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Many federal and state laws, municipal ordinances, and court decisions grant specific rights to employees. However, not all laws apply to all employees. State laws, court decisions, and ordinances vary. Some rights extend to all or almost all employees, whereas others may extend only to those in specified industries. The law is constantly extending rights to cover ever-larger areas.
numbers of workers. Some of these rights include rights against discrimination on specified bases, the right not to be subjected to certain invasive or offensive tests, and various protections such as for taking leave, receiving notification of plant closing, and being protected from secondhand smoke.

**Discrimination**

Federal laws protect employees from discrimination on a number of grounds. Some laws prohibit discrimination on only one basis, whereas others protect on many bases. These laws include the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

**Civil Rights Act of 1964**

The most important law governing employment discrimination and also harassment on the basis of race, color, religion, sex, and national origin is Title VII of the federal Civil Rights Act of 1964. The act applies to every employer who has fifteen or more employees and engages in an industry affecting interstate commerce and to labor unions with fifteen or more members. It does not apply to the U.S. government (except the Congress) or to certain private membership clubs exempt from federal taxation.

This law makes it an unlawful employment practice for an employer to fail to hire, to discharge, or to in any way discriminate against anyone with respect to the terms, conditions, or privileges of employment because of the individual’s race, color, religion, sex, or national origin. (Discrimination because of sex includes discrimination because of pregnancy, childbirth, or related medical conditions.) The employer also may not adversely affect an employee’s status because of one of these factors. In addition, it is an unlawful employment practice for an employment agency or a labor organization to discriminate, classify, limit, or segregate individuals in any way on any one of these bases.

When a person sues under Title VII, the discrimination is usually claimed on either of two theories. These theories are disparate treatment and disparate impact.

**Disparate Treatment**

In a discrimination case on the ground of disparate treatment in employment, the plaintiff alleges that the discrimination was against the plaintiff alone and was because of the plaintiff’s membership in a protected class. A protected class is any group given protection by antidiscrimination laws, such as groups based on race, color, religion, sex, or national origin and protected by Title VII. Disparate treatment is basically intentionally different treatment. That is, women are treated differently than men, blacks are treated differently than whites, and people of one religion are treated differently than people of another religion, solely because of their sex, race, or religion, respectively. The plaintiff must show that the employer acted with the intention of discriminating. Plaintiffs make a case by showing direct evidence of discrimination or by showing four essential elements:

1. They belong to one of the protected classes.
2. They were qualified for the job or performed their job well.
3. They suffered an adverse employment action.
4. A person not in the protected class got the job or did not suffer the adverse action.
These elements vary slightly depending on the plaintiff’s situation—that is, whether the plaintiff applied for a job or had a job. But once plaintiffs prove the four elements, employers must offer a nondiscriminatory reason for their actions. If such reasons can be offered, plaintiffs must then show that the adverse treatment was because of their membership in one of the protected classes—that the employer intended to discriminate.

**Court Case**

**Facts:** Target Corporation hired Billeigh Riser, Jr., who was black, as an Executive Team Lead In Training (ETL-IT). Three other ETLs who were white but not trainees worked Riser’s shift. Riser was on probation the first ninety days on the job. At the end of ninety days, Riser was fired for poor job performance. He had a low number of “pulls” (pieces of stock replenished to store shelves), did not conduct “huddles” (nightly staff meetings), and did not answer overhead phone calls. Riser sued, claiming he was fired because of his race.

**Outcome:** The court pointed out that Target had a legitimate, nondiscriminatory reason for Riser’s discharge. There was no reasonable inference that race was a determining factor in his termination.

—*Riser v. Target Corp.*, 458 F.3d 817 (8th Cir.)

**Disparate Impact.** To prove a discrimination claim based on *disparate impact*, an employee must show that an action taken by the employer that appears fair, nonetheless negatively and disproportionately affects a protected class of employees. An important difference between this theory and disparate treatment is that no intent to discriminate need be shown for disparate impact. The action complained of could be a testing policy, an application procedure, a job qualification, or any other employment practice whose adverse effect on employees is significantly greater on the members of a protected class than on employees that are not in that class.

**Sexual Harassment.** Courts have held that the Title VII prohibition against discrimination on the basis of sex protects an employee against an employer who engages in or allows unwelcome sexual advances that create a *hostile work environment*. A hostile work environment exists when harassing conduct alters the terms or conditions of employment, creating an abusive work atmosphere, and it is based on the victim’s membership in a protected class. Economic harm does not necessarily have to be proved. An employer can be liable for harassment by coworkers if the employer knows about the harassment and does not take prompt and appropriate corrective action. However, proper and corrective action by an employer after learning of harassment is an effective defense to a sexual harassment lawsuit.

In order to prove that the work environment was hostile, an alleged victim of sexual harassment must show that the environment was one that an objectively reasonable person would find abusive. This means that any reasonable employee would find the environment abusive. Such a requirement protects employers from overly sensitive employees who, for example, might feel that one isolated comment from a coworker created an abusive environment. In addition, victims
themselves must find the environment abusive. A victim who is less sensitive than reasonable employees would probably have to have a more abusive work environment before a claim of sexual harassment would be upheld. If both of these requirements are met, the victim need not show psychological injury—the hostile work environment alone is actionable.

Although many types of actions are prohibited under Title VII, to be actionable, the victim must be affected because of membership in a protected class. Behavior could discriminate or create an abusive work atmosphere, but only that behavior based on the alleged victim’s membership in a protected class is actionable. For example, a person could be teased about living in a high-rise apartment, having short hair, long hair, a pierced nose, driving a particular type of car, having freckles, or being tall. Even if they are insensitive or designed to humiliate, as long as a court does not find the comments are based on membership in a protected class, they are not actionable under Title VII.

Successful plaintiffs in Title VII cases are entitled to a remedy that would put them in the same position they would have been in if the discrimination had not occurred. This might include some kind of corrective action by employers, posting of notices about sensitivity training, reinstatement, promotion, payment of lost benefits, and attorneys’ fees. If the discrimination is intentional, the plaintiff may recover punitive damages.

The act established the Equal Employment Opportunity Commission (EEOC), which hears complaints alleging violations of this and other laws. Individuals may file the complaints or the EEOC itself may issue charges. If the EEOC verifies the charge, it must seek by conference, conciliation, and persuasion to stop the violation. If this fails, the EEOC may bring an action in federal court. If the EEOC finds no basis for a violation, the employee may still sue the employer in court; however, the employee has the burden of hiring a lawyer and pursuing the case.

Facts: Sergeant Justo Cruz told Officer Blanca Valentín-Almeyda she had nice eyes, pretty hair, great legs, and looked beautiful in the morning. He drove by Valentín’s house several times a day and honked his horn. Cruz became upset with her because she did not greet him with a kiss on the cheek. Valentín rebuffed Cruz and tried to complain to the police commissioner, but he had her meet with Lieutenant Juan Vélez, an investigator. Vélez told Valentín it was her fault because she had Cruz “bedazzled.” She was assigned double shifts and given the worst job assignment. Cruz constantly tried to be near her at work and approached her at the mall. He left a note under her windshield wiper saying she was his. When she went to the station house to file a grievance, Cruz, Officer David Ferrer, and Vélez gave her three warning letters about her job performance. She transferred to the state police station, but the commissioner, Cruz, and Ferrer came once or twice a week and the visits made her too uncomfortable to work. She sued for sexual harassment.

Outcome: The court found that there was ample evidence of a hostile work environment.

—Valentín-Almeyda v. Municipality Of Aguadilla, 447 F.3d 85 (1st Cir.)
Equal Pay Act

Recognizing that women were frequently discriminated against in the workplace by being paid less than men were paid for the same work, the federal government enacted the Equal Pay Act of 1963. As an amendment to the Fair Labor Standards Act (discussed in detail in Chapter 30), the law applies to employers covered by that act. The Equal Pay Act requires that employers pay men and women equal pay for equal work. The law prohibits employers from discriminating on the basis of sex by paying employees at a rate less than the rate at which employees of the opposite sex are paid for equal work. To be equal work, the jobs must be performed under similar working conditions and require equivalent skill, effort, and responsibility.

An employer is not required to pay employees at the same rate if the payments are made on the basis of:

1. A seniority system
2. A merit system
3. Quantity or quality of production
4. A differential resulting from any factor other than sex

In addition to its application to employers, the Equal Pay Act also prohibits labor unions from making or attempting to make employers discriminate against an employee on the basis of sex. Although the law was intended to help women, it is written in such a way that it requires equal pay for equal work and neither men nor women may be preferred.

Age Discrimination in Employment Act

In order to protect people aged forty or over from employment discrimination, the federal government enacted the Age Discrimination in Employment Act (ADEA). This statute prohibits arbitrary age discrimination by employment agencies, employers, or labor unions against people aged forty or above. Employers are prohibited from firing or failing to hire people in this age group, and they may not limit, segregate, or classify their employees so as to discriminate against people in this age group solely because of their age. The firing can be an actual termination or a constructive discharge.
The ADEA does not prevent an employer from ever considering an employee’s age or age-related criteria. It prohibits arbitrary discrimination, which occurs when age is considered despite its complete irrelevance to the decision being made. The law allows age discrimination when age is a true occupational qualification, such as the rule that commercial pilots cannot be more than sixty years old. In this case, the age limit is related to very significant safety considerations affecting the lives of millions of people. Company seniority systems are also permitted, even though they may have an impact on employees based on their ages.

An employee who wishes to pursue an ADEA claim must file a claim with the EEOC within 180 days of the occurrence of the adverse employer action. If the EEOC does not find the claim valid, the employee may bring a court action against the employer. A successful employee could recover back pay, lost benefits, future pay (called front pay), and, at the discretion of the court, attorneys’ fees. In addition, the court could order reinstatement, promotion, or, for an individual denied a job, hiring. If violation of the ADEA was willful, liquidated damages equal to the back-pay award is automatically awarded.

This law excludes from the definition of employee people elected to state or local office and people appointed at the policy-making level.

**Americans with Disabilities Act**

The Americans with Disabilities Act of 1990 (ADA), which applies to employers of fifteen or more employees, prohibits employment discrimination against qualified people with disabilities. An employer may not discriminate because of the disability in job application, hiring, advancement, or firing. For the purposes of the ADA, a disability requires two elements:

1. A physical or mental impairment
2. A substantial limitation of one or more major life activities

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**Facts:** Tommy Morgan, aged forty-five, was appointed managing partner of a New York Life Insurance Company (NYL) office. Morgan was given a series of performance benchmarks, but after the first year, the year-end evaluations showed he did not meet them. A series of events beyond Morgan’s control plagued the office, lowering performance. When his performance did not improve after being on performance warning, he was put on final notice that stated he would be removed as managing partner if he did not meet specified goals including a 5 percent growth in employees. It was determined on September 18 that 5 percent growth was not met. His employment was terminated the next day. Agents younger than Morgan had received lesser sanctions and in some cases even favorable treatment despite performance problems while other managing partners over age fifty had been eased out of the company. NYL document dated September 2 listed replacements for Morgan. Claiming this proved his forty-year-old successor had been chosen before it was determined he had not met his goals, Morgan sued alleging age discrimination.

**Outcome:** After a jury found in favor of Morgan, the appellate court ruled there was a substantial amount of evidence tending to show that Morgan was terminated because of his age. The jury verdict was upheld.

—*Morgan v. New York Life Ins. Co.*, 559 F.3d 425 (6th Cir.)
It is not enough simply to have an impairment and be unable to perform one specific job. The impairment must significantly limit a major life activity such as being unable to perform a class or broad range of jobs. A “major life activity” includes such actions as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of major bodily functions, such as functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

To determine whether other impairments constitute a major life activity, courts consider the type and severity of the impairment, the duration of the impairment, and any permanent or long-term impact of the impairment. Thus, temporary, short-term (with an actual or expected duration of six months or less), or nonchronic impairments with no long-term impact are not disabilities. Such impairments include broken bones, flu, sprains, appendicitis, and concussions. In addition, specifically excluded from the definition of a disability are compulsive gambling, kleptomania, pyromania, sexual behavior disorders, and current illegal drug users and alcoholics.

In addition, a person who has a history of an impairment that limits a major life activity, or is thought to have such a long-term impairment, is eligible for the benefits of the ADA. Thus, an employee can obtain the benefits of the ADA.
not because of actual impairment, but because the employee is treated by the employer as having a limiting impairment.

Once a job applicant or employee has been identified as disabled according to the law, it must be determined if the individual with a disability is otherwise qualified for a particular job. If qualified, employers are required by the ADA to make “reasonable accommodations” to allow the disabled person to perform the essential functions of the job. The reasonable accommodation might include rescheduling employees, raising the height of desks to accommodate wheelchairs, acquiring equipment, or hiring a reader or sign language interpreter. An employer does not have to accommodate a disabled person if the accommodation would impose an undue hardship on the business. Violation of the ADA allows a qualified employee to recover, such as reinstatement, back pay, compensatory damages, punitive damages, and attorneys’ fees.

Testing

In order to make sure businesses run properly, protect employees, protect company property from employee misuse, and weed out applicants for employment who might not be the best employees, many businesses have tried to institute various testing programs. These include polygraph testing, drug testing, and AIDS testing. The right of employers to use such tests, either on a preemployment basis or on a random or mandatory basis after employment, has been limited by statute as well as by the courts.

Polygraph Testing

As lie detector tests appeared to become more reliable, increasing numbers of employers began using them, both as a tool to find out which employees had violated workplace rules and to screen applicants for employment. As a result of perceived injustices, both because of an intrusion on employees’ rights and because of the debate about the reliability of such tests, the right to use these tests has been limited by statute. In 1988, the federal government enacted the Employee Polygraph Protection Act (EPPA). A polygraph is another word for a lie detector.

The EPPA limits the use of lie detector devices for preemployment screening or random testing of employees by employers engaged in interstate commerce. An employer may not retaliate against an employee who refuses to take a polygraph test and may not use the test results as the basis for an employment decision adverse to an employee who took such a test. Private employers may not use polygraphs unless:

1. The employer is investigating a specific incident of economic loss, such as theft or industrial espionage or sabotage.
2. The employer provides security services.
3. The employer manufactures, distributes, or dispenses drugs.

An employer may use a polygraph as part of an ongoing investigation if the employee tested had access to the subject of the investigation and the employer has a reasonable suspicion of the employee’s involvement. Before a polygraph test may be administered, the employee must be given written notice stating the specific economic loss, that the employee had access to the property that is the basis of the investigation, and giving a description of the employer’s reasonable suspicion of the employee’s involvement.
If an employer violates the EPPA, an employee or job applicant may sue the employer for the job, reinstatement, promotion, lost wages and benefits, or even punitive damages.

Except for the U.S. Congress, the law does not prohibit federal, state, and local governments from subjecting their employees to polygraphs.

**AIDS Testing**

With the spread of the AIDS virus, employees have been concerned about contamination from afflicted coworkers. At the same time, workers with the virus have been concerned that they could be stigmatized and even lose their jobs. Because the test for AIDS is a blood test, the test is an invasive procedure, and there are some limits to what an employer can require on constitutional grounds. The Fourth Amendment to the Constitution prohibits “unreasonable search and seizure,” and courts have held that requiring a blood test for AIDS is a search and seizure; therefore, it must be reasonable. To determine whether a search is reasonable, the court balances the intrusion the testing would cause on the constitutional rights of the person to be tested with the interests said to justify the intrusion.

**Drug Testing**

There has been concern about the ability of employees in certain jobs to do their jobs properly while under the influence of drugs. This concern has resulted in private employers and several federal administrative agencies requiring drug testing of employees or prospective employees. The Supreme Court has recognized three government interests that justify random drug testing. These are: (1) maintaining the integrity of employees in their essential mission, (2) promoting public safety, and (3) protecting sensitive information. For example, Customs Service employees seeking transfers or promotions to sensitive positions, and railroad workers involved in major railroad accidents or who violate certain safety rules are tested for drug use. Courts have upheld random drug testing for employees in order to promote safety.

Of course, because at-will employees can be discharged at any time, employers are free to terminate such employees who refuse drug testing even when their jobs cannot be held to involve public safety.

**DNA Testing**

As DNA testing has become more reliable, it is possible employers might require it of employees for two reasons:

1. To make employment decisions to exclude people with a genetic “defect”—a greater risk for certain diseases
2. For identification purposes

Many states have laws barring employers from discriminating against employees and prospective employees on the basis of their genetic makeup. These laws prohibit using genetic information when making hiring, promotion, or salary decisions. Victims of genetic discrimination normally can sue their employers for damages. It is likely that more states and the federal government will enact such legislation.
Employees in states that do not have such laws have sued employers for using DNA test results alleging violation of the ADA, the constitutional prohibition on illegal searches and seizures, and Title VII of the Civil Rights Act. Employers should be very careful to ascertain their legal rights before using DNA tests in making hiring, promotion, or salary decisions.

As a reliable method of identifying people, DNA samples could be useful in a number of areas. The military (an employer) takes DNA samples of all personnel to use in identifying remains. The states and the federal government have passed laws setting up DNA databases to use in solving crimes. All states require at least some convicted felons to submit DNA samples to their databases. The courts have almost uniformly upheld the legality of requiring DNA samples from criminals.

**COURT CASE**

**Facts:** Felons in Wisconsin sued challenging the law that required all people convicted of felonies to submit a DNA sample for a data bank. The prisoners alleged that requiring the DNA sample was an unconstitutional search and seizure prohibited by the Fourth Amendment.

**Outcome:** The court stated that the state’s interest in getting reliable DNA identification evidence in the database to use in solving crimes was more important than the limited privacy interests of the prisoners. The DNA samples were required.

—*Green v. Berge*, 354 F.3d 675 (7th Cir.)

Many employers who need to be sure their employees are law-abiding, such as those providing security services or dealing with large sums of cash, might want to have prospective employees provide a DNA sample to make sure they are not convicted felons. Just as the military wants to have DNA samples to help in identifying remains, employers of employees involved in hazardous occupations such as firefighters, pilots, and demolition workers would have an interest in having DNA samples for identification.

**Protections**

In addition to rights against discrimination on various bases and against certain kinds of invasive or offensive testing, employees have been accorded a variety of protections. These include protection of their jobs when a family necessity or medical condition requires a leave, notification of plant closings, and protection from secondhand cigarette smoke.

**Family and Medical Leave**

In order to allow employees the right to take leaves when family circumstances or illnesses require it, the federal government enacted the Family and Medical Leave Act (FMLA). This law allows an employee to take an unpaid leave of up to twelve workweeks in a twelve-month period on the following occasions:
1. Because of the birth, adoption, or foster care of the employee’s child
2. To care for the employee’s spouse, child, or parent with a serious health condition
3. Because of a serious health condition that makes the employee unable to perform the job

The law applies to public and private employers who have 50 or more full- or part-time employees for 20 weeks during the year. It gives leave rights to employees who have worked for the employer for at least 12 months and a total of 1,250 hours.

Although the FMLA gives workers the right to take leave, it is important to note that this leave is unpaid. Workers also may be required by their employers to use accrued paid vacation, personal, medical, or sick leave toward any part of the leave provided by the FMLA. If the leave is for the birth, adoption, or placement of a foster child, the leave must be taken within the first 12 months of the event. Unless the leave is not foreseeable, employees must give 30 days’ notice of a leave request.

A “serious health condition” for which leave may be requested is an illness, injury, impairment, or physical or mental condition that requires inpatient care or continuing medical treatment. Its purpose is to provide leave for the more exceptional and presumably time-consuming events. The care given to another includes psychological as well as physical care.

The benefit provided by the FMLA is that after taking the leave and returning to work, employees have to be given back their previous positions. If this is not possible, the employer must put them in an equivalent job in terms of pay, benefits, and the other terms and conditions of employment.

**PREVIEW CASE REVISITED**

**Facts:** Employed as a registered nurse at Chicago-Read Mental Health Center run by the Illinois Department of Human Services (DHS), Elizabeth de la Rama called in sick beginning July 19. She sporadically submitted notes from physicians stating she was ill. The notes did not state her condition nor describe its severity. Although de la Rama had exhausted her sick leave, she continued to call in sick without explaining the nature of her illness. On August 11, she spoke with a human resources specialist who told her that to request a medical leave, she needed to submit a completed “CMS 95” form. On October 4, she submitted a completed CMS 95 form, which explained that she suffered from fibromyalgia and a herniated disk. Chicago-Read retroactively granted her FMLA leave to the date of her last sick day, September 2. De la Rama returned to work on January 3. De la Rama’s absences in July and August were treated as unauthorized absences (UAs). Eight months later she sued DHS alleging it violated the FMLA by refusing to allow her to take leave in July and August for a serious medical condition.

**Outcome:** Although an employee is not required to refer to the FMLA in order to give notice of an intention to take FMLA leave, a notice must alert the employer of the seriousness of the health condition. The court said that calling in sick without providing additional information did not provide sufficient notice of such a condition.

— *de la Rama v. Illinois Dept. of Human Services*, 541 F.3d 681 (7th Cir.)
Plant Closing Notification

Under the provisions of the federal Worker Adjustment and Retraining Notification Act (WARN), a business that employs 100 or more employees must give 60 days’ written notice of a plant closing resulting in an “employment loss” for 50 or more employees. Notice must also be given of a mass layoff which is a decrease in the workforce at a single site of employment that results in an “employment loss” during a 30-day period for:

1. Thirty-three percent of the full-time employees (at a minimum of 50 employees)
2. At least 500 full-time employees

An employment loss is a termination that is not a discharge for a cause, a voluntary departure, or a retirement.

The written notice must be given to workers expected to experience some loss of employment, or their union representative, and to specified government officials. Workers in this instance include managers and supervisors. WARN does not require the full 60 days’ notice if the plant closing or mass layoff occurs as a result of an unforeseeable business event, a natural disaster, a labor dispute (a lockout or permanent replacement of strikers), the completion of a project by employees who knew the employment was temporary, or certain relocations when employees are offered transfers.

Facts: Uno-Ven Co. operated an oil refinery under a collective bargaining agreement with the International Oil, Chemical & Atomic Workers, Local 7-517. Uno-Ven was a partnership between VPHI Midwest and Unocal. Unocal wanted to get out of the oil refining business, so Uno-Ven was dissolved. VPHI transferred its interest in Uno-Ven to PDV Midwest Refining, which got the refinery upon the dissolution. PDV hired Citgo Petroleum Corp. to run it. Uno-Ven notified its 377 refinery workers they were terminated, but at the same time Citgo offered to hire them. Citgo rehired 367 of them at the same pay with no break in their work. The union sued, alleging that the transaction violated WARN because there was no advance notice.

Outcome: Although the transfer of the business caused a technical termination of employment, Citgo’s rehiring resulted in no “employment loss” except to ten employees. The termination of ten employees was not a “mass layoff.”

—International Oil, Chem. & Atomic Workers, Local 7-517 v. Uno-Ven Co., 170 F.3d 779 (7th Cir.)

In case of a violation of WARN, an employee may sue the employer for back pay for each day of violation as well as benefits under the employer’s employee benefit plan. Courts have the discretion to allow the successful party in such lawsuits to recover their reasonable attorneys’ fees.

Smoking

The disclosure of the damaging effects of breathing secondhand smoke has resulted in a desire by many nonsmoking employees to work in smoke-free environments. The right of employees to be protected from secondhand cigarette smoke is protected in a variety of ways.
Some employers have taken the initiative by prohibiting or restricting smoking at their workplaces. In addition, a number of states and municipalities have enacted restrictive smoking legislation. This legislation varies greatly. No state law totally bans smoking at all job sites. Some laws merely require employers to formulate and publicize a written policy about smoking in the workplace. Others require employers to designate smoking and nonsmoking areas. Nearly all of the laws have exceptions to the smoking ban that allow smoking in private offices. In spite of these exceptions, a very large percentage of employers have some kind of smoking restrictions in effect.

Other Sources of Rights

There are many other rights granted to employees, particularly through federal laws, which apply to large numbers of workers. These laws include the Rehabilitation Act and the Pregnancy Discrimination Act. The rights granted by these two laws are similar to those granted by statutes mentioned in this chapter.

QUESTIONS

1. To whom does the federal Civil Rights Act of 1964 apply and who is excluded from coverage of the act?
2. What should an employer who learns of sexual harassment by workers do?
3. Is all behavior that discriminates against an employee or creates an abusive work atmosphere actionable under Title VII? Explain.
4. What is it that the Equal Pay Act prohibits?
5. Does the Age Discrimination in Employment Act prevent employers from ever considering an employee’s age or age-related criteria?
6. Does the ADA prohibit employment discrimination against all people with a physical or mental impairment?
7. In what ways does the EPPA limit an employer’s use of a polygraph test with respect to employees?
8. When may an employer use a polygraph as part of an ongoing investigation?
9. How do courts determine whether AIDS testing is reasonable under the Fourth Amendment?
10. Are any employees whose jobs do not involve public safety subject to discharge for refusal to take drug tests?
11. For what reasons does the FMLA allow an employee to take an unpaid leave?
12. Under what circumstances is the full sixty-day notice requirement of WARN excused?

CASE PROBLEMS

1. For years, Addie Stover, an African American female, worked as secretary to the associate superintendent and head of the personnel department or the superintendent of the Hattiesburg Public School District. She held a bachelor’s degree in English with a minor in paralegal studies. She attended board meetings to take minutes and did not create agenda items, but typed and organized information that was provided to her. A high-level administrator for the district who held
a doctoral degree resigned and Stover assumed a few of his duties. Two years later, the district filled the opening without advertising the position by hiring Alan Oubre, a white male, as central office administrative coordinator. Oubre held a bachelor’s degree in secondary school English and a master’s degree in educational administration and was paid $25,000 more than Stover. Stover argued Oubre and she were administrative assistants who performed substantially equal work, and, therefore, they should be paid the same. The superintendent said she was not qualified for Oubre’s position. Stover filed suit, alleging race and sex discrimination under Title VII. Had the district discriminated against Stover?

2. Dunlop Sports Group Americas, Inc., operated a golf ball manufacturing plant employing 350 people. On October 31, Dunlop’s employees came to work and discovered Dunlop had ceased operations. Dunlop notified all employees in writing that it was selling the factory. Their employment would continue until the earlier of December 31, or the date they accepted a position working for the successor company that intended to run the plant. Employees did not have to report for work, but they would continue to receive wages for forty hours per week and be eligible for benefits as long as they remained employed by Dunlop. In November, the successor company hired twenty-two Dunlop employees who had worked at the plant until October 31. In early December, Dunlop stopped paying wages and benefits to these twenty-two employees because they were employed full-time by the successor company. They sued, claiming Dunlop should have continued to pay them wages and benefits until December 31 because it did not comply with the notice requirements of the WARN Act. Had Dunlop conformed to the WARN Act?

3. SunTrust bank got a phone call from employee Daniel Worden claiming two men had kidnapped him in order to rob the bank. Worden asked his coworker to open the vault, but the coworker refused and told another employee to call the police. Worden told police he was held in his home overnight at gunpoint by two men who wanted to use him to rob the bank and threatened to kill him. He said when friends arrived, the kidnappers tied them up. He claimed the kidnappers abandoned him when they realized their plan had failed. The police told Worden they suspected he was behind the attempted robbery. He agreed to take a polygraph examination. The police told Kevin Brock, a SunTrust manager, of their suspicions and Worden’s agreement to the test. The polygraph examiner announced Worden failed the exam. The FBI initiated and gave a second test to which Worden consented. No one from SunTrust requested, participated in, or was present during either polygraph examination. The FBI told Worden the results indicated “deception,” and he was a suspect. Worden told Brock he failed the second polygraph. The police told Brock that Worden was their prime suspect and he would likely be charged with the crime. Telling him SunTrust had concerns based on law enforcement’s belief he was involved in the attempted bank robbery, Worden was fired. The polygraphs were not mentioned. SunTrust had discharged another employee under virtually identical circumstances except there had been no polygraph. Worden sued SunTrust, alleging SunTrust violated the EPPA by basing its decision to fire him on the polygraphs. Should Worden succeed?

4. Burlington Resources Oil and Gas Company employed Paul Pippin as a senior engineer when Burlington began a reduction in force (RIF). Burlington sought to retain employees whose past performance reports and skill sets matched Burlington’s future needs. Burlington fired Pippin, who was fifty-one years old. Fourteen out of nineteen employees fired in the RIF were over age forty. In the ranking before his firing, Pippin ranked last among thirteen senior engineers. In previous rankings,
he was in or near the bottom half of his peers. Pippin sued Burlington, claiming age discrimination. Was this age discrimination?

5. Drummond Co., Inc., employed union members Gary Watson and Cloy Owens. Drummond suspected they had stolen from it and suspended them. The union asked that they be allowed to take a lie detector test. Watson and Owens were told they could be immediately reinstated by taking the polygraph test or opt to have their cases arbitrated. They both chose arbitration. The arbitrators upheld their dismissals. They sued Drummond, alleging violation of the EPPA. Should they recover?

6. Info Pro Group, Inc., employed Brandi M. Dearth as administrative assistant to Richard L. Collins, president, director, and sole shareholder. Info Pro fired Dearth, who then claimed sexual harassment by Collins. Once Info Pro was informed of the alleged sexual harassment, its legal counsel immediately conducted an investigation. Info Pro’s employee handbook stated that an employee subject to harassment or hostile conduct should immediately notify a supervisor or the Human Resources Department. Dearth sued Info Pro for sexual harassment. Decide the case.

7. Louis Aguilera, a member of the East Chicago Fire Department, was randomly tested for drugs. The test was positive for cocaine. Aguilera chose to participate in a drug rehabilitation program. Ten months later, he was given a follow-up drug test. He again tested positive for cocaine and was fired. Aguilera sued, claiming the follow-up test violated his Fourth Amendment rights against warrantless searches. Was the second test a violation of Aguilera’s rights?

8. James Whitlock worked for Mac-Gray, Inc. After he was diagnosed with attention deficit hyperactivity disorder (ADHD), he was allowed to build partitions around his workspace and use a radio to block background noise. Whitlock performed his work and taught himself to use Mac-Gray’s new computer system. He worked for a while but frequently called in sick and finally stopped working after his doctor said he was totally disabled. Whitlock, alleging he was disabled from working, sued Mac-Gray for workplace discrimination and violation of the ADA. Should he recover?

9. While working for Jaguar of Troy, Jeffrey Perry applied for leave for the summer under the FMLA in order to take care of his son, Victor. Victor had learning disabilities, attention deficit disorder, and attention deficit hyperactivity disorder. Victor took medication and visited a doctor every six months, but he could feed and dress himself. He rode the bus to and from school, played video games, watched TV, played with neighborhood children, rode his bike, and swam. Two weeks after taking the leave, Jaguar informed Perry his leave was not considered to be under the FMLA. At the end of the summer, Perry inquired about his job and Jaguar told him it was filled and there were no other jobs available. Perry sued, claiming Jaguar violated the FMLA by failing to permit him to return to his job. Did it?

10. Albertson’s, Inc., hired Hallie Kirkingburg as a truck driver. The doctor who examined his eyes erroneously certified that his eyesight met the Department of Transportation’s (DOT) standards. A year later, Kirkingburg took a leave of absence after an injury, and Albertson’s required a physical before he returned to work. This time, the doctor told Kirkingburg that his eyesight did not meet basic DOT standards. He applied for a waiver, but Albertson’s fired him because he did not meet the standard. Kirkingburg sued Albertson’s, alleging the firing violated the ADA. Albertson’s alleged that if Kirkingburg was disabled, he was not a “qualified” person with a disability because Albertson’s only required the minimum eyesight standards. Was Kirkingburg “qualified?”