

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

EMPLOYER-EMPLOYEE RELATIONS
Professor Secunda

FINAL EXAM

Date: May 9, 2006

Time Allowed: 3 Hours, 30 minutes

Instructions

1. This is an open book examination. You may refer to any materials.
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 to the front of the room at the end of the examination.
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 PARTS (100 Points)

PART ONE (6 Short Answers, 10 minutes each, 5 points each (30 points total))

- A. Manuel Manfred has worked for Money Systems Inc. (MSI) full-time for the past three years. MSI has 75 employees in two locations that are 50 miles apart.

Manuel's mother has recently become sick (assume Manuel has the proper certification forms for his mother's illness) and although she has only seen a doctor once, she is also on strong prescription medication for her condition. Manuel would like to take off two weeks paid leave from work immediately to take care of his mother, perhaps taking 3 hours off a day at different times to coordinate caring for his mother with his sister.

When Manuel asked his employer for the time off, his employer refuses. Does Manuel have a cause of action under the federal Family and Medical Leave Act (FMLA)? (You do **NOT** need to discuss remedies in your answer).

- B. After selling his business to All Things Sold (ATS), Roger Rogers entered into a ten-year contract with ATS under which he would be employed as general manager of the company at \$50,000 a year. After three years serving in that position, Rogers is terminated in favor of ATS' president's nephew.

What cause of action might Roger have against ATS and what remedies may he seek? If Roger was fired also in part because he was about to collect on a bonus that he already earned, what other cause of action and remedies might he have?

- C. Assume that Mississippi has just enacted a new "right to know" law that requires employers to disclose to their employees the presence of toxic chemicals used in their factories, requires certain labeling of such chemicals, and requires training on the handling of these chemicals for all employees. The law also requires that similar information about toxic chemicals be disclosed outside of the workplace to public safety officials and environmental control officials.

OSHA has in place a Hazard Communication Standard (HCS) which more specifically seeks to protect workers against similar workplace hazards. The federal and Mississippi state standard effectively provide the same amount of workplace safety and health protection in this area.

Is the Mississippi law preempted by OSHA? Would it make any difference if we assume that Mississippi had its own OSHA-approved state program?

- D. Giant Toys Ltd. (GTL) wants to convince as many of its older employees as possible to consider early retirement in order to cut its expenses. Through a series of oral presentations and written documents, the plan administrator (the Human Resource Manager of GTL appointed to manage and operate the pension

plan on a day-to-day basis) persuades a group of early retirement candidates that they might as well retire now since this is the most generous pension offer they will ever receive and no other programs are currently under review. Consequently, Jack, Kyle, and Donna end up accepting the early retirement offer and start receiving pension payments.

Four months later, however, the now-retired employees discover that the company has offered an even more generous early retirement package to another group of employees, Michael, Richard, and Karen. It turns out that the new plan had already been under serious consideration by the plan administrator at the same time when he was telling Jack, Kyle, and Donna about the first plan.

What type of claim might this initial group of employees have under ERISA and under what enforcement section of ERISA would they have to proceed?

Would the same issues exist if GTL just had decided never to offer any early retirement plans in the first place and just terminated the pension plan completely?

- E. Howard Hills owns and operates a car dealership. He pays his employees \$80 per week in salary for working 40 hours a week, but unlike other car dealers, also provides them with free use of a company car (that they must drive) and provides commissions and bonuses at the end of each four week period to each employee of \$1200. Assume that the car's value on a weekly basis is \$300.

Are Howard's compensation practices in violation of the FLSA?

Assuming there is a violation and Howard sought to intentionally file misleading documents about his pay practices, what impact might this further fact have on the claims and remedies available to the impacted employees?

- F. Jenny Jentry and her boyfriend of 10 years, Billy Bane, have a three-year old child together, Natasha. Billy decides that he is tired working in the casinos in Nevada and wants to try his hand at the casinos in Atlantic City, New Jersey.

Consequently, Jenny ends up quitting her job at the Slots Diner in Nevada (where she has worked full time for two years) so that she and her daughter can follow Billy to his new job in New Jersey.

Will Jenny be eligible for unemployment compensation? Does Jenny's eligibility for unemployment change if she is fired for sleeping on the job? If she is eligible, how will her unemployment benefits be calculated and how long can she receive them? **(No numerical calculations are required for your answer.)**

PART TWO (Fact Pattern; One Hour; 40 points)

Ernie and Bert have opened up a factory to make a special blend of coffee, which they sell in 30 out of the 50 states in United States. Their company, Elmo's Espresso Express (EEE), now has 150 employees. EEE does not have an employee handbook and, unless otherwise indicated, none of its employees have employment agreements.

Because of the unique nature of their coffee and the competitive advantage its blend has given EEE over its competitors over the years, Ernie and Bert take a number of precautions to ensure the secrecy of their brew. In particular, Ernie and Bert ask Cookie Monster, the Vice President of Operations to sign a non-competition agreement after he has already been employed, under which Cookie Monster agrees not to compete against EEE with any type of food manufacturer until three years have elapsed after his termination anywhere in the United States. In exchange for agreeing to these terms, ER has paid Cookie Monster a one-time lump sum of \$10,000. Cookie has also signed a confidentiality agreement, agreeing that he will not divulge any of EEE's proprietary processes or information to its competitors.

Unbeknownst to Ernie and Bert, however, Cookie Monster has already been discussing with Prairie Dawn, a co-worker, about branching out on their own to start a new food manufacturer company. While still employed, Cookie apparently has talked to other employees about joining his venture and has also contacted current EEE customers about the enterprise. That being said, Cookie Monster is a large part of the reason why EEE continues to be so profitable.

Prairie Dawn, for her part, works for Ernie and Bert on a project basis as a quality control inspector. She uses her own tools, maintains her own hours, receives her compensation when each project is completed, and also has other companies besides EEE for which she works in the same capacity.

Eventually, Cookie Monster and Prairie Dawn decide to no longer work for EEE and open their own food factory, but this time a chocolate chip cookie factory. Moreover, because Cookie was never happy with how Ernie and Bert treated him, Cookie ends up talking to one of EEE's chief coffee competitors, Oscar's Grouch Grinds (OGG), and tells Oscar the Grouch, its president, about the formula for EEE's coffee blend. Ernie and Bert are livid when they find out about this betrayal.

But EEE is not only having issues with high level employees like Cookie Monster. Another employee, Telly, works helping to sort out the different ingredients for the coffee blend on the factory floor. Telly supervises two other employees in this venture, but he does not exercise any independent discretion over how the coffee-making process works. He is paid a fix salary of \$52,000 a year (\$1000 a week) and has worked 50 hours a week since he was hired a year ago. To date, he has received no overtime.

Because Telly believes that he deserves overtime pay, he ends up filing a complaint with the regional office of the Department of Labor's Wage and Hour division. Right after

filing the complaint, Ernie and Bert terminate Telly for working with leprosy patients on his spare time (which he, in fact, does) because they claim that they are afraid he will infect the rest of plant and cause harm to co-employees and to their product.

Unfortunately, shortly thereafter, EEE's fortunes start going downhill precipitously as sales of the previously popular coffee blend start to plummet. As a result, Ernie and Bert decide that they must fire 75 employees over a 45 day period (35 at first and 40 more 45 days later). The fired employees were given 15 days notice of their termination, but received no form of severance payment.

Please analyze the above fact pattern from the perspective of the various legal claims and defenses that EEE (Ernie & Bert), OGG (Oscar the Grouch), Cookie Monster, Prairie Dawn, Telly, and the group of employees impacted by the layoff might have under these circumstances. **Please do not forget to discuss remedies in writing your analysis.**

PART THREE (Policy Question; One Hour; 30 points)

Comment critically on the following statement:

"The over-federalization of employment law has overwhelmed the federal courts. Consistent with foundational ideas of federalism, employment law should be primarily a matter of state law rather than federal law."

Integrate cases, statutes, and policy arguments from **our employment law class only** in supporting your answer. In answering, please first state how the current law operates with reference to **at least two separate employment law areas** we discussed in class. You should then argue how the law *should* operate in these same areas.