Human Resource Management in Public Service Paradoxes Processes and Problems 5th edition Berman Test Bank

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Summary/Review/Discussion Questions and Answers

Chapter 2

1A. Explain the following paradox: "Managers must embrace the law to avoid the law." (51)
Managers must learn the intricacies of the law to ensure they do not spend their careers entangled in it.

2A. What are the reasons a manager should be familiar with basic legal principles? (51)
a. To avoid liability.
b. To anticipate and prevent problems from developing into lawsuits.
c. To gain the confidence to make tough decision, such as when to discipline an employee.
d. To capably assist in implementing worthy societal objectives such as equality, fairness, dignity, economic well-being, strong familiar relationship.

2. What are three competing interests that need to be kept in balance? (52)
a. The need of employers to mange their workforce and operations in efficient ways.
b. Rights the employees have in their jobs, privacy, and other matters.
c. The interest of governments to pursue social objectives through public policy.

3A. Describe the overarching paradox in the legal arena and list some of the reasons for it. (51/52)
Those in charge are expected to uphold the law, but the complexities and uncertainties of constitutional, statutory, administrative and common law make complying frustratingly difficult.
Reasons:
a. Legal requirements and interpretations of them are voluminous and dynamic, so managers sometimes have the experience that "the more you know, the less you know.
b. Supervisors may contact legal counsel for assistance, but formal options may take considerable time to obtain and legal staff may be unwilling to stand behind initial, informal opinions.
c. Applying a statute is rarely straightforward.
d. Using case law is tricky because cases are decided on specific facts, but managers seldom confront identical facts, so they must determine whether minor factual distinctions should alter the outcome.
e. Legal requirements may be crosscutting so that compliance with one directive conflicts with another.

3. How can managers stay up to date with legal changes? (53)
Managers can await policy directives from their organizations, use networking, major newspapers, law firm seminars, the Internet.

4. What is a common law system? (53)
Most "rules in a common law system are not written down in statutes or codes, but are in the form of judicial opinions. The "law" is built up case by case by judges, to find the law, in addition to reading any pertinent statutes, one must read judges' opinions on the matter at hand.

5. What is a civil law system? (56)
Civil law systems place their primary emphasis on legislation. There are comprehensive statutes or codes enacted by a legislative body on every subject.

7A. Define the principle of "stare decisis". (56)
Courts generally should abide by precedents established by a superior court.

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6. Explain the difference between a binding precedent and a persuasive precedent? (56)

Binding precedents must be followed by other courts. For a court's opinion to be controlling precedent or binding precedent, it must have been written by a court directly up the pyramid from the lower court. A persuasive precedent refers to a court decision that does not control but that may be followed voluntarily by another court because the facts are comparable and the reasoning strong.

8A. Which institutions are responsible for most federal employment laws? (56)

The Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor.

9A. List some of the federal employment laws. (54-55)

a. Exhibit 2.2

7. Define at-will employment? (58)

Unless the parties have agreed to a specific duration of employment, either party may terminate employment at any time, without notice, for any lawful reason.

8. What two trends have increased individual rights and eroded the at-will doctrine? (59)

First, the Supreme Court ruled that when a public employer takes adverse personnel action against employees it is "state action," so federal and state constitutional protections apply. Second, the Supreme Court ruled that when a law, rule, or understanding creates an expectation of continued employment in a government job, then employees possess a property interest that cannot be taken away without due process of law.

9A. What is the implication of having property interests in a job? (60)

The person has procedural due process rights. The employee may not be disciplined seriously unless procedures designed to guarantee fairness are followed.

9. What did the Supreme Court seek to do in *Board of Regents v. Roth* (1972)? (61)

The Supreme Court explained the conditions that raise government employment to the level of property interest. The employee must have a legitimate claim of entitlement to continued employment based on codified rules or explicitly agreed-upon contract terms.

10. What are Loudermill rights? (61)

The right to pre-termination hearing.. Before it makes a decision, the employer must give the employee notice of the charges, an explanation of the evidence, and an opportunity for the employee to present his side of the story.

11A. Define "adverse action" and explain who is affected by it. (60)

Formal discipline of an employee involving suspension, salary reductions, demotions and terminations. It affects civil servants in classified positions.

11. What did the court seek to do in the *Pickering* case? (62)

Sought to weigh the need for workplace efficiency against employees' free speech rights to speak out as citizens in matters of public debate.

12. Whom does the Whistleblower Protection Act of 1989 protect? (63)

Requires federal employees to seek protection against an agency's adverse action in response to whistle-blowing through the Office of Special Counsel. If this course is unsatisfactory, plaintiffs may appeal to the Merit Systems Protection Board.

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13. What is the Hatch Act? (63)

Government workers are limited in the political activity in which they may engage by the federal Hatch Act of 1939 as amended, and state and local little Hatch Acts. These acts restrict the First Amendment right to political expression, but they pass muster with courts because they reduce political coercion of the bureaucracy and promote non-partisan, efficient government workforce.

14A. The U.S. Office of Special Counsel that publishes guides to the Hatch Act, has divided federal employees in two groups. List them and explain how they differ. (64)

a. Further restricted employees work in intelligence and enforcement-type agencies. They have little ability to participate in partisan politics.
b. Less restricted employees face fewer restrictions.

14. Identify the key finding in *Branti v. Finkel* (1980)? (64-65)

The court clarified that, regardless of whether the "policy maker" or "confidential" label fits, party affiliation must be necessary for effective performance of the job.

15. What is the overtime pay requirement under the FLSA of 1938? (65)

A minimum wage should be paid and the overtime be paid, at time-and-a-half of the regular rate for hours more than 40 per week.

16. What is the white-collar exemption? (65)

Employees who are engaged in an executive, administrative, or professional capacity, which includes many government workers, are exempt from both minimum wage and overtime requirements.

17. What does the 1963 Equal Pay Act requires? (65)

It requires employers to pay men and women equal wages for equal work, unless the employer can justify the differential by seniority, merit, piecework, or any other factor other than sex.

19A. What coverage is provided under the workers' compensation acts? (67)

All injured workers in federal agencies should receive health care and lost wages. Employees relinquish the right to sue employers in civil courts for on-the-job injuries while employers forfeit the right to deny benefits to employees whose own negligence caused or contributed to the injury.

18. Are public employers legally obligated to provide health insurance to employees? (67)

Yes. Private sector employment-based health insurance benefits are voluntary, but public-sector plans are created by laws.

19. How are retirees and same-sex domestic partners treated in terms of health insurance? (67-68)

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Most public employers offer health insurance coverage to retirees, and many subsidize the premium. Far less offer health insurance to same-sex domestic partners. Though financing these benefits is a growing challenge.

21A. What does the Affordable Care Act require? (67)
Employers with at least 50 employees to offer coverage to people who work an average of 30 hours a week. It requires all citizens to have health insurance, so that hose unable to access employer plans must turn to private insurers or health exchanges; governmental subsidies are available to assist these individuals. .

20. What is required under the FMLA of 1993? (68)
Under the Family and Medical Leave Act, employers are required to give employees up to 12 weeks of unpaid leave for childbirth, adoption, or care of ill children, spouses, or parents.

22A. Define official immunity. (68)
It is a common-law doctrine that shields government employees from individual liability. It is based on the belief that government actors should not be made hesitant in carrying out their responsibilities by threats of lawsuits.

21. What is qualified immunity and absolute immunity? To whom do they apply? (68-69)
Absolute Immunity: it applies to few officials such as judges and legislators for actions performed in furtherance of judicial or legislative functions.
Qualified Immunity: most officials are immune from liability for discretionary acts in the scope of their duties if they act in good faith (without malice) and reasonably.

22. How does the "balance doctrine" apply to matters of privacy? (69-70)
In the workplace, a reasonable search must balance the work-related purposes of the government against socially accepted expectations of privacy.

23. How can employers remove expectations of privacy? (70)
Eliminating personal work places and adopting pertinent workplace policies authorizing search.

24. What is Executive Order 12564? (70)
It requires executive agencies to test federal employees in sensitive positions for illegal drug use. The order authorizes drug testing in four circumstances:
a. Where there is a reasonable suspicion of illegal drug use
b. In a post-accident investigation
c. As part of counseling or rehabilitation for drug use through an employee assistance program
d. To screen any job applicant.

26A. What approach should be adopted by agencies in matters of grooming and dress? (74)
One-size-fits-all standard of dress and grooming is not recommended. A contingency approach seems warranted.

25. What questions should not be asked in pre-employment checks? (74)
May not inquire about such personal matters as sexual orientation, marital status, or even the willingness of a working spouse to relocate. Cardinal Rule is job relatedness.

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26. When is it OK to use medical tests? (74-75)
May be used as a condition to hiring after an offer has been made. Medical testing of current employees must be job related. The results of tests should be kept confidential and used in a nondiscriminatory way.

27. When it is OK to administer AIDS tests? (75)
Only where transmission of the HIV virus is a demonstrable risk.

29A. When does defamation occur in post-employment references? (77)
A job reference is defamatory if it contains a false statement that injures an individual's work reputation.

28. Who is protected under the Civil Rights Act of 1964? ..the Age Discrimination in Employment Act? …the ADA of 1990? (76)
The Civil Rights Act of 1964 protects employees in hiring, promotion, and termination decisions based on their race, color, religion, national origin, or gender. The Age Discrimination in Employment Act extends protection to all workers over 40 years of age. The Americans With Disabilities Act protects persons with disabilities and requires employers to make reasonable accommodation.

30A. In which ways can intentional discrimination be proved? (78-79)
a. Direct evidence: statements that demonstrate bias by the decision maker.
b. Indirect evidence: the employee relies on actions by the employer to support an inference of unlawful motive.

29. Define BFOQ? (78-79)
Bona Fide Occupational Qualifications, could allow employees to make gender or race a relevant job qualification- if it is job related. Today, BFOQs are all but dead.

31A. What is the reason for the harassment? (83)
Gender, for example not conforming to the male stereotype.

32A. What is the paradox contained in affirmative action programs? (84)
They use race-based decision making to remedy harm caused by race-based decision making.

30. What did the U.S. Supreme Court say about the University of Michigan's law school admissions policy? Why? (84)
The University of Michigan Law School could constitutionally use a race-conscious admissions policy because the law school had a compelling interest in attaining a diverse student body.

31. What is reverse discrimination? (84)
When organizations have adopted a affirmative action plan to address underrepresentation, they may hire qualified minority or female candidates over better-qualified majority or male candidates.

32. What is the 80% rule? (85)
Discrimination is any selection process that results in qualification rates of protected groups that are less than 80% of those of the highest group.

33. What is race norming and what purpose did it serve? (85)

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The practice of adjusting test scores of minority groups to ensure that a sufficient number of candidates can be hired, a practice disallowed by the Civil Rights Act of 1991. It has been used to avoid a disparate impact on a protected group.

35A. Would an employee with cancer be covered under the Americans with Disability Act? Which functions are expected to be carried on by the employee? (87)

Yes. The employee covered by ADA must be able to perform essential job functions previously identified by the manager.

34. What constitutes "reasonable accommodation" regarding employer actions and religious freedom? (86-87)

That which is minimally necessary for the employee to fulfill his or her religious obligation or conscience.

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