1. Regarding Wal-Mart v. Dukes 2011 U.S. Lexis 4567. From the information in Justice Scalia’s opinion, answer the following questions: Do you agree with the decision/holding of the Court? Why, or why not? What could the plaintiffs have done differently to have a better chance at getting their class action certified? How would this have impacted employers (not just Wal-Mart) if the class action had been allowed to proceed?
2. A 350 pound man interviewed for a job as a sales counselor for a weight loss center. He was told by the interviewer that he was the “most qualified” applicant, but the regional manager had concerns about his weight. He was later informed that he would not be hired now because the company is “image conscious” and his weight would “send the wrong message.” He was told to re-apply for employment after losing seventy pounds. The man sued. What should the court decide? Why? (Goodman v. L.A. Weight Loss Centers, 2005 U.S. Dist. LEXIS 1455)
3. A truck driver was subjected to a random drug test and tested positive for marijuana use. After a confirmatory test verified the initial result, the driver was terminated. He denied having ever used marijuana. The driver passed a hair follicle test performed by an independent laboratory 84 days after the employer’s urine test. The hair follicle test is aimed at identifying people who persistently use drugs over time. The driver also pointed to problems with the employer’s drug tested procedures. Specifically, the drug test was given by a supervisor despite the availability of nonsupervisory employees, the container had been removed from the sealed kit before the driver arrived to be tested, the driver was not instructed to wash his hands at the proper times, access to the collection site for the specimen was not restricted, and the collection container was not kept in full view of the driver during the time between when the specimen was produced and the container was sealed. Did the employer fail to comply with the drug testing procedures required by the Department of Transportation? If so, was it negligent in how it conducted the drug testing. Why, or why not?
4. A woman from New Jersey is interviewed for a job in marketing. The Job is based in Georgia. She has an MBA. The interviewing manager asks her questions such as “Do you have any children?”, “Does your husband help with the child rearing?”, “Do you plan on having more children in the future?”, and “Would your family support you moving to Georgia if we need you to?” The woman is not hired for the position (a male from Georgia with a bachelor’s degree in public relations is hired). Does the woman have a legitimate argument for sex discrimination? If yes, what does she have to show in order to make a prima facie case of discrimination? What affirmative defense(s), if any, can the employer assert?
5. An employee is upset because a co-worker has been spreading rumors about her. She is threatening to file a lawsuit. If she does, what type of allegation would she be making, and what are the elements of the claim that she will need to prove in order to be successful in her lawsuit?