

**FINAL EXAMINATION**

**In**

**EMPLOYMENT DISCRIMINATION LAW**

**May 4, 1998**

**Professor Shanor**

This 2½ hour exam contains five short answer questions (90 minutes total) and one longer essay (one hour). Credit will be weighted approximately in accordance with the time allotted.

Please write all your answers in the space provided on the exam. One lined page has been provided for each of the five short answer questions and 3 1/2 pages for the longer essay. I have been very generous with writing space; you should attempt to be focused with your answers.

Write your exam number on each of the exam pages and in the space provided below for the Honor Code pledge.

The exam is open book; computers and assistance from other persons is prohibited; additionally, since the exam is being administered to different members of the class at different times, please be especially careful not to discuss anything about the exam in front of classmates who have not taken the exam.

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!

**GOOD LUCK!**

I acknowledge that in this, as in all other Law School activities, I am bound by the Honor Code.

I  
(90 minutes)

Five short-answer fact patterns follow. Please analyze the legal issues posed by each fact pattern under the employment discrimination statutes we have studied. You are provided with one page of lines on which to analyze each fact pattern (each page is labeled by the name of an employee).

1. Cordelia Crenshaw, a black female, asks you to evaluate whether she has any claims against Systems Management, a company which recently refused to hire her based on a wholly subjective selection process. Your discovery shows that there is insufficient evidence to support any individual disparate treatment claim by Ms. Crenshaw. You do find that, of 200 white male applicants, 50 were hired; of 50 black male applicants, 20 were hired; of 200 white female applicants, 60 were hired; and of 50 black female applicants, 5 were hired.
2. Bevis Butthead, a supervisor at Ironworks Factory, had an unusual management style. He regularly called males "stupid jerks" and "dickhead" (among other endearments) and occasionally kicked them in the rear with an appellation to "get the lead out of your pants." Female supervisees were told to "get off your fat ass," and advised that "if you don't have any work to do, you might as well suck my cock." Butthead's harshest treatment, however, was reserved for an effeminate male, whom he rode mercilessly with both verbal abuse and mock homosexual sex acts. Because the employees were so afraid of Butthead, nobody reported his actions to higher management, who first learned these facts after EEOC charges were filed by male and female employees and the effeminate employee. Following an expeditious internal investigation in response to the charges, Butthead was fired.

3. Mayda Martyr, a white woman employed by Tiger Camera Shop, supported the promotion of a black employee. When a white employee was promoted instead, she "leaked" a letter awarding the promotion to the white applicant which was dated prior to the white applicant's interview. Shortly thereafter she was fired. She instituted a grievance, but the grievance was terminated when she filed a charge with the EEOC. A collective bargaining agreement term requires termination of "any grievance when the employee seeks to resolve a dispute in an administrative or judicial forum." Subsequently, Tiger responded to Wolf Camera's inquiry concerning Mayda's application for employment at Wolf by saying "she's not a team player."
4. Tonia Jolley was employed by Phillips Junior College as an admissions representative. The new admissions director announced he would make some changes, including rearrangement of the desks of the recruitment representatives. Jolley said she would not move her desk, because "I may be pregnant." The new director said "You mean you weren't put through a machine to make sure you couldn't have children?" and then insisted she move the desk. When she refused to move the desk, the director fired Ms. Jolley, who in fact was not pregnant at the time of the foregoing events.
5. Cortez Bridges, during a physical examination required of all applicants for firefighter positions, revealed that he has a mild form of hemophilia, a blood clotting disorder. Pursuant to the examining doctor's recommendation, the city rejected Bridges' application because of "the extreme risk of severe trauma" to Bridges and the possibility that bleeding by Bridges might communicate blood-carried diseases such as AIDS to others. Despite his hemophilia, Bridges has never suffered any severe complications, even though he engaged in contact sports and served in the National Guard.













II.  
(1 hour)

Pete Wilson, a black male with a severe case of PFB (a condition which precludes him from shaving his beard) and an evangelical commitment to the Seventh-Day Adventist Church, worked for fifteen years as a mechanic for Eastern Airlines in its Atlanta, Georgia facility. When Eastern's employees went on strike in early 1989, Wilson, at age 47, was being paid \$18/hour plus generous fringe benefits.

Wilson submitted employment applications to several other major airlines, including Patriot Air, at various times during 1989 and 1990. These applications were brief, asking questions primarily related to education, experience, and physical capabilities.

On one occasion, in November, 1990, Wilson showed up at a Patriot Air training center a couple of hours from his home on a morning that Patriot Air was beginning an airline mechanic's training class. The instructor commented that he was not sure Wilson matched Patriot's "vigorous, clean-cut" image and that the company "might be reluctant to hire a mechanic who couldn't work on Saturdays."

While unemployed, Wilson watched from the sidelines as his former employer did a terminal nosedive into bankruptcy liquidation. Moreover, as the months dragged by with no word from Patriot Air other than postcards acknowledging receipt of his applications, Wilson got more and more angry. As he told a friend at a baseball game in August, 1991: "Patriot is hiring green, inexperienced kids right out of college and they are ignoring me, despite my 15 years of experience and the fact that I know their main airplane, the Boeing 767, inside-out." His friend recommended that Wilson file a charge with the EEOC. The next day, Wilson proceeded to do this, writing on the EEOC form that "Patriot refused to hire me despite my excellent qualifications while hiring less qualified individuals for mechanic opening" and checking the race and age "basis for discrimination" boxes on the EEOC form.

The EEOC's investigation had barely commenced when Wilson obtained a lawyer who requested and received a right-to-sue letter and promptly filed suit against Patriot Air on Wilson's behalf. Discovery produced, inter alia, the following information: (1) nobody at headquarters, where applications were screened, even remembered Wilson's application from the thousands of applications the company had on file for mechanic positions; (2) various company officials gave differing reasons why Wilson was probably not even

invited for an interview; (3) some of the reasons given were clearly untrue, for people with various characteristics which company officials said were bars to employing Wilson had been hired; (4) Wilson had lied on all his applications in order to conceal past psychiatric treatment for severe depression; and (5) all the decision makers who passed over Wilson's application agreed that mechanics having "high seniority with another major carrier" were undesirable applicants due to "corporate culture differences and the shock of low pay, perks, and seniority" at Patriot compared to the other major carriers.

You are a law clerk for the district court judge who has received a comprehensive summary judgment motion from Patriot and an equally comprehensive opposition to that motion from Wilson. Because you told the judge that you had a first-rate employment discrimination course in law school, you have been asked to write a memo analyzing whether summary judgement should be granted or denied. Write that memo.

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Employment Discrimination Law

Exam Number \_\_\_\_\_  
Professor Shanor

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