into a lesion. Within a week, Fairbanks was hospitalized with an MRSA infection. Dynea argued that the bacteria was on Fairbanks’s skin before he came to work. Even if this were true, however, it was the rubbing of the boot that caused the sore through which the bacteria entered his body. This fact fulfills the second requirement for the re­covery of workers’ compensation benefits.

In the actual case on which this problem is based, the court issued a deci­sion in favor of Fairbanks’s claim for benefits.

**18–5A. *Age discrimination***

No, Sanofi-Aventis U.S. LLC (S-A) does not appear to have engaged in age discrimination. The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination on the basis of age against individuals forty years of age or older. For the act to apply, an employer must have twenty or more employees, and the employer’s business activities must affect interstate commerce.

To establish a *prima facie* case, a plaintiff must show that he or she was (1) a member of the protected age group, (2) qualified for the position from which he or she was discharged, and (3) discharged because of age discrimination. If the employer offers a legitimate reason for its action, the plaintiff must show that the stated reason is only a pretext.

In this problem, Rangel was over forty years old. But he also had negative sales performance reviews for more than two years before he was terminated as part of S-A’s nationwide reduction in force of all sales professionals who had not met the “Expectations” guidelines, including younger workers. The facts do not indicate that a person younger than Rangel replaced him or that S-A intended to discriminate against him on the basis of age. Based on these facts, Rangel could not establish a *prima facie* case of age discrimination on the part of S-A.

In the actual case on which this problem is based, in Rangel’s suit against S-A under the ADEA, alleging age discrimination, a federal district court issued a judgment in S-A’s favor. On Rangel’s appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed, according to the reasoning stated above.

**18–6A. *Discrimination based on disability***

No, Knight has not violated the Americans with Disabilities Act (ADA) by failing to provide Horn’s requested accommodations. The ADA requires that certain employers “reasonably accommodate” the needs of persons with disabilities unless to do so would cause the employer to suffer “undue hardship.” Thus, if an employee with a disability, with reasonable accommodation, can perform essential job functions, the employer must make the accommodation. Generally, employers should give primary consideration to employees’ preferences in deciding what accommodations to make. But the ADA does not require that employers accommodate the needs of employees with disabilities who are not otherwise qualified to do the work.

In the facts of this problem, Horn worked as a janitor for Knight. When she developed sensitivity to cleaning products, her physician gave her a “no exposure to cleaning solutions” restriction. She suggested to her employer that restrooms be eliminated from her route or that she be provided with a respirator as an accommodation to allow her to continue to work. Knight explained that she would be exposed to cleaning solutions in any situation because they were airborne, and concluded that there was no work available within her restriction. In other words, Horn’s suggested accommodations were not reasonable because neither one complied with her restriction. Further, it appears that Knight could not in any other way reasonably accommodate the restriction.

In the actual case on which this problem is based, Horn filed a suit against Knight. The court dismissed her claim. The U.S. Court of Appeals for the Sixth Circuit affirmed, according to the reasoning set out above.

**18–7A. Business Case Problem with Sample Answer—*Unemployment compensation***

Yes, Ramirez qualifies for unemployment compensation. Generally, to be eligible for unemployment compensation, a worker must be willing and able to work. Workers who have been fired for misconduct or who have voluntarily left their jobs are not eligible for benefits. In the facts of this problem, the applicable state statute disqualifies an employee from receiving benefits if he or she voluntarily leaves work without “good cause.”

The issue is whether Ramirez left her job for “good cause.” When her father in the Dominican Republic had a stroke, she asked her employer for time off to be with him. Her employer refused the request. But Ramirez left to be with her father and called to inform her employer. It seems likely that this family emergency would constitute “good cause,” and Ramirez’s call and return to work after her father’s death indicated that she did not disregard her employer’s interests.

In the actual case on which this problem is based, the state of Florida denied Ramirez unemployment compensation. On Ramirez’s appeal, a state intermediate appellate court reversed, on the reasoning stated above.

**18–8A. *Sexual harassment***

Newton’s best defense to Blanton’s assertion of liability against the employer for its general manager’s actions is the “*Ellerth/Faragher* affirmative defense.” To establish this defense, an employer must show that it has taken reasonable care to prevent and promptly correct any sexually harassing behavior and that the plaintiff unreasonably failed to take advantage of any opportunity provided by the employer to avoid the harm.

In this problem, Blanton was subjected to sexual harassment by the general manager at their place of employment, a Pizza Hut restaurant operated by Newton. Blanton alerted low-level supervisors about the harassment, but they, like Blanton, were subordinate to the general manager and had no authority over her. Newton had a clear, straightforward anti-discrimination policy and complaint procedure that provided an employee should complain to the harasser's supervisor in such a situation. Once Blanton finally complained to a manager with authority over the general manager, their employer promptly and effectively responded to Blanton's proper complaint. His delay in reporting the harassment to the appropriate authority can be construed as an unreasonable failure to take advantage of the opportunity provided by the employer to avoid the harm.

In the actual case on which this problem is based, in Blanton’s suit against Newton, a jury found that the plaintiff was harassed as he claimed, but also that the defendant proved the *Ellerth/Faragher* affirmative defense, and the court issued a judgment in the employer’s favor. The U.S Court of Appeals for the Fifth Circuit affirmed.

**18–9A. A Question of Ethics—*Retaliation by employers***

**1.** Yes. Dawson could establish a claim for retaliation. Title VII prohibits retaliation. In a retaliation claim, an individual asserts that he or she suffered harm as a result of making a charge, testifying, or participating in a Title VII investigation or proceeding. To prove retaliation, a plaintiff must show that the challenged action was one that would likely have dissuaded a reasonable worker from making or supporting a charge of discrimination.

In this problem, under applicable state law, it was unlawful for an employer to discriminate against an individual based on sexual orientation. Dawson was subjected to derision on the part of co-workers, including his supervisor, based on his sexual orientation. He filed a complaint with his employer’s human resources department. Two days later, he was fired. The proximity in time and the other circumstances, especially the supervisor’s conduct, would support a retaliation claim. Also, the discharge would likely have dissuaded Dawson, or any reasonable worker, from making a claim of discrimination. In the actual case on which this problem is based, the court held that Dawson offered enough evidence that “a reasonable trier of fact could find in favor of Dawson on his retaliation claim.”

**2.** Some argue that homosexuals should be considered a protected class under Title VII because most people in our society agree that employers should not be able to discriminate against persons who are homosexual. A growing number of states have enacted laws protecting homosexuals from discrimination and harassment. The federal government should follow suit and amend Title VII to explicitly prohibit discrimination based on sexual orientation.

Homosexuality should not be considered a protected class because it is a deviant behavior not an inherited trait (such as race, color, or gender). Sexuality is choice, which makes it different from the other factors that qualify a protected class, including one’s genes (such as race, color, or gender), national origin, or disability. Society has gone too far in protecting individuals who are homosexual, bisexual, transgender, etc. with sexual identity issues

**Critical Thinking and Writing Assignments**

**18–10A. Business Law Critical Thinking Group Assignment**

**1.** To succeed on a claim of disparate-treatment discrimination in hiring, a plaintiff must show that (1) he or she is a member of a protected class, (2) he or she applied and was qualified for the job in question, (3) he or she was rejected by the employer, and (4) the employer continued to seek applicants for the position or filled the position with a person not in a protected class. If the plaintiff can meet these relatively easy requirements, he or she has made out a *prima facie* case of illegal discrimination. This means that the plaintiff has met the initial burden of proof and will win in the absence of a legally acceptable employer defense. In this problem, a *prima facie* case could likely be established if people of color who auditioned for lead roles were not given the same opportunities to compete as white people who auditioned.

**2.** In a disparate-impact discrimination case, the complaining party must first show statistically that the employer’s practices, procedures, or tests are discriminatory in effect. Once the plaintiff has made out a *prima facie* case, the burden of proof shifts to the employer to show that the practices or procedures in question were justified. A plaintiff can prove a disparate impact by comparing the employer’s workforce to the pool of qualified individuals available in the local labor market. The plaintiff must show that (1) as a result of educational or other job requirements or hiring procedures, (2) the percentage of nonwhites, women, or members of other protected classes in the employer’s workforce (3) does not reflect the percentage of that group in the pool of qualified applicants. A plaintiff can also prove disparate-impact discrimination by comparing the selection rates of whites and nonwhites (or members of another protected class). When a job requirement or hiring procedure excludes members of a protected class from an employer’s workforce at a substantially higher rate than nonmembers, discrimination occurs. In this problem, to consider the validity of the plaintiffs’ claim requires consideration of the requirements to appear on the shows and the numbers and races of the applicants. If, however, the shows have never featured a person of color in a lead role, it seems likely that there is discrimination.

**3.** Despite the assumption in the facts that the plaintiffs can establish a *prima facie* case, the employer’s best defenses most likely relate to the elements of such a case. For example, if few persons of color applied for the lead roles, the disposition of their applications would have little statistical significance in a disparate-impact discrimination case. And those who did apply may not have met the shows’ criteria for the lead roles, undercutting a claim of disparate-treatment discrimination in hiring. Of the other defenses discussed in the text, the employer might argue that whatever criterion the rejected applicants failed to meet is a business necessity—necessary for the performance of the role. There is no indication that color is a bona fide occupational qualification (BFOQ) for the role, and in any circumstance there is little likelihood it would be an acceptable BFOQ. In an analogy to a fair seniority system, in which persons with more years of service are promoted first, the employer might assert that the lead roles are filled on a first-to-apply, first-to-be-cast basis.