**Alternate Case Problems**

*Chapter 18*

**Employment Law**

**18-1. Workers’ Compensation.** Linda Burnett Kidwell, employed as a state traffic officer by the California Highway Patrol (CHP), suffered an injury at home, off duty, while prac­ticing the standing long jump. The jump is a required component of the CHP’s annual physical performance program fitness test. Kidwell filed a claim for workers’ compensa­tion benefits. The CHP and the California workers’ compensation appeals board denied her claim. Kidwell appealed to a state appellate court. What is the re­quirement for grant­ing a workers’ compensation claim? Should Kidwell’s claim be granted? [*Kidwell v. Workers’ Compensation Appeals Board*, 33 Cal.App.4th 1130, 39 Cal.Rptr.2d 540 (1995)]

**18-2. Wrongful Discharge.** Stephen Fredrick, a pilot for Simmons Airlines Corp., criticized the safety of the aircraft that Simmons used on many of its flights and warned the airline about possible safety problems. Simmons took no action. After one of the planes crashed, Fredrick appeared on the television program *Good Morning America* to discuss his safety concerns. The same day, Fredrick refused to allow employees of Simmons to search his personal bags before a flight that he was scheduled to work. Claiming insubordination, the airline terminated Fredrick. Fredrick filed a suit in a federal district court against Simmons, claiming, among other things, retaliatory dis­charge for his public criticism of the safety of Simmons’s aircraft and that this dis­charge violated the public policy of providing for safe air travel. Simmons responded that an employee who “goes public” with his or her concerns should not be protected by the law. Will the court agree with Simmons? Explain. [*Fredrick v. Simmons Airlines Corp.,* 144 F.3d 500 (7th Cir. 1998)]

**18-3. Religious Discrimination.** Mary Tiano, a devout Roman Catholic, worked for Dillard Department Stores, Inc. (Dillard’s), in Phoenix, Arizona. Dillard’s considered Tiano a productive employee because her sales exceeded $200,000 a year. At the time, the store gave its managers the discretion to grant unpaid leave to employees but prohibited vacations or leave during the holiday season (October through December). Tiano felt that she had a “calling” to go on a “pilgrimage” in October 1988 to Medjugorje, Yugoslavia, where some persons claimed to have had visions of the Virgin Mary. The Catholic Church had not designated the site an official pilgrimage site, the visions were not expected to be stronger in October, and tours were available at other times. The store managers denied Tiano’s request for leave, but she had a nonrefundable ticket and left anyway. Dillard’s terminated her employment. For a year, Tiano searched for a new job and did not attain the level of her Dillard’s salary for four years. She filed a suit in a federal district court against Dillard’s, alleging religious discrimination in violation of Title VII. Can Tiano establish a *prima facie* case of religious discrimination? Explain. [*Tiano v. Dillard Department Stores, Inc.,* 139 F.3d 679 (9th Cir. 1998)]

**18-4. Hours and Wages.** Richard Ackerman was an advance sales representative and account manager for Coca-Cola Enterprises, Inc. His primary responsibility was to sell Coca‑Cola products to grocery stores, convenience stores, and other sales outlets. Coca‑Cola also employed merchandisers, who did not sell Coca‑Cola products but per­formed tasks associated with their distribution and promotion, including restocking shelves, filling vending machines, and setting up displays. The account managers, who serviced the smaller accounts themselves, regularly worked between fifty-five and sev­enty-two hours each week. Coca‑Cola paid them a salary, bonuses, and commissions, but it did not pay them—as they did merchandisers—additional compensation for the overtime. Ackerman and the other account managers filed a suit in a federal district court against Coca-Cola, alleging that they were entitled to overtime compensation. Coca-Cola responded that because of an exemption under the Fair Labor Standards Act, it was not required to pay them overtime. Is Coca-Cola correct? Explain. [*Ackerman v. Coca-Cola Enterprises, Inc.,* 179 F.3d 1260 (10th Cir. 1999)]

**18-5. Discrimination Based on Disability.** PGA Tour, Inc., sponsors professional golf tournaments. A player may enter in several ways, but the most common method is to compete successfully in a three-stage qualifying tournament known as the “Q-School.” Anyone may enter the Q-School by submitting two letters of recommendation and paying $3,000 to cover greens fees and the cost of a golf cart, which is permitted during the first two stages, but is prohibited during the third stage. The rules governing the events include the “Rules of Golf,” which apply at all levels of amateur and professional golf and do not prohibit the use of golf carts, and the “hard card,” which applies specifically to the PGA tour and requires the players to walk the course during most of a tournament. Casey Martin is a talented golfer with a degenerative circulatory disorder that prevents him from walking golf courses. Martin entered the Q-School and asked for permission to use a cart during the third stage. PGA refused. Martin filed a suit in a federal district court against PGA, alleging a violation of the Americans with Disabilities Act. Is a golf cart in these circumstances a “reasonable accommodation” under the ADA? Why or why not? [*PGA Tour, Inc. v. Martin,* 531 U.S. 1049, 121 S.Ct. 652, 148 L.Ed.2d 556 (2001)]

**18-6. Discrimination Based on Race.** The hiring policy of Phillips Community College of the University of Arkansas (PCCUA) is to conduct an internal search for qualified applicants before advertising outside the college. Steven Jones, the university’s chancellor, determines the application and appointment process for vacant positions, however, and is the ultimate authority in hiring decisions. Howard Lockridge, an African American, was PCCUA’s Technical and Industrial Department Chair. Between 1988 and 1998, Lockridge applied for several different positions, some of which were unadvertised, some of which were unfilled for years, and some of which were filled with less qualified persons from outside the college. In 1998, when Jones advertised an opening for the position of Dean of Industrial Technology and Workforce Development, Lockridge did not apply for the job. Jones hired Tracy McGraw, a white male. Lockridge filed a suit in a federal district court against the university under Title VII. The university filed a motion for summary judgment in its favor. What are the elements of a *prima facie* case of disparate-treatment discrimination? Can Lockridge pass this test, or should the court issue a judgment in the university’s favor? Explain. [*Lockridge v. Board of Trustees of the University of Arkansas,* 315 F.3d 1005 (Ark. 2003)]

**18-7. Discrimination Based on Age.** The United Auto Workers (UAW) is the union that represents the employees of General Dynamics Land Systems, Inc. In 1997, a collective bargaining agreement between UAW and General Dynamics eliminated the company’s obligation to provide health insurance to employees who retired after the date of the agreement, except for current workers at least fifty years old. Dennis Cline and 194 other employees over the age of forty but under fifty, objected to this term. They complained to the Equal Employment Opportunity Commission, claiming that the agreement violated the Age Discrimination in Employment Act (ADEA) of 1967. The ADEA forbids discriminatory preference for the “young” over the “old.” Does the ADEA also prohibit favoring the old over the young? How should the court rule? Explain. [*General Dynamics Land Systems, Inc. v. Cline,* 540 U.S. 581, 124 S.Ct. 1236, 157 L.Ed.2d 1094 (2004)]

**18–8. Workers’ Compensation laws.** The Touch of Class Lounge is in a suburban shopping plaza, or strip mall, in Omaha, Nebraska. Patricia Bauer, the Lounge’s owner, does not own the parking lot, which is provided for the common use of all of the busi­nesses in the plaza. Stephanie Zoucha was a bartender at the Lounge. Her duties ended when she locked the door after closing. On June 4, 2001, at 1:15 a.m., Zoucha closed the bar and locked the door from the inside. An hour later, she walked to her car in the park­ing lot, where she was struck with “[l]ike a tire iron on the back of my head.” Zoucha sustained a skull fracture and other injuries, including significant cognitive damage (impairment of speech and thought formation). Her purse, containing her tip money, was stolen. She identified her attacker as William Nunez, who had been in the Lounge earlier that night. Zoucha filed a petition in a Nebraska state court to obtain workers’ compensation. What are the requirements for receiving workers’ compensation? Should Zoucha’s request be granted or denied? Why? [*Zoucha v. Touch of Class Lounge,* 269 Neb. 89, 690 N.W.2d 610 (2005)]

**18–9. Employment at Will.**Thomas Ellis signed an agreement with the BlueSky Charter School to serve as its director for one year, from July 1 to June 30. A sentence in bold type stated that the employment was “at will.” The agreement included a provision for automatic annual renewal unless the school’s board acted before April 15. On May 7, the board terminated the arrangement. Was Ellis an at-will employee? If so, what effect did this status have on the board’s authority to terminate his employment? [*Ellis v. BlueSky Charter School,* \_\_ N.W.2d \_\_, 2010 WL 1541352 (Mn.App. 2010)]

**18-10. A Question of Ethics**

Keith Cline worked for Wal-Mart Stores, Inc., as a night maintenance supervisor. When he suffered a recurrence of a brain tumor, he took a leave from work, which was covered by the Family and Medical Leave Act (FMLA)of 1993 and authorized by his employer. When he returned to work, his employer refused to allow him to continue his supervi­sory job and demoted him to the status of a regular maintenance worker. A few weeks later, the company fired him, ostensibly because he “stole” company time by clocking in thirteen minutes early for a company meeting. Cline sued Wal-Mart, alleging, among other things, that Wal-Mart had violated the FMLA by refusing to return him to his prior position when he returned to work. In view of these facts, answer the following questions. [*Cline v. Wal-Mart Stores, Inc.,* 144 F.3d 294 (4th Cir. 1998)]

**1.** Did Wal-Mart violate the FMLA by refusing to return Cline to his prior posi­tion when he returned to work?

**2.** From an ethical perspective, the FMLA has been viewed as a choice on the part of society to shift to the employer family burdens caused by changing economic and social needs. What “changing” needs does the act meet? In other words, why did Congress feel that workers should have the right to family and medical leave in 1993, but not in 1983, or 1973, or earlier?

**3.** “Congress should amend the FMLA, which currently applies to employers with fifty or more employees, so that it applies to employers with twenty-five or more employees.” Do you agree with this statement? Why or why not?