

***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.
- 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.
- 3) At the federal level, a trial court is called a U.S. Circuit Court.
- 4) The American legal system is based on *stare decisis*, a system of using legal precedent.
- 5) A district court must follow the decision of a circuit court of appeals in a neighboring jurisdiction.
- 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.
- 7) In a disparate treatment case, the plaintiff must be able to demonstrate that the employer had an "evil" intent to discriminate.
- 8) The U.S. Supreme Court only hears appeals from the circuit courts.
- 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.
- 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.
- 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.
- 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.

- 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.

- 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.

- 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.

- 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.

- 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.

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.

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.

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.

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

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

- 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.
- 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.
- 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?
- 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.
- 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.

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.

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.

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

47) Describe the business necessity defense to a disparate impact claim.

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.

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

50) Describe legal resources available on the Internet.