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Employment Dscrimination La
Final Exam Spring 1993

EMORY UNIVERSITY

Exam Nu

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# FINAL EXAMINATION
in
# EMPLOYMENT DISCRIMINATION LAW

April 27, 1993

**Professor Shanor**

This 3 hour exam contains four parts. Credit will be weighted approximately in accordance with the time and space allocated to each question.

The exam is closed book; it may be taken only in this room. If you believe you need additional information to analyze any question, state what you think is needed and why it makes a difference.

Read, think, and organize before you write.

Write all your answers in the space provided on the exam.

Write your exam number on each of the exam pages in the space provided.

GOOD LUCK!

Exam Number _____

I.
(45 Minutes)

The EEOC sued Conscientious Cleaners,Inc. (CCI), a small company which provides janitorial services for a number of office buildings in Chicago, alleging national origin discrimination under Title VII. The owner of the company, Mr. Hwang, is a Korean immigrant whose employees are 81% Korean.

The evidence presented at trial showed that 73% of the applicants for jobs with CCI are Korean in a county where the workplace is less than 3% Korean. Generally, Mr. Hwang has relied exclusively upon word-of-mouth recruitment to obtain employees. Persons approach Hwang or his employees at work or social events, and Hwang has occasionally asked employees whether they know anyone who wants a job.

On three occasions, CCI did place newspaper ads - twice in a Korean-language paper and once in the Chicago Tribune. The latter ad produced a number of applicants, many of whom were non-Korean, but Mr. Hwang never hired anyone from the ad because he failed to obtain a large cleaning contract that had led him to place the ad. The other two ads produced only three hires, two of whom promptly quit, disgruntled over the hard work and low pay. Typically, few word-of-mouth hires leave CCI after less than two years of employment.

Two other factors exist in the case. First, the discovery process failed to uncover any non-Korean applicants who likely would have taken CCI jobs if offered them. Second, a local Korean-origin sociologist testified that "it is natural for recent Korean immigrants, such as Hwang, to hire other recent Korean immigrants, with whom he shared a common culture."

As a law clerk for the district judge who heard this case, you have been asked to draft a memorandum assessing whether, on these facts, CCI has violated Title VII.

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II.
(45 Minutes)

Doughboy, Inc. has a light-duty program which provides that any employee "accidentally injured" on the job will be considered for light duty work at full pay for the time he or she is unable, according to a doctor's evaluation, to perform the normal duties of the job. The light duty program, a product of collective bargaining between Doughboy and the Flour Workers' Union, is not available to employees who are unable, because of illness, to perform their normal job duties. Employees who are sick are entitled only to the company's "disability leave" benefit, which consists of payments during the first two months of 30% of salary and an unpaid leave of absence thereafter up to a total of six months.

Ms. Trixie Richards has been an employee of Doughboy for the past 10 years in a job which requires her to handle 50-pound sacks of flour several times a day. Two weeks ago, her obstetrician gave her a note stating that she should not, for the duration of her pregnancy, lift weights exceeding 20 pounds. She immediately requested that she be put on light duty for the duration of her pregnancy, but her request was summarily rejected. The letter from the Benefits Director stated that Ms. Richards was not eligible for the light duty program since she had not been "accidentally injured," and informed her about the disability benefit available to her under the company's disability benefit program.

(A) Advise Ms. Richards whether she has a viable claim under Title VII and indicate what factual information might help or hurt her claim.

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(B) Evaluate whether, assuming she has a Title VII claim, Ms. Richards should file a class or an individual action after obtaining a right-to-sue letter from the EEOC.

(C) Advise Doughboy whether its policy, which it believes is lawful under Title VII, is lawful under the Americans With Disabilities Act.

III.
(30 Minutes)

All the employees of Bulk Freight, Inc. are represented by the Teamsters. There are four bargaining units--over-the-road drivers, local drivers, mechanics, and office clericals. Most of the employees are drivers, while the mechanics and clerical employees are about 10% of the workforce. The mechanics and clericals units are approximately the same size, but the former is 90% male while the latter is 90% female. During the latest round of bargaining, the Company proposed a two-tier wage system for all four units under which new hires would be paid at rates substantially below rates of incumbent employees. The Teamsters opposed two-tier wage arrangements for any unit, but eventually yielded to the Company's position with respect to the office clericals unit. The salary schedules agreed to for incumbent employees call for mechanics to earn $15-$16 per hours, for file clerks to earn $10 per hour, and for secretaries to earn $12 per hour. New mechanics will earn more than the average wage for mechanics in the geographical area ($14 per hour); new file clerks will earn the prevailing area wage of $8 per hour and new secretaries will earn the prevailing area wage of $10 per hour. When several clerical workers complained to the union that they "got the shaft" in the contract negotiations, the chief union negotiator said "You broads have gotten mighty pushy. With secretaries being laid off right and left due to computerization, you're lucky to be in this union at all. You ought to stop bitching and start organizing the sisters at other companies." It is true that, unlike drivers and mechanics, few local clerical workers are unionized. Advise the clerical workers whether, on these facts, they have any viable employment discrimination claims.

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IV.
(one hour)

Four short-answer fact patterns follow. Please analyze what causes of action, if any, exist under the federal employment discrimination statutes you have studied and what problems each cause of action may involve.

1. Alice Apple, a fifty year old white woman with a history of heart problems, is married to a politically-prominent Black man. White coemployees at the insurance company for which she worked until recently regularly made denigrating comments, in her presence, about Blacks. She alleges that these coworkers, knowing her husband and children are black, mounted a campaign to harass her into resigning. She did in fact quit last week, saying "I can't take this any more."

2. A sizeable catering business hired a Jehovah's Witness to serve as cashier and to greet customers at one of its locations. The business recently fired her because she refused to ring up holiday gift boxes for customers and scowled at customers who said "Merry Christmas." She told the manager in advance of her discharge that her religious beliefs required her to oppose the commercialization of Christ's birthday.

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3. The Mayor of a major American city recently acknowledged that, of 100 positions he has filled in city government since his election in November, 1992, 25 went to black males, 25 to black females, 25 to white males, and 25 to white females. The Mayor has a long history of support for affirmative action, contract set-asides for minorities, and "race and gender fairness." In fact, the city over which he presides is comprised of almost equal numbers of each of these demographic groups.

4. David Koresh, a 58-year-old California-based aeronautical engineer, was given two weeks notice of being laid off on New Year's Day, 1989. The company for which he worked told him this layoff was due to a decline in military business, but Koresh suspected that the real reason was that his pension was scheduled to vest in February, his tenth anniversary with the company, and he had heard that the pension plan was underfunded. When a former colleague told Koresh in August that his job had been taken over by a newly-hired but experienced 50-year-old engineer, Koresh filed a charge of age discrimination with the EEOC. When EEOC processed his charge at what Koresh thought to be a "glacial pace," Koresh obtained a right-to-sue letter in September 1991 and filed a private ADEA suit several weeks later.