# **Chapter 1**

# **OVERVIEW OF EMPLOYMENT LAW**

**Test Bank Questions, 5e**

### MULTIPLE CHOICE QUESTIONS

1. Sarah aged 59, has been employed by your firm for more than 26 years, and has continually received above-average evaluations. Just before her 27th anniversary with the firm, you are ordered by your superior, the HR Manager, to tell her that her employment with the firm is terminated immediately. Given the facts, as presented, the issues most likely to be raised are:

a. legal

b. ethical

c. medical

d. contract

e. none of these

Answer: B

2. Under U.S. employment laws, employees have the right to:

a. not be fired, as long as they do a good job and the employer’s financial condition does not require that employment levels be cut

b. be treated fairly in all aspects of the workplace, including receiving fair compensation

c. have health insurance and other basic benefits, provided that they are full-time employees

d. all of the above

e. none of the above

Answer: E

3. In order to determine which employment laws apply to a certain employer, the employer should consider which of the following factors?

a. the number of employees that work for the company

b. whether the employer sells goods or services to the federal government

c. the state(s) in which the employer operates

d. all of the above

e. none of the above

Answer: D

4. Regarding the historical development of employment law in the U.S., which of the following statements is true?

a. Most federal employment laws were passed in the first half of the 19th century in response to growing industrialization

b. The earliest employment laws focused on wages and hours

c. Most employment laws were passed with little conflict, since the need for these laws was evident to employers, employees and legislators.

d. The importance of employment at will has increased over time.

e. None of the above.

Answer: E

5. Which of the following is generally true regarding the process of enforcing employment laws?

a. courts and government agencies hear cases only after employees come forward with complaints about violations of the law

b. employees are very likely to seize the opportunity to sue their employers, because all of the cost of employment litigation is borne by the employer

c. once a claim is brought, a company’s attorneys deal with it, and managers have little involvement in the case

d. all of the above

e. none of the above

Answer: A

6. In *Nino v The Jewelry Exchange*, plaintiff bank employee sued alleging discrimination, and his employer sought to dismiss the suit, stating that the employee had signed a mandatory arbitration agreement, so that the suit should go to arbitration. The employee responded that the mandatory arbitration agreement he had signed was unconscionable, and therefore, unenforceable. Among other things, the employee alleged that the arbitration agreement was unconscionable because gave him only 5 days to make a demand for arbitration. The court ruled:

a. for the Plaintiff employee, because the agreement was both procedurally and substantively unconscionable.

b. for the Plaintiff employee, because the arbitration agreement was procedurally unconscionable.

c. for the Defendant employer, because none of the provisions of the arbitration agreement was unconscionable.

d. for the Defendant employer because the unconscionable parts of the arbitration agreement could be stricken, and the arbitration could proceed.

Answer: A

7. Under the “payroll method” approved by the U.S. Supreme Court:

a. employers whose payrolls exceed $500,000 annually are covered by Title VII

b. employers are covered by Title VII if they had at least 20 employees on the payroll at the time of the alleged discrimination

c. employers are covered by Title VII if they had at least 15 employees working and being paid for each working day during at least 20 weeks in the same or the preceding year

d. employees are counted for each full week between when they are hired and when they leave employment, regardless of the number of days or hours worked.

e. none of the above

Answer: D

8. Regarding arbitration, which of the following statements is true?

a. historically, arbitration has been used to resolve disputes over contractual rights

b. arbitrators’ decisions are usually advisory and not considered final

c. arbitrators have less control over the outcomes of disputes than do mediators.

d. arbitration is always more costly and time-consuming than litigation

e. none of these

Answer: A

9. Regarding the interrelationship of federal and state employment laws:

a. state laws must be identical to federal law or the state law is void

b. states may pass laws which reduce employee rights, but may not enact laws that expand employee protections granted in federal laws

c. states may pass laws which expand employee rights, but may not enact laws that reduce employee protections granted in federal laws

d. employment law is exclusively a federal domain, so states may not enact laws when federal law already exists

Answer: C

10. In *Casias v.* *Wal-Mart Stores*, plaintiff Casias, a cancer patient and Wal-Mart employee, was prescribed medical marijuana for his symptoms by his physician, pursuant to the state’s new medical marijuana law. Upon being injured at work, he was given a blood test which showed marijuana in his system. He was fired, and sued for wrongful termination. The court ruled:

a. for the Plaintiff because he had a valid state medical marijuana registry card to show that he was authorized to use medical marijuana

b. for the Plaintiff because he did not cause his own injury at work

c. for Wal-Mart, because the state law did not change employment-at-will

d. for Wal-Mart, because plaintiff’s marijuana use led to his injury

Answer: C

11. In EEOC v AutoZone, the EEOC sued AutoZone on behalf of an employee who suffered injury and disability because his employer would not provide a reasonable accommodation for his disability. Fed Ex argued that the damages awarded by the jury were too high, and also offered evidence of its ADA compliance policy set forth in the employee manual. The court ruled:

a. for the defendant AutoZone, since the establishment of an ADA compliance policy was sufficient to establish a good faith effort to comply with the ADA

b. for the defendant AutoZone, because plaintiff had not established that he suffered from a disability

c. for the plaintiff because the damages awarded were consistent with the damages awarded in other cases

d. for the plaintiff because he established that he suffered from a disability

 Answer: C

12. Which of the following is true regarding enforcement of employee rights and enforcement of employment laws?

a. finding a lawyer willing to take an employment law case is difficult because lawyers accept only about 50% of employment discrimination cases brought to them

b. if an employer has a complaint or grievance procedure, the employee is required to exhaust the remedies afforded under the internal procedure before taking the case to an enforcement agency or court

c. the EEOC encourages the parties to discrimination cases to use mediation

d. the EEOC encourages the parties to discrimination cases to use arbitration

Answer: C

13. An employer considering whether to use mandatory arbitration agreements should recognize which of the following limitations of their use?

a. the agreements probably won’t apply to any of its unionized employees

b. the agreements will not deter the EEOC from investigating and possibly litigating to recover remedies for individuals

c. the agreements may not be enforceable if they do not provide employees with the same remedies as those available through the courts

d. all of the above

e. none of the above

Answer: D

14. Which of the following is true of the enforcement process for discrimination charges brought under Title VII?

a. the plaintiff may choose to begin in the state civil rights agency, or may file directly with the EEOC as they wish

b. charges must be brought within 60 days of the alleged discriminatory act

c. a right to sue letter must be obtained from the EEOC before a plaintiff can file suit in court

d. all of the above

e. none of the above

Answer: C

15. A mandatory arbitration agreement which provides that all claims be brought within 90 days of the date of the alleged violation would likely be:

a. enforceable

b. unenforceable

c. subject to amendment by the court

Answer: B

16. Dean got a job as a copyrighter for a publishing firm, and after working for the firm for two years, was told he was required to sign a mandatory arbitration agreement and agree to submit any employment disputes to binding arbitration. Dean was also told that if he would not sign it as is, he would be fired. Dean:

a. will have to sign the agreement if he wants to keep his job

b. does not have to sign the agreement, and can still keep his job

Answer: A

17. The contract referred to in Question #16 above is:

a. procedurally unconscionable

b. substantively unconscionable

c. neither of these

d. both of these

Answer: A

18. Which of the following provisions, if included in a mandatory arbitration agreement, would be likely to render it unenforceable?

a. a provision that the employee pay the costs of the arbitrator’s services

b. a provision that gives the employer the right to choose any arbitrator

c. a provision that bars all discovery

d. a provision that requires the employee to prove his case

e. all of these

f. all of these except d

Answer: F

19. As the Human Resources manager of your firm, the task of putting into effect the firm’s new mandatory arbitration agreement has fallen to you. At a minimum, legally, which of the following actions are required to make the policy enforceable?

a. send email notice to all employees that a mandatory arbitration policy has been adopted

b. post the mandatory arbitration policy on the firm’s website, and ask employees to visit the site and review the policy

c. provide employees with a copy of the agreement, and ask them to sign it

d. make certain that the agreement provides, and the employees understand, that they are waiving their rights to sue

e. all of these are legally required

f. none of these are legally required

g. only c and d are legally required

Answer: G

20. Your firm has just gotten a contract with the U.S. government to build security gates for the fence along the U.S.-Mexican border. In addition to the employment laws which already apply to your business, the following will now also apply:

a. Title IX

b. the Federal Security Fence Funding Act of 2008

c. EO # 11246

d. all of these

e. none of these

Answer: C

**ESSAY QUESTIONS**

1. Employment law arises from a variety of sources. Name and briefly discuss each of them.

 Answer: Employment law may arise from:

* CONSTITUTIONS - In the employment law context, constitutions address the relationship between citizens and their government. Generally, a legal claim based on a constitution must assert a violation of someone’s constitutional rights by the government (state action). In practical terms, this means that usually only employees of government agencies – and not employees of private companies – can look to the U.S. Constitution or state constitutions for protection in the workplace. Examples of constitutional protections available to government employees include speech rights, freedom of religion, protection from unreasonable search and seizure, equal protection under the law, and due process rights.
* STATUTES – Statutes are written laws enacted by a legislature, which has been elected by the people. These bodies enact laws or statutes, many of which affect the workplace. Among the many important statutes with implications for human resource practice are Title VII of the Civil Rights Act of 1964, the National Labor Relations Act, the Equal Pay Act, the Americans with Disabilities Act, the Family and medical Leave Act, and the Employee Retirement Income Security Act.
* EXECUTIVE ORDERS – The executive branch of government has the power to issue executive orders that affect the employment practices of government agencies and companies that have contracts to provide goods and services to the government. Executive orders function much like statutes, although they reach fewer workplaces, and can be overridden by the legislative branch. The most important example of an executive order affecting employment is Executive Order (E.O.) 11246, which establishes affirmative action requirements for companies that do business with the federal government.
* REGULATIONS, GUIDELINES & ADMINISTRATIVE DECISIONS – When congress enacts a statute, it often creates an agency, or authorizes an existing agency to administer and enforce that law. Legislators do not have the expertise (and sometimes do not have te political will) to fill in all the details necessary to put statutes into practice. For example, Congress mandated in the Occupational Safety and Health Act that employers provide safe workplaces, but largely left it to the Occupational Safety and Health Administration (OSHA) to give content to that broad principle by promulgating (creating) safety standards governing particular workplace hazards. Formal regulations are put in place only after an elaborate set of requirements for public comment and review have been followed. Regulations are entitled to considerable deference from the courts (generally, they will be upheld when challenged), provided that the regulations are viewed as reasonable interpretations of the statutes on which they are based. Agencies also contribute to the law through their decisions in individual cases that are brought before them.
* COMMON LAW – Many disputes are resolved through courts interpreting and enforcing the types of law discussed earlier. However, sometimes courts are asked to resolve disputes over matters that have not been objects of legislation or regulation. Over time, courts have recognized certain common law claims to remedy harm to people caused by other people or companies. Common law is defined by state courts, but broad similarities exist across states. One branch of common law is the traditional role of the courts in interpreting and enforcing contracts. The other branch is recognition of various tort claims for civil wrongs that harm people. Tort claims relevant to employment law include negligence, defamation, invasion of privacy, infliction of emotional distress, and wrongful discharge in violation of public policy.

2. Describe what the role of a good human resources manager should be in managing employment law issues.

Answer: The role of a good human resources manager in dealing with employment law issues may be described in 4 major functions:

* *Knowing the law when it is clear*. This includes recognizing, analyzing and dealing effectively with a variety of employment law issues, setting policies and enforcing them, so that the firm remains in legal compliance.
* *Developing a strategy for dealing with legal issues that are still developing*. This includes recognizing and coping with ambiguity, and developing long-term legal strategies for handling legal issues when what should be done according to the law is not clear. The best HR managers develop strategies that are protective of the firm in the long run.
* *Anticipating legal problems and trying to avoid them*. The best HR managers are proactive – not waiting for problems to arise, but doing all they can to prevent them from arising at all, setting policies and procedures in place that will address matters that may become legal issues before they become problematic.
* *Knowing when to seek the advice of legal counsel*. There are many things a good HR manager can do independently, but the best HR managers will also know when to consult with legal counsel. Early consultation can minimize or avoid many problems, and legal counsel can help the manager put in place policies that will accomplish the three functions named above.