Employment Law for Business 9th edition Bennett-Alexander Test Bank

SKU: 9781259722332-TEST-BANK

Employment Law for Business, 9e **(Bennett)**
Chapter 2 The Employment Law Toolkit: Resources for Understanding the Law and Recurring Legal Concepts

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

Answer: FALSE
Explanation: 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.
Difficulty: 1 Easy
Topic: Guide to Reading Cases
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
Bloom's: Remember
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

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
Explanation: 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.
Difficulty: 1 Easy
Topic: Guide to Reading Cases
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
Bloom's: Remember
AACSB: Analytical Thinking
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3) At the federal level, a trial court is called a U.S. Circuit Court.

Answer: FALSE
Explanation: At the federal level, a trial court is called a U.S. District Court. A U.S. Circuit Court is a federal court of appeals.
Difficulty: 1 Easy
Topic: Stare Decisis and Precedent
Learning Objective: 02-02 Explain and distinguish the concepts of stare decisis and precedent.
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4) The American legal system is based on *stare decisis*, a system of using legal precedent.

Answer: TRUE
Explanation: 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.
Difficulty: 1 Easy
Topic: Guide to Reading Cases
Learning Objective: 02-02 Explain and distinguish the concepts of stare decisis and precedent.
Bloom's: Remember
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

5) A district court must follow the decision of a circuit court of appeals in a neighboring jurisdiction.

Answer: FALSE
Explanation: A district court is not required to follow the decision of a court of appeals in a neighboring jurisdiction. When considering a novel issue, a district court may look at how it was handled in the neighboring jurisdiction, but it can choose to follow or not to follow the approach used by that court.
Difficulty: 1 Easy
Topic: Stare Decisis and Precedent
Learning Objective: 02-02 Explain and distinguish the concepts of stare decisis and precedent.
Bloom's: Remember
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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
Explanation: 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."
Difficulty: 2 Medium
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
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7) In a disparate treatment case, the plaintiff must be able to demonstrate that the employer had an "evil" intent to discriminate.

Answer: FALSE
Explanation: Disparate treatment is considered intentional discrimination. However, 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 only hiring men to work in a warehouse facility. Keep in mind that it is not the employer's subjective intent that is important. There need not be evil intent to discriminate. Claimant must simply be able to be show that the difference in treatment occurred and had no sustainable justification, leaving a prohibited category as the only remaining conclusion.
Difficulty: 1 Easy
Topic: Disparate treatment cases
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
Bloom's: Remember
AACSB: Analytical Thinking
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8) The U.S. Supreme Court only hears appeals from the circuit courts.

Answer: FALSE
Explanation: The U.S. Supreme Court has original jurisdiction over certain types of cases, but most of its decisions are generally appeals from the circuit court alleging legal error committed by the circuit court and are heard by all (usually 9) justices of the court. Supreme Court decisions are written by one judge, with other judges either joining in the opinion if they concur, or dissenting if they do not. U.S. Supreme Court decisions apply to all courts in the country.
Difficulty: 2 Medium
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
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9) Roberta refuses to take her turn in her employer's mandatory overtime schedule, citing family commitments. Roberta's employer could discharge her for failing to meet job requirements without too much concern that a court might question its decision based on public policy reasons.

Answer: TRUE
Explanation: While courts often try to be sensitive to family obligations, being there for one's family is not a sufficient public policy interest; and a refusal to work overtime in consideration of those obligations was deemed a legal basis for termination. The termination of an at-will employee for meeting family obligations did not violate a public policy or any legally recognized right or duty of the employee.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-05 Recite and explain at least three exceptions to employment-at-will.
Bloom's: Apply
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10) Although courts vary from state to state, state court systems are similar to the federal court system. They generally include trial courts, intermediate courts of appeal, and a state supreme court.

Answer: TRUE
Explanation: States have court systems parallel to the federal court system. They vary from state to state, but generally there is also a trial court level, an intermediate court of appeals, and a state supreme court. For our purposes, the state court system works very much like the federal system in terms of appeals moving up through the appellate system, though some states have more levels. Once the case is decided by the state supreme court, it can be heard by the U.S. Supreme Court if there is a basis for appealing it to that court.
Difficulty: 1 Easy
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
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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
Explanation: 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.
Difficulty: 1 Easy
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
Bloom's: Remember
AACSB: Analytical Thinking
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12) An individual's ability to file a case in court on the basis that his or her rights have been violated is known as a cause of action.

Answer: FALSE
Explanation: When a legal case is brought, it must be based on legal rights provided by the law. When an individual's legal rights have been violated, the ability to file a case on that basis is known as having a cause of action. Each cause of action has certain requirements that the law has determined constitute that particular cause of action.
Difficulty: 1 Easy
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.; 02-02 Explain and distinguish the concepts of stare decisis and precedent.
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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
Explanation: 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.
Difficulty: 2 Medium
Topic: Guide to Reading Cases
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
Bloom's: Understand
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14) Marc, an African-American, is a chemical engineer with a graduate degree from a reputable 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
Explanation: 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.
Difficulty: 3 Hard
Topic: Guide to Reading Cases; Employment Discrimination Concepts
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.; 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
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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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment-At-Will Concepts
Learning Objective: 02-03 Evaluate whether an employee is an at-will employee.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

16) Which of the following is NOT generally considered a valid exception to employment-at-will?
A) The employer breached an implied promise to the employee.
B) The employee quit following rumors the employer would be relocating within the state. The employee may have a cause of action pursuant to the whistle-blower protection statutes.
C) The employee's discharge violates public policy.
D) The employer breached an implied covenant of good faith or fair dealing.

Answer: B
Explanation: Though they are difficult cases for employees to prove, state courts and state legislation have been fairly consistent in holding that exceptions will be permitted where the discharge is in violation of some recognized public policy, where the employer breaches an implied covenant of good faith and fair dealing, or where an implied contract or implied promise to the employee was breached (the latter involves the legal concept of *promissory estoppel*).
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
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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
Explanation: 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.
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
Bloom's: Apply
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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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
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19) Ralph is the defendant in a lawsuit filed by Henry. Ralph's attorney does not believe that there is sufficient evidence to prove a violation of law, and plans to file a motion with the court to resolve the case. Ralph's attorney will most likely file a:
A) motion for summary judgment.
B) motion to compel.
C) motion to dismiss.
D) motion to reverse.

Answer: C
Explanation: A defendant will make a motion to dismiss when he or she thinks there is not enough evidence to constitute a violation of law. If the motion to dismiss is granted, the decision favors the defendant in that the court dismisses the case. As a matter of procedure, the parties also may ask the court to grant a motion for summary judgment. This essentially requests that the court take a look at the documentary information submitted by the parties and make a judgment based on that, as there are allegedly no facts that need to be determined by a jury.
Difficulty: 2 Medium
Topic: Stare Decisis and Precedent
Learning Objective: 02-02 Explain and distinguish the concepts of stare decisis and precedent.
Bloom's: Understand
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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
Explanation: 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.
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
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21) Which of the following job applicant screening devices may be used by an employer where the employer can demonstrate that the information is a business necessity?
A) credit status
B) height and weight
C) arrest record
D) all of the above

Answer: D
Explanation: Each of these screening devices potentially has a disparate impact. However, that does not mean that it will automatically be struck down as discriminatory. The employer can always show that the screening device is based on a legitimate business necessity, It is possible to demonstrate that each of these screening devices have a legitimate business need.
Difficulty: 3 Hard
Topic: Disparate Treatment
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
Bloom's: Apply
AACSB: Reflective Thinking
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22) Congress can express its disagreement with a U.S. Supreme Court decision by:
A) overturning the decision.
B) changing the law involved to more clearly reflect Congress' interpretation.
C) disbanding the Supreme Court, and replacing its members.
D) There is a separation of powers. Congress cannot do anything in this situation.

Answer: B
Explanation: Once a case is heard by the U.S. Supreme Court, there is no other court to which it can be appealed. Under our country's constitutionally based system of checks and balances, if Congress, who passed the law the Court interpreted, believes the Court's interpretation is not in keeping with the law's intended purpose, Congress can pass a law that reflects that determination.
Difficulty: 3 Hard
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
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23) The key players in a trial are:
A) the petitioner and the defendant.
B) the appellant and the appellee.
C) the appellant and the respondent.
D) the plaintiff and the defendant.

Answer: D
Explanation: The *case name* is derived from the parties involved—the first name is the party suing (called plaintiff at the district court level) and the second name is the party being sued (called defendant at the district court level). At the court of appeals and Supreme Court level, the first name reflects who appealed the case to that court. It may or may not be the party who initially brought the case. At the court of appeals level, the person who appealed the case to the court of appeals is known as the appellant and their name would be first and the other party responding to the appeal is known as the appellee. At the Supreme Court level they are known as the petitioner and the respondent. Whoever brings the action at that level is the one whose name appears first in the title for that level of the case.
Difficulty: 1 Easy
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
Bloom's: Remember
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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
Explanation: 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.
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-04 Determine if an at-will employee has sufficient basis for wrongful discharge.
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25) A court of appeals can decide to do any or all of the following, except:
A) Remand the case.
B) Affirm the lower court's decision.
C) Hear testimony regarding facts or issues not considered by the trial court.
D) Reverse the lower court's decision.

Answer: C
Explanation: After the appellate court reviews the lower court's decision, the court of appeals will either affirm the lower court's decision and the decision is allowed to stand, or it will reverse the lower court's decision, which means the lower court's decision is overturned. If there is work still to be done on the case, the appellate court also will order remand. Remand is an order by the court of appeals to the lower court telling it to take the case back and do what needs to be done based on the court's decision.
Difficulty: 2 Medium
Topic: Understanding the case information
Learning Objective: 02-01 Understand how to read and digest legal cases and citations.
Bloom's: Apply
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26) An employer's defense to an employment discrimination claim might include a simple demonstration that the employee's evidence is not true. This defense might include all of the following except:
A) The employee is a known liar.
B) The employer's policy was not correctly interpreted or applied.
C) The employee's statistical analysis is flawed in some way.
D) The treatment that the employee alleges simply did not occur.

Answer: A
Explanation: The employer may present other defenses including that the employee's evidence is not true—that is, this is not the employer's policy as alleged or it was not applied as the employee alleges, the employee's statistics regarding the policy's disparate impact are incorrect and there is no disparate impact, or the treatment the employee says she or he received did not occur.
Difficulty: 2 Medium
Topic: Legitimate, Non-Discriminatory Reason Defense
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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27) James is an employee in the widget inspection department of XYZ Systems, a government contractor. James was part of a 3-person inspection team that found a particular batch of widgets did not meet the exacting requirements of the U.S. Government. In order to meet the tight deadline and avoid penalties under the contract, James' boss demanded that the batch of widgets be sent in fulfillment of the government contract. When James found out, he went to the vice president of the company and reported the situation. James was demoted by his boss, and no longer works on government projects. James has a:
A) cause of action for breach of implied covenant of good faith.
B) retaliation claim as a result of whistleblowing activities.
C) legitimate claim under bona fide occupational qualification (BFOQ).
D) disparate impact employment discrimination.

Answer: B
Explanation: James may have a cause of action for retaliation as a result of his whistleblowing. Presumably the defects in the widgets create a public safety issue. As a matter of public policy it is not appropriate to retaliate against an employee who reported the shipment of defective widgets.
Difficulty: 3 Hard
Topic: Exceptions to the At-Will Doctrine
Learning Objective: 02-05 Recite and explain at least three exceptions to employment-at-will.
Bloom's: Apply
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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 pre-employment 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
Explanation: 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 pre-employment 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.
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-05 Recite and explain at least three exceptions to employment-at-will.
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29) An employee may experience retaliation in a number of different ways. Retaliation may include all of the following, except:
A) The employee is fired or laid off.
B) The employee is demoted.
C) The employee chooses to switch to working hours that are considered by most to be less than desirable.
D) The employee is excluded from staff meetings that he was once welcome to attend.

Answer: C
Explanation: 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. This is in addition to the original action that resulted in the employee suing for discrimination in the first place and, as such, is the basis for a separate cause of action against the employer for retaliation.
Difficulty: 2 Medium
Topic: Retaliation
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
Bloom's: Understand
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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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
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31) In which type(s) of discrimination claims must an employer make reasonable attempts to accommodate the employee?
A) Age.
B) Religion.
C) Disability.
D) Both B and C.

Answer: D
Explanation: Discrimination is simply prohibited on the basis of race, color, gender, national origin, or age. When it comes to religion and disabilities, the law imposes on the employer a duty to attempt to accommodate the disability or religious conflict, but only to the extent that it does not cause the employer an undue hardship (which is determined on a case-by-case basis using certain specific criteria).
Difficulty: 2 Medium
Topic: Accommodation
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
Bloom's: Understand
AACSB: Analytical Thinking
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32) Jessica wants to file a discrimination claim against her current employer. 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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
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33) Emmanuel & Petersen LLP is a 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
Explanation: 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.
Difficulty: 3 Hard
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
Bloom's: Apply
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34) The bona fide occupational qualification (BFOQ) defense is available for cases involving all of the following except:
A) Race.
B) Gender.
C) Religion.
D) National Origin.

Answer: A
Explanation: Employers also 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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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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
Explanation: 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.
Difficulty: 3 Hard
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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36) The following are elements of a prima facie case of disparate treatment discrimination except:
A) The employer's job criteria seem neutral, yet there is an adverse impact on a protected group.
B) The employee applied for, and was qualified for, the job.
C) The employee was rejected, and the position remained open after the employee was rejected.
D) The employee belongs to a protected class under Title VII.

Answer: A
Explanation: To establish a prima facie case of disparate treatment employment discrimination, the individual must demonstrate: 1) the employee belongs to a protected class under Title VII; 2) the employee applied for and was qualified for a job; 3) the employee was rejected, and after rejection the position remained open; and 4) the employer continued to seek applications with the rejected applicant's qualifications. Disparate treatment discrimination is overt; there are no hidden criteria.
Difficulty: 1 Easy
Topic: Disparate Treatment Discrimination
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
Bloom's: Remember
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

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
Explanation: 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.
Difficulty: 1 Easy
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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38) In the case of disparate impact employment discrimination, a job criterion that seems neutral on its face may adversely impact a protected class. Which of the following could lead to a claim of disparate impact discrimination?
A) Casual conversation at an employment interview.
B) A credit check.
C) Information such as height and weight found on a job application.
D) All of the above.

Answer: D
Explanation: There need not be evil intent to discriminate. Claimant must simply be able to be show that the difference in treatment occurred and had no sustainable justification, leaving a prohibited category as the only remaining conclusion. Prohibited categories include race, color, gender, religion, and national origin.
Difficulty: 2 Medium
Topic: Disparate impact discrimination claims
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
Bloom's: Apply
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
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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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
Bloom's: Apply
AACSB: Reflective Thinking
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41) Which of the following questions is least problematic in an employment interview?
A) Are you married? What does your husband/wife do?
B) What an interesting name. What sort of name is it?
C) You have beautiful gray hair. Is it natural?
D) What is your height?

Answer: D
Explanation: Even chit-chat in an employment context can be problematic. A careless interviewer can easily get an employer in a lot of hot water. Simple inquiries about hair or name origin can be a mask for prohibited questions about age or national origin. The question about height is least likely to be problematic. Height can sometimes be demonstrated as a valid business necessity.
Difficulty: 2 Medium
Topic: Disparate Treatment
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.
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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
Explanation: 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.
Difficulty: 1 Easy
Topic: Employment Discrimination Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
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43) Eric testified for the plaintiff in a racial discrimination lawsuit brought by a female employee against their employer, Sincere Bank. He did this even though his manager advised him to not 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
Explanation: 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."
Difficulty: 3 Hard
Topic: Employment Discrimination Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
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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 quits her or his position; and retaliates against their former company on social media.
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
Explanation: 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.
Difficulty: 2 Medium
Topic: Employment-At-Will Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
Bloom's: Understand
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45) At Innov8 Systems Inc.'s office, Ahmed's workstation is next to Casey's. One day, Ahmed overhears Casey's supervisor, Ralph, say to Casey that women should just stick to being homemakers. Casey, 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 Casey's favor, Ahmed is ill-treated at work simply for supporting Casey during the trial. Which of the following holds true in this scenario?
A) Ahmed can prove a constructive discharge claim.
B) Ahmed cannot sue his employers because he is an at-will employee.
C) Ahmed cannot sue his employers because he is not in the same protected group as Casey.
D) Ahmed can prove a case of retaliation against his employers.

Answer: D
Explanation: Ahmed can prove a case of retaliation against Innov8 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.
Difficulty: 3 Hard
Topic: Employment-At-Will Concepts
Learning Objective: 02-08 Determine if there is sufficient basis for a retaliation claim by an employee.
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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.
Difficulty: 2 Medium
Topic: Employment-At-Will Concepts
Learning Objective: 02-05 Recite and explain at least three exceptions to employment-at-will.
Bloom's: Understand
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47) Describe the business necessity defense to a disparate impact claim.

Answer: In a disparate impact case, once the employer provides evidence rebutting the employee's *prima facie* case by showing business necessity or other means of rebuttal, the employee can show that there is a means of addressing the issue that has less of an adverse impact than the challenged policy. If this is shown to the court's satisfaction, then the employee will prevail and the policy will be struck down.

Knowing these requirements provides the employer with valuable insight into what is necessary to protect itself from liability. Even though disparate impact claims can be difficult to detect beforehand, once they are brought to the employer's attention by the employee, they can be used as an opportunity to revisit the policy. With flexible, creative, and innovative approaches, the employer is able to avoid many problems in this area.
Difficulty: 2 Medium
Topic: Legitimate, Non-Discriminatory Reason Defense
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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48) Kellie was employed with the Western Phone 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 Western Phone Company refused to admit Kellie 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 Kellie's and the Western Phone Company's point of view. Include the basis for the relevant claims and defenses.

Answer: Kellie 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, Kellie 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. Western Phone Company can use the bona fide occupational qualification (BFOQ) defense to defend against Kellie'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.
Difficulty: 3 Hard
Topic: Employment Discrimination Concepts
Learning Objective: 02-06 Distinguish between disparate impact and disparate treatment discrimination claims.; 02-07 Provide several bases for employer defenses to employment discrimination claims.
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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.
Difficulty: 2 Medium
Topic: Employment Discrimination Concepts
Learning Objective: 02-07 Provide several bases for employer defenses to employment discrimination claims.
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50) Describe legal resources available on the Internet.

Answer: there are quite a few websites on which you can find legal resources for free, but there are also other legal databases that cost to access. Westlaw and Lexis/Nexis are vast full-service legal databases. Each permits limited free access. In addition, many law firms maintain as part of their websites free recent information on issues they deal with. If you enter into a search engine the particular issue you wish to research, you will likely find many resources. There are also compilation resources that allow you to stay up to date by subject matter based on many of these resources created by law firms.
Difficulty: 2 Medium
Topic: Additional Legal Resources
Learning Objective: 02-09 Identify sources for further legal information and resources.
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