

UNIVERSITY OF MISSISSIPPI  
SCHOOL OF LAW

EMPLOYER-EMPLOYEE RELATIONS  
Professor Secunda

FINAL EXAM

Date: April 30, 2003

Time Allowed: 3 Hours, 30 minutes

Instructions

1. You are allowed to refer to the statutes in your statutory supplement, but no other materials may be consulted during this examination. Any annotations or other handwritten materials in your statutory supplement are not permitted.
2. Please "sign" the following pledge by writing your examination number on the line after the pledge. DO NOT write your name on this examination or on any bluebook.

By the act of submitting my examination, I do pledge, on my honor, that I have neither given nor received any improper assistance and that I will report any improper assistance given or received by others of which I am aware.

Exam No. \_\_\_\_\_

3. No examinations may leave the examination room. Return your examination with your bluebooks.
4. The first thirty (30) minutes of the examination is recommended for the purpose of reading over the examination and organizing your thoughts.

GOOD LUCK AND HAVE A GREAT SUMMER!

**DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED**

## **THREE QUESTIONS**

### **QUESTION ONE** (One Hour; worth 1/3 of points)

In April 2002, Margie Marigold begins working as the Mississippi regional marketing representative for a large Southern advertising company, Baneful Billboards. Her primary job duties require her to work with clients on the creative side of the billboard process by helping them select slogans for their billboards and by reviewing their billboard graphics. She also informally works with Baneful executives in assisting to establish marketing strategies company-wide. Margie has one subordinate, a secretary, who works under her supervision.

Part of the reason that Margie was willing to uproot her family from the West Coast and move to Mississippi was that during hiring negotiations with Baneful's personnel manager, Slim Slezzy, he stated to her that he hoped they would retire together and that as long as she performed well, she had a "secure" job at Baneful. Although Margie never received any such promises in writing, Margie wrote a letter to Slezzy stating that it was because of these representations that he had made to her about her future employment that she had decided to accept the employment offer from Baneful rather than accepting a job with a prestigious university in the Northeast as an Assistant Professor of Marketing.

The only employment contract that Margie signed at the commencement of her employment with Baneful was an agreement containing Baneful's standard non-competition clause. The non-competition clause stated that Margie could not directly compete against Baneful for 4 years after she left employment with Baneful in any area of the country in which Baneful did business (which area covered about 10 Southern states).

Margie was not initially informed by Slezzy in what manner she would be paid. After working two weeks for Baneful, she received a pay check which documented that she was being paid at a rate of \$20 per hour. However, even though she worked 100 hours (or 50 hours per week) during her first two weeks, she received a check for the gross amount of \$1600 (or 80 hours multiplied by \$20/hour). Margie also noticed that Baneful had deducted \$50 for the Rainy Day Fund from her paycheck. When Margie complains to Slezzy, he merely states that the check amount is correct since the company is treating her as an exempt employee and every employee must contribute to the Rainy Day Fund. Slezzy also tells Margie that even if she were nonexempt, her health and pension benefits more than cover what Baneful would owe her in overtime compensation.

Initially, Margie is a great success as a marketing representative for Baneful. Not only does she acquire many new customers for Baneful, but she even comes up with a new method for quickly attaching advertising copy to billboards which saves Baneful a significant amount of money and gains Margie a patent for her idea. (Margie formulates this new billboard method during work time using Baneful's resources).

Although hoping to spend her whole career at Baneful, things turned sour in April 2003 when Margie discovers what she believes to be certain illegal client billing practices. Margie brings her concerns to Sleezy who gives her an icy glare and exclaims, "You would do better to keep your nose out of other people's business." Not satisfied, Margie files a report with the State Department of Consumer Affairs. (It later turns out that Baneful was not engaging in illegal billing practices and Margie had been mistaken about the law.)

After Baneful was notified of Margie's report to the State Department of Consumer Affairs, she was immediately fired. The reasons given for her termination include: filing a false report with a public agency, becoming the head of the local "Legalize Marijuana" campaign, and marrying a marketing representative at Baneful's chief competitor, Angelic Advertising.

Although Margie was able to obtain a new job with Angelic Advertising, she was too afraid to accept the new employment after she was informed in a nasty letter from Slim Sleezy that Baneful would consider such employment with Angelic to be in violation of her non-competition clause. In the same letter, Sleezy tells Margie not to bother to file for unemployment compensation benefits as Baneful plans to contest her eligibility for such benefits. Finally, during Margie's employment discussions with Angelic, she learns that Baneful has been attempting to transfer its interests in her billboard patent to Angelic.

- A. A few days later, a visibly upset Margie comes to your law office to seek legal advice. She asks you to evaluate what claims she can assert against Slim Sleezy and Baneful Billboards. What are her chances of success? What additional information (if any) do you need to know? Write a legal memo evaluating her case, including a detailed analysis of possible claims, defenses, and remedies.
- B. Based on Rubin and Shedd's human capital theory, would Rubin and Shedd be in favor of enforcing the noncompetition clause against Margie Marigold under these facts?

**QUESTION TWO** (One Hour; worth 1/3 of points)

Beautiful Butchery ("BB") is a purveyor of fine meats throughout the Continental United States. Employing 300 employees in 3 different locations (160 employees in Jackson, MS; 110 employees in Butte, Montana; and 30 employees in Philadelphia, Pennsylvania), BB is one of the largest butchers in the country. Unfortunately, because more and more people are going to food clubs or food super centers to buy their meats in bulk, BB, which focuses on high quality, hand-butchered meats, is in financial trouble.

In order to meet the economic challenges faced by the realities of the new market place, Sly Slaughter, President of BB, decides to undertake a number of cost-savings measures. First, Slaughter reclassifies 50 current employees at the Jackson facility as "independent contractors," and based on such designation, no longer provide these new "independent contractors" with health insurance or retirement benefits (BB had been providing these workers with a 401k plan, a type of defined contribution plan).

Next, Slaughter decides to completely shut down the Butte, Montana facility within 45 days of giving the Butte employees notice. Slaughter's primary reason for the plant closing is to save money that BB would have owed to many of these Butte employees under the defined benefit pension plan in place at the Butte plant. Therefore, as part of the closure of the Butte facility, BB voluntarily terminates the Butte Pension Plan.

As an additional cost saving measure, Slaughter takes advantage of a liberal reservation of rights clause in the company-wide, health insurance plan's summary plan description (SPD) and substantially reduces the lifetime health insurance coverage maximum from \$1 million to \$100,000 for remaining employees and sets up a self-insured health plan which no longer covers mental illnesses, such as manic depression, schizophrenia, and obsessive-compulsive disorder. Unbeknownst to BB, Pennsylvania has a state mandated benefit law which requires coverage for these mental illnesses.

Moreover, BB immediately cancels all retiree health care coverage. This action is specifically contrary to language in the summary plan description (SPD) describing these retiree health benefits as being for the retiree's "lifetime." Nevertheless, in the same SPD, there is language reserving the right of BB to amend the welfare plan whenever it so desires. Slaughter had also just had a conversation last week with some employees considering an early retirement option in which he guaranteed the continuation of the retiree health benefits even though the elimination of such coverage was already under serious consideration.

Slaughter next turns his gaze to the Company's generous family and medical leave plan under which employee receive 16 weeks per year of paid family and medical leave for the birth of a child, their own serious health condition, or the serious health condition of a family member. In order to cut down on the costs of the program, Slaughter changes the new family and medical leave program to provide 8 weeks of unpaid family and medical leave every two years, no longer provides for leave to take care of a family member with a serious health condition, and only permits full-time employees (those working more than 35 hours a week) to apply for these benefits.

Last, sick and tired of paying the costs associated with employment litigation, Slaughter wants all remaining employees to sign an arbitration agreement agreeing to submit all future employment disputes between themselves and the company to binding arbitration. Under this Agreement, BB will be in charge of setting the arbitration rules and the arbitrator will only be empowered to award reinstatement and back pay for lost wages. The employee and BB will equally share the cost of the arbitration process.

You are in-house counsel for Beautiful Butchery. Stanley Slaughter wants to know the legality of his cost-saving proposals. Expecting that affected employees and retirees may soon file a lawsuit against the Company based on these new policies, he asks you what claims they may have against them and what their chances are of success. What additional information (if any) do you need to know? Write a memo evaluating the likely success of a case brought against BB, including a detailed analysis of possible claims, defenses, and remedies.

**Question Three** (One hour; worth 1/3 of points)

Comment critically on the following statement. Advocate a position with respect to the statement. Integrate cases, statutes, and arguments discussed in class to support your view.

"The Occupational Safety and Health Act (OSHA) is ineffective because the promulgation of safety and health standards has become an overly-politicized process, with the result that employers are left to comply with out-of-date and ill-conceived Interim Regulations. Congress should scrap OSHA and instead rely on a combination of state safety and health statutes, the tort system, and the labor market to address safety and health workplace concerns."