

UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW

EMPLOYMENT DISCRIMINATION LAW
Professor Secunda

FINAL EXAM

Date: April 28, 2007

Time Allowed: 3 Hours

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. There are **THREE PARTS** to the exam, allotted equal time. Please be sure to do all parts of the exam, spending sufficient time on each.

GOOD LUCK AND HAVE A GREAT SUMMER!

DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED

THREE PARTS (100 Points)

PART ONE (One Hour; 6 Questions, 6 points each for a total of 36 points)

QUESTION ONE

Anita Ward believes that she was discriminatorily not hired based on her race by Ring My Bell Enterprises (RMBE). After Anita files a charge of discrimination with the EEOC in a timely manner, RMBE offers to place Anita into the position she initially applied for, but without retroactive seniority and only if she agrees to withdraw her EEOC complaint. What is the impact of the RMBE's offer on Anita's potential remedies under Title VII?

How might Anita avoid these issues surrounding Title VII and still be able to bring a race discrimination claim against her employer? What are the advantages of proceeding in this manner?

QUESTION TWO

Are the elements that a plaintiff has to establish to make out a prima facie case always the same in any McDonnell Douglas/pretext case? What is the purpose of making a plaintiff establish a prima facie case in the pretext situation? How does *St. Mary's Honor Center v. Hicks* potentially undermine that purpose?

QUESTION THREE

George Michael, 53, worked for Wham! Limited (WL) as a marketing executive. WL had 13 full-time employees, 3 part-time employees and 2 volunteer interns. Can George bring an age discrimination claim against WL when he is replaced by a 43 year-old worker?

What if George is considered an independent contractor, can he bring a reverse sex discrimination claim under Title VII against WL if his replacement is female?

QUESTION FOUR

Talking Heads Inc. (THI), a non-unionized employer, makes David Byrne sign an arbitration agreement which requires David to arbitrate all of his employment-related disputes with THI. Must David arbitrate his Title VII claims against THI? May the EEOC still sue THI under Title VII for make-whole relief on David's behalf? If so, why?

QUESTION FIVE

Although New Bohemians Limited (NBL) sees itself as a progressive, employee-friendly employer, Edie Brickell doesn't see things that way. Indeed, Edie claims that the sexual harassment that she has suffered at the hands of her supervisor, Thomas Dolby, has given her no choice but to quit her employment. Edie did not complain of the harassment to others in the company before quitting. Assuming Edie can make out the other elements of her hostile environment sexual harassment claim, will she be able to hold NBL vicariously liable for the sexual harassment of Dolby?

QUESTION SIX

Thompson Twins Corporation (TTC) employs a two-step process for determining whether to promote individuals in its organization from rank-and-file employees to supervisors. The first part of the process is a criterion-related validated test and 50 men and 50 women take the promotion test. 80% of men pass (40), but only 40% of women pass (20). From the resulting eligibility list, TTC then engages in individual interviews to determine who will receive the promotion. After the interviews, 6 men (12% of men applying for promotion) and 6 women (12% of women applying for promotion) are chosen for the twelve promotions. A group of women, who failed the test and did not get promoted, bring a disparate impact claim for sex discrimination. Will their claims be successful?

PART TWO (One Hour; 34 points)

Pat Benatar worked for Culture Club Enterprises (CCE), as an administrative assistant to Boy George, off and on from 1973 to 2000. CCE is located in the State of Oxford, which has a parallel state antidiscrimination agency and state antidiscrimination law. The Oxford Human Relations Commission (OHRC) has a self-executing work-share agreement with the EEOC.

Pam had a baby in 1976. When Boy found out that Pam was pregnant, he terminated her employment. Pam took no legal action in response. In 1982, Pam was re-hired to her previous position, but without any of her previous seniority. Again, Pam took no legal action.

Along with a large group of other employees, Pam was terminated from employment again in 2000 during a company reduction-in-force (RIF). The company carried out the RIF based on which employees had the least seniority accumulated under the company's seniority plan. It is undisputed that Pam, and other women who were fired in the past for being pregnant and then re-hired without seniority, would have had sufficient seniority to avoid being terminated had they not been fired for being pregnant in the past.

Pam filed a charge of discrimination alleging pregnancy discrimination with the EEOC 200 days after her termination. More specifically, Pam claimed that CCE violated Title

VII, as amended by the PDA, by terminating her employment illegally in 1976, by re-hiring her back without her previous seniority, and then terminating her under the current RIF. After waiting another 200 days, she requests, and receives, a right to sue letter from the EEOC and files a class action on behalf of all similarly situated female CCE employees in federal court.

- A. Pam comes to you and wants you to represent the class in all legal matters concerning her employment discrimination claims against CCE. She wishes to bring both a pattern and practice claim and a disparate impact claim. Please explain to Pam whether these claims are likely to be successful.
- B. For purposes of this question, if Pam is successful in her claims, what type of remedies may she seek and how may those remedies be limited for different claims. How may Pam get around potential remedial limitations under Title VII?
- C. May Pam also bring an individual national origin discrimination claim in federal court at the same time as her class claims?
- D. Does Pam have to exhaust her administrative remedies with the state antidiscrimination agency and if so, what must she do to exhaust those claims?

PART THREE (One Hour; 30 points)

Comment critically on the following statement:

"Congress should amend the Civil Rights Act of 1991 to expressly extend it to include the retaliation provisions of Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA)."

Integrate cases and policy arguments in supporting your answer. In answering, please first state what the current law *is*, and then consider what the law *should be*.