**QUESTIONS**

**1**. *Precedent* is defined as:

1. A past judicial decision relied on as authority in a present case

.         b.   The process for compelling witnesses to appear before a court and give testimony

1. To decide a case; settle by judicial decree

**2.**  Does the following job posting demonstrate a valid BFOQ?

*Now hiring manufacturing assemblers for second shift. High school diploma required*.

\_\_\_Yes \_\_ No

**3.** Ito applies for a job with Aryan Corporation, but is turned down. He learns that Aryan has never hired a Japanese-American since 1941. He goes to the EEOC, which determines that his charge of racial and national origin discrimination is valid and substantiated. Ito sues Aryan in Federal District Court.  As part of the trial, the Court:

  a. Will accept the EEOC’s findings and limit the hearing to the amount of damages.

b.    Will conduct a *de novo* review of all the issues Ito raised at the EEOC.

c.    Will accept the EEOC’s determination but allow the employer to put on evidence to demonstrate that the EEOC’s investigation was biased or incomplete.

d.    Will mandate that the parties submit to arbitration before hearing any evidence.

**4.** Helga works in the warehouse of a distributor of machine parts. One day she learns that all the men (about 80% of the warehouse workforce) make 25 cents an hour more than the women. She complains to her supervisor who explains that the men are required to help unload trucks and that some of the parts are very heavy and awkward, things women are not physically able to handle. This is:

a.    Gender stereotyping

b.    A valid BFOQ

c.    A valid pay differential since neither Helga nor any other women had ever unloaded a truck or asked to do so.

d.    Gender plus discrimination

**5**.  Under the various tests to distinguish an employee from an independent contractor, one of the most consistently important determining factors  is:

a.    The method of termination of the relationship

b.    Whether the individual meets the test of an agent

c.    The right to control

d.    The frequency of pay

e.    How the employer treats the individual on his or her tax returns.

**6.** Crystal is the owner of Glacial Springs, a company that delivers bottled water to homes. Moose, her third cousin once removed is between jobs again and she sends him out to collect checks from her customers.  Moose is never put on the payroll or compensated in any way. Moose does this for a few weeks then one day he disappears.  Crystal begins to get calls from her customers complaining that Moose has been going around demanding payment in cash, claiming it is a new company policy. An entire week’s worth of revenue has disappeared along with Moose. If this case went to court, what would be the likely result?

a.    The customers will have to repay because Moose had no authority to demand payment in cash.

b.    The customers will have to repay because Moose was never an employee or independent contractor for Glacial Springs.

c.    Glacial Springs will have to absorb the loss because Moose had the apparent authority to act as its collection agent and change the terms of payment.

d.    Glacial Springs will have to absorb the loss because Moose had the actual authority to act as its collection agent and change the terms of payment.

e.    Crystal will have to reimburse the company because she is responsible for a relative she sent out without a formal legal relationship with the company.

**7**. *Quid pro quo* is defined as:

a.    This for that; sexual harassment where harasser requests sexual activity in exchange for workplace benefit

1. A legal excuse to do something which otherwise would be illegal
2. A rarely used remedy for discrimination

**8**. When filling an open position, it is a good idea not to keep any interview records on those who do not get the job since this will only be used as evidence against you if an unsuccessful applicant tries to sue you

\_\_\_\_\_\_\_True    \_\_\_\_\_\_\_\_False

**9.** Elmo works at Toxico Chemical Plant. Toxico employees must change in and out of protective clothing at work, so the company provides locker rooms and personal lockers, which the employees are permitted to secure with a lock if they choose to do so. They all do. One day management comes in with bolt cutter and opens all the lockers on the basis of a phone tip that someone may be collecting bomb-making materials. When they open Elmo’s locker they find his promotional materials for his off-duty job, Dweebs the Clown who performs at kids’ parties with a French poodle. Needless to say he becomes the butt of many jokes. Elmo wants to sue Toxico for invasion of his privacy – specifically opening his locked personal locker. He asks you, a new lawyer in town you opinion. You conclude:

a.    Elmo has a case; under the 4th Amendment the company needed a warrant.

b.    Elmo has no case -the company was exempted from the subpoena requirement because there was a potential risk of loss of life form a bomb and it had no time to get a warrant.

c.    Elmo has a case – the locked locker was within his expected zone of privacy as defined by the Supreme Court.

d.    Elmo has no case – the 4th amendment does not apply to private employers and the company actually owned the lockers, they merely allowed employees to use them.

**10.** Jorge is a Hispanic individual employed as a customer service technician (CST) by GringCo, an Internet service provider Inc.  Each year the company has all of its CST’s take an exam to ensure that they are technically current and proficient.  In order to be eligible for promotion, a grade of 90% is required. Anyone getting a grade under 60% is placed on probation and given 30 days to re-take the test and make 60% or be terminated. This year Jorge gets only 58% on the test. He finds that no other Hispanic CST (and there are several with GringCo) made over 60% either.   Jorge believes this is discrimination and goes to the EEOC. The most likely result is:

a.    Jorge wins, this is disparate impact discrimination

b.    Jorge wins, this is disparate treatment discrimination

c.    Jorge loses, the test is job-related

d.    Jorge loses; he still has 30 days to re-take the test and has suffered no adverse impact.

e.    Jorge will recover both compensatory and punitive damages from GringCo.

**11.** A policy that permits employees to formally appeal performance evaluations may avoid misunderstandings, improve morale and rectify lower management bias or error, but it is not legally required.

 \_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_False

**12**. Under COBRA, any employer of over 20 employees that offers its employees health insurance, must continue that coverage at the same cost ratio of employer and employee contribution ratio for a year after it terminates the employee or until the employee is covered by another plan, whichever is first.

\_\_\_\_\_True \_\_\_\_\_False

**13**. Felix was recently hired as the third-shift (11 PM – 7 AM) supervisor at Botox Warehousing Center.  There is also one Supervisor on each of the other two shifts. The Center is open Monday through Fridays. Felix is a member of the Church of St. Moloch.  Members of St. Moloch’s must attend all-night services every full moon, and Felix asks the Center manager for leave to do so. This is refused on the grounds that there must be a trained supervisor in charge on each shift, there are no “assistant supervisors” to take his place, and the other shift supervisors are unwilling to switch shifts, even one night a month. When Felix declines to show up the next full moon shift, he is fired. Felix goes to the EEOC with a complaint of religious discrimination. What is the most likely result?

a.    Felix will win; he was fired solely for practicing his religion.

b.    Felix will lose; he should have disclosed his religious obligation before he was hired.

c.    Felix will win, by closing on Saturday and Sunday; the Company implicitly accommodated the majority Christian and Jewish religions, but not Felix’s.

d.    Felix will lose; accommodating him would place an undue burden on the employer per EEOC guidelines for religious accommodation.

**1**4. All employers covered by Title VII of the Civil Rights Act are legally required to develop some form of Affirmative Action Program.

\_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_\_False

**15.** Steve Works is the President of Pineapple Processors, Inc. a company that develops unique computer hardware systems and complimentary software. He needs a strong team of technical support personnel to assist customers, so he decides to develop a pre-employment test to assess the skills of job applicants. He has taken a course in Employment Law at the University of Phoenix and knows that tests can be tricky and get him in hot water with the EEOC if they are not properly validated. He decides to first survey all his existing technical support employees to see what they actually do and to identify what knowledge and skills are most critical and necessary. He then has a team of HR specialists and technical support people create a test based on survey results. This type of validation is best described as:

a.    Criterion-related

b.    Content

c.    Construct

d.    Sub-Group

e.    Job-Related

**16**. Under existing labor laws, the duty to bargain in good faith means that all issues must be resolved through collective bargaining. Failure to reach agreement exposes one or more of the parties to a charge of Unfair Labor Practices. \_\_\_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_\_False

**17**. Salvador’s Stogies is a 125 year-old maker of hand rolled cigars that is still located in its original building. Local 99½ of the Tobacco Workers Union represents the employees of Salvador’s. In the collective bargaining agreement, the company has a Management Security Clause.  Sales are up; so Salvatore Akahito IV, the current President, tells the employees he is brushing off and implementing a 10 year-old plan to modernize the facility. He promises them that this will make things better and no one’s job is at risk. No one seems to care much until the union officials see workers installing air-conditioning units. (Except for the President’s office, the plant has never been air-conditioned.)  The union files an Unfair Labor Practice petition with the NLRB asserting that the company must negotiate “work conditions” of which air temperature is surely one.  Akahito says he is entitled to run the business under the bargaining agreement and that the reason for air conditioning is to improve product quality -- tobacco molds and rots in hot humid air. Worker comfort is merely a side benefit. The most likely result is:

a.    The complaint will be sustained. Working conditions cannot be unilaterally changed.
b.    The complaint will be dismissed. Salvador’s is making a change to the physical plant based on business needs, which the Security Clause allows.
c.    The complaint will be sustained. The company was obligated to give the union notice of its actions so any bargaining agreement issues could be identified prior to implementation.
d.    The complaint will be dismissed. The union must show that Salvador’s action was intended to undermine union loyalty.

**18.** Silence can never be an element of common law fraud.

\_\_\_\_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_\_False

**19**. Shift Leads (non-management hourly employees) at the Phoenixville sewer plant take turns being on call on weekends. They are provided with a cell phone and are required to answer emergency calls.  They are paid for any time they must spend on the phone or for time they are required to come into the facility.  One of the Leads, Ulrich files suit under the FLSA to have the entire weekend included in his calculation for overtime since he cannot go anywhere outside the range of the cell phone or more than an hour away form home on the one weekend a month he is on call.  He admits that he is seldom called more than once while on call. Ulrich’s claim will be:

a.    Denied because he is paid if must actually work

b.    Upheld since his movements on the on call weekend are severely restricted.

c.    Denied because his movements on the weekend are not unduly restricted.

d.    Denied because he should be considered management and therefore exempt under the FLSA.

**20**. If an employee is injured at the workplace in a freak accident that does not involve existing OSHA regulations, the employer can still be cited and fined under the General Duty Clause.

\_\_\_\_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_\_\_ False

**21**. Alice is hired as a heavy equipment operator at No Trees Left Standing Construction Co. She is required to sign a Non-Compete Agreement that prohibits her from operating any heavy equipment for any other employer in the U. S. for a period of 2 years after she leaves No Trees Left Standing. The Company tells Alice it needs this protection because it is in a very competitive business and does work all over the country. This agreement:

1. Is fully enforceable
2. Is enforceable everywhere except California, Montana, North Dakota and Oklahoma
3. Is not enforceable because it is unreasonably restrictive
4. Is enforceable nationwide but only for one year.
5. Is enforceable for two years, but only in the state in which Alice is employed when she leaves the company.

 **22**. The Age Discrimination in Employment Act (ADEA) covers Americans between the ages of 40 and 70 years of age.  \_\_\_\_\_\_\_\_\_\_\_True \_\_\_\_\_\_\_\_\_\_\_ False

**23**. Sven works in OleCo’s Warehouse.  One day he sees that a hanging light high in the rafters is out.  Since all the lift truck are in use. Sven goes to an adjacent mezzanine, climbs over a three foot metal guardrail, throws an extension cord in the metal supports above the hanging light and swings Tarzan-like out to the hanging light with a new bulb clutched in his teeth. Unfortunately, as the cord swings on the rafters, it frays, and when Sven attempts to insert the saliva-covered bulb in the socket, an arc occurs which shocks him.  He stays in that position for several minutes until a co-worker sees him, shuts off he power and he is rescued. Sven looses all his hair but his mental capacities seem unaffected.   Will OSHA fine OleCo?

a.    Yes, OleCo is strictly liable for employee safety under the General Duty Clause.
b.    No, Sven’s injuries are not severe enough.
c.    Yes, the incident was prompted by a burned out bulb, a safety hazard, and as everything Sven did and used to replace it involved OleCo property, they company should have foreseen creative uses.
d.    No, OleCo is not liable for reckless employee behavior that is not predictable and foreseeable.

**24.** At the age of 45, Prudence is changing jobs. She has offers from two companies that are equally attractive to her. The decision is important since she intends this to be her last career move before retirement.  She does not trust the stock market or her own investment abilities, so she would like to retire knowing exactly what she will have each year to live on. One company offers a defined contribution retirement plan and the other offers a defined benefit retirement plan. This is the only significant difference between the two offers.  Knowing Prudence’s concerns, which company should she go to work for?

\_\_\_\_\_The defined benefit plan company

\_\_\_\_\_The defined contribution plan company

**25**. Workers at DynosauraSys are required to work in teams of two for safety reasons.  Agnes and Goldie both work at DynosauraSys and have occasionally been teamed together. Agnes’ ex-boyfriend has recently started dating Goldie, and in retaliation, Agnes has been spreading rumors among co-workers that Goldie has a very virulent and contagious form of TB (which is not true.) Soon no one will work with Goldie, and her supervisor calls her in to say since everyone is refusing to work with her, he must let her go. Goldie says she has heard the rumors and offers to take whatever test he wants to prove that she is healthy. The supervisor says he has heard no rumors, does not want to and this is a simple management decision. Goldie goes to the EEOC and files a complaining of discrimination based on the ADA. Goldie’s complaint:

a.    Will be dismissed since she has no disability in fact.

b.    Will be dismissed since the manager was unaware of what the co-workers were saying and ADA issues never entered his decision-making process.

c.    Will be dismissed because, even if true, TB is very treatable and would not be regarded as a disability.

d.    Will be sustained because the ADA also covers people regarded as having a handicap even if they do not.

e.    Will be sustained because the manager was unreasonable in refusing Goldie’s offer to take a TB test.