

Exam Number _____

FINAL EXAMINATION

EMPLOYMENT DISCRIMINATION LAW

December 9, 2010

Professor Shanor

This **two and one-half hour exam** contains **5 short answer questions**. Each question carries approximately the same credit, so you should spend about 30 minutes per question. Including this cover sheet, the **exam has three pages**.

Your **exam number** should appear on **each exam page** and **each answer page**. This exam is covered by the **honor code**; by placing your exam number on this copy of the exam and your answers, you are pledging to abide by the code.

The exam is **open book** (including casebook, notes, written study aids). Computer research, downloading, electronic cutting and pasting, etc. are **forbidden**, as is assistance from any other person. This exam is being administered at different times. **Do not discuss the exam** -- some classmates may not have taken it.

Answer concisely but use legal authorities where available; verbose answers do not help you, will interfere with your analysis, and will cause you unnecessary time pressure. If you think you need **additional information** to analyze any question, state what you believe is needed and why it makes a difference.

All exam questions must be returned at the end of the exam, whether you write or type your answers!

Read, think, and organize before you write!

GOOD LUCK AND HAVE A HAPPY HOLIDAY!

Questions

(Five Questions; Approximately ½ hour each)

1. Tara Germain, an unmarried Suffolk County police officer, informed the police chief in early 2009 that she was pregnant with triplets. On the advice of her doctor, she requested light duty. The chief said police department policy was to grant light duty only to police officers with on-the-job injuries. Germain thereafter used up her paid sick leave, then took unpaid leave. While on leave, she applied for a promotion, but this was denied because of a Suffolk County policy that “only employees currently on full-time duty are eligible for promotion.” In response to a promotion opening in September that Germain sought after giving birth, the chief said, “It was nothing you did or didn’t do, but you have the kids and just have a lot on your plate right now.” After this third rebuff, Germain filed an EEOC charge with the EEOC alleging discrimination under Title VII all three. Analyze her claims.

2. Cornelius Jefferson, a 65-year-old highly skilled African-American welder in Atlanta’s largest auto repair shop, was terminated during the summer of 2009 during a “downsizing” that the company president said was due to “the sorry economy.” Shortly before Jefferson was notified he was being let go, the manager of the welding operations, Mike Patterson, commented that, if he were in Jefferson’s position, he would “spend some serious time traveling, fishing, eating soul food, watching reruns of Cosby and visiting the grands.” When Jefferson asked Patterson what he meant, Patterson said “Man, you got it made. Pension, social security, medicare, empty nest, and a house that’s paid for. If I were you, I wouldn’t be hanging around this junk-heap.” Jefferson tried various activities and odd jobs after his termination but became bored. He missed the challenge of work and companionship of co-workers. He came to you a few weeks ago asking you to evaluate his chances of successfully challenging his discharge on race and age grounds. Do so.

3. When hired in 2005 as a legislative lobbyist in Georgia by Hale Consultants, Vandiver Elizabeth Glenn appeared to be male. However, although Glenn had been born male, he was diagnosed as having Gender Identity Disorder (GID), a medical condition recognized by the American Psychiatric Association. His health-care providers recommended in early 2006 that Glenn undergo sex change surgery and advised him to live as a woman prior to the surgery. When he appeared at work following a month-long summer vacation in September 2006 dressed as a woman, the company owner, Abner Hale, told Glenn to go home and dress appropriately. Glenn did so, but notified Hale that he was going to undergo the surgery and thereafter dress as a woman. Glenn provided literature concerning GID to the boss, but Hale fired Glenn anyway, saying “Your presentation as a woman would be seen by clients and legislators as immoral, and you would make other employees uncomfortable.” Glenn has filed suit under Title VII and the ADA alleging discrimination. Assess Glenn’s case and the employer’s likely responses.

4. Tom McBride is a city planner for Cityscapes, Inc. in Decatur, Georgia. His building is located in a part of town downwind of the city dump, so employees use strong air freshener fragrances to cover the stench. Over time, McBride has developed a strong allergic reaction to these air fresheners. McBride reports watery eyes, labored breathing, nausea, coughing, loss of voice, and a scratchy throat. McBride recently asked the owner of the firm to remove the air fresheners, but a brief experiment without the fresheners led to mass revolt by the other workers. When McBride suggested that the company install an air filtration system to remove smells from the dump, the owner responded by saying “What do you think I am, a money tree?” When McBride suggested the possibility of working from home, he was told that would be incompatible with the “team effort” involved in Cityscapes’ projects. McBride had previously investigated having allergy treatments, but they were quite expensive, were not covered under his medical plan, and had less than a 50% chance of success. Frustrated and on the verge of resigning from his “dream job,” McBride asks your advice as to whether he has any recourse under the ADA. Advise him.

5. Following the Supreme Court’s *Ricci v. DeStefano* decision in June 2009, as New Haven prepared to promote a group consisting almost entirely of white fire captains and lieutenants based on exam results, a black New Haven firefighter, Michael Briscoe, filed a disparate-impact lawsuit against the city. Like Frank Ricci, Briscoe is a sympathetic plaintiff. He received the highest score of any candidate on the oral portion of the lieutenant’s promotion exam. But he isn’t eligible for promotion because the city based 60 percent of each candidate’s score on the written exam. On this part of the test, Briscoe—like most black candidates for promotion—did comparatively badly. Briscoe argues that the written exam did not, in fact, test for the skills that fire captains and lieutenants need on the ground; instead, it rewarded rote memorization. As for alternatives, Briscoe says that the city could have relied more heavily on the oral exam, which required candidates to respond to real-life firefighting and training scenarios. Neither the city nor the company that designed the exam defended making it worth 60 percent of the promotion score. Briscoe also points out that New Haven could have used an assessment-center model, which tests candidates through simulations of real-life job challenges. Many other cities use assessment centers successfully. Assuming the above facts are true, write a memo on whether Briscoe’s lawsuit should be dismissed in light of *Ricci*. Do not consider issues unrelated to *Ricci*.