

Student name: _____

TRUE/FALSE - Write 'T' if the statement is true and 'F' if the statement is false.

Agency law, based on the traditional law called master and servant, governs employment relationships.

true

false

In an employment-agency relationship, if an agent acts beyond his or her authority, the principal may be liable for any resulting loss to a third party.

true

false

Myra provides accounting services as an independent contractor for Great Northern. Because of this relationship, Great Northern is responsible for withholding and paying Myra's employment taxes, including federal unemployment compensation (FUTA), Social Security (FICA) and FICA excise tax.

true

false

Employers are not liable for most torts committed by an independent contractor within the scope of the working relationship.

true

false

There is a single commonly accepted definition of "employee" used by courts, employers, and the government.

true

false

Fresh Ideas employs part-time workers through a staffing firm. After the staffing firm sent over a part-time office assistant, Fresh Ideas asked the firm to replace her with someone from a

different race. The replaced office assistant cannot proceed with a discrimination claim under Title VII of the Civil Rights Act since she (the part-time office assistant) was never an employee of Fresh Ideas.

true

false

MULTIPLE CHOICE - Choose the one alternative that best completes the statement or answers the question.

If an employee has a car accident while driving a company car from one company office to another, the employer may be liable to the owner of the other vehicle under which legal theory?

Vicarious liability

Joint liability

Strict liability

Negligence

Which federal law protects employees from unfair labor practices of employers?

Occupational Safety and Health Act

National Labor Relations Act

Fair Labor Standards Act

Labor Management Relations Act

A willful misclassification of workers by an employer may result in harsh sanctions, including imprisonment and a fine of up to \$10,000, under which federal law?

Federal Unemployment Compensation Act (FUTA)

Fair Labor Standards Act (FLSA)

National Labor Relations Act (NLRA)

Federal Insurance Contributions Act (FICA)

Which of the following is currently considered to be the leading test to determine employee status?

Common-law agency test

IRS 20-factor analysis

Economics realities test

Degree of control test

How many employees must an entity have under The Civil Rights Act of 1866 to qualify as an employer under the Act?

15 employees

20 employees

50 employees

No minimum requirement

The Rehabilitation Act of 1973 applies to government contractors that maintain contracts with the federal government in excess of how much annually?

\$1,000

\$5,000

\$10,000

No minimum dollar amount

CMS, Incorporated solicited bids from various contractors to develop and maintain the grounds of its new office complex. Roberta, the head of facilities management at CMS, told her secretary, LeAnne, that she will not accept any bids from a Russian contractor. She then rejected a bid made by a Russian contractor without any legitimate reason. If the Russian contractor brings a lawsuit against CMS for discrimination, what is the likely result?

Roberta's refusal to hire Russian contractors will be found to be a violation of the Social Security Act.

Roberta's refusal to hire Russian contractors will be found to be a violation of the Consumer Protection Act.

Roberta's refusal to hire Russian contractors will not be considered an offense because employers in the United States are free to discriminate against employees based on their race or national origin.

Roberta's refusal to hire Russian contractors will not be considered a violation of Title VII of the Civil Rights Act because that law does not cover discrimination against independent contractors.

Riley is a freelance handyperson hired by Bob's Burgers whenever small repairs are needed in the store. Riley is paid per project and usually works at Bob's Burgers one day a month. Which of the following is likely true of this scenario?

Bob's burgers will need to withhold a certain percentage of Riley's wages for federal income tax purposes.

Riley cannot be held liable for any torts committed by him within the scope of the working relationship.

Riley can make a claim for medical or retirement benefits from Bob's Burgers as he is an employee.

Riley cannot make a claim for medical or retirement benefits from Bob's Burgers as he is an independent contractor.

Employment law based on agency principles imposes a duty on an employee to act as authorized. If the employee exceeds his or her authority, the employer is:

not liable for any loss or damage that results from the employee's unauthorized acts.

liable for damages or losses incurred by third parties and has no recourse against the employee for the losses incurred.

liable for damages or losses incurred by third parties, while the employee remains liable to the employer.

not liable for any loss or damage incurred by third parties, unless the damage is beyond \$35,000.

Nelson is misclassified as an independent contractor for FunTime Toys. He is actually an employee. While driving to a meeting at FunTime's headquarters, Nelson caused a car accident in which a cab driver was hurt. Upon investigation, it was found that Nelson was on the phone with one of the managers at FunTime when he was driving that day. Which of the following may be true in the context of liability for the accident?

FunTime has no liability, because Nelson is classified by FunTime as an independent contractor.

FunTime has vicarious liability.

FunTime has no liability even if Nelson is an employee.

FunTime has strict liability.

Chris stocks shelves for a grocery store. While unloading cases of soda, Chris dropped a case on a customer's foot causing a severe break. Which of the following is true of the scenario?

The grocery store is not vicariously liable because it was an accident.

The grocery store is vicariously liable because Chris was not acting within the course of employment.

The grocery store is not vicariously liable because Chris was not acting within the course of employment.

The grocery store is vicariously liable because Chris was acting within the course of employment.

Salvatore and Annette are sales managers for Acme USA. Both work full-time in the Acme offices under the same manager and share the same type of job responsibilities. Salvatore was hired as an employee and is paid a salary. Required federal and state tax withholdings are made by Acme for Salvatore. Annette was hired as an independent contractor and is paid by the project. No federal and state withholdings are taken for Annette, and she does not receive retirement or health insurance benefits. Which of the following is likely true?

Acme properly classified Annette as an independent contractor.

Acme willfully misclassified Annette as an independent contractor and is liable under Fair Labor Standards Act of 1938.

Acme has no rights to withhold federal and state taxes for Salvatore if he is classified as a full-time employee.

Acme has to provide more health and retirement benefits to Annette than Salvatore because Annette is an independent contractor.

Jeffrey works as an independent contractor for an accounting firm jointly owned and managed by the Matthews brothers. Which of the following implications can be drawn from the scenario?

Jeffrey will be solely responsible for making payments for his Social Security (FICA), federal income tax, state taxes, and Medicare.

The accounting firm will be completely responsible for paying Jeffrey's federal unemployment compensation (FUTA), Medicare, and state taxes.

Jeffrey will be protected from unfair labor practices just like an employee under the National Labor Relations Act of 1935 (NLRA).

The accounting firm will have to include Jeffrey in its dental, medical, pension, and profit-sharing plans.

Carol is a nurse in a rehabilitation facility run by Sun Retirement Systems. She works at least 50 hours every week. After looking at her payroll stubs for the past six months, she concludes that she has not received her share of overtime pay. With the help of a friend in the payroll department, Gabriel learns she has been classified as a temporary employee so that her overtime pay can be avoided. She complains to her supervisor, but her employer makes no changes. Which of the following legal courses can Carol take against Sun Retirement Systems?

Carol can bring a complaint to the U.S. Department of Labor, under the Social Security Act.

Carol can bring a complaint to the U.S. Department of Labor, under the Fair Labor Standards Act of 1938 (FLSA).

Carol can bring a complaint to the U.S. Department of Labor, under the Employee Retirement Income Security Act of 1974 (ERISA).

Carol can bring a complaint to the U.S. Department of Labor, under Equal Employment Opportunity Act.

Blockbuster Stores hired programmers at its headquarters to maintain its online retail operation. As the size of the online business grew, Blockbuster changed the status of the programmers from employees to independent contractors, although their job responsibility increased. For the past 3 years, all new programmers brought on board have signed documents classifying them as independent contractors. Some of the programmers brought a court case regarding their status and got a verdict that they were misclassified. Which of the following is an implication of this scenario?

The Internal Revenue Service (IRS) can hold the employer liable for its share of Social Security and federal unemployment compensation that should have been withheld.

The Internal Revenue Service (IRS) will require the employer to exclude its programmers from its dental, medical, pension, and profit-sharing plans.

The Internal Revenue Service (IRS) will hold the employer liable for a minimum of 10 percent of the wages received by the programmers.

The Internal Revenue Service (IRS) will require the programmers to pay all the outstanding federal taxes, state taxes, and Medicare on their own if their employer fails to pay.

The three main tests courts use to classify employees and independent contractors are:

the common-law agency test, the *Darden* test, and the master-servant rule.

the master-servant rule, the common-law agency test, and the GAP analysis.

the common-law agency test, the Internal Revenue Service (IRS) 20-factor analysis, and the economic realities test.

the Internal Revenue Service (IRS) 20-factor analysis, Myers-Briggs test, and earned value analysis.

To determine whether a worker is an employee or an independent contractor, the Internal Revenue Service (IRS) 20-factor analysis includes a consideration of all but which of the following?

the worker was previously employed in the same industry.

the work is performed on the employer's premises.

an employer provides training to the worker.

the establishment of hours of work by the employer.

Which of the following factors is not part of the economic realities test used by courts to determine whether a worker is an employee or an independent contractor?

The worker's investment in an employer's business.

The worker's productivity.

The worker's opportunity for profit or loss.

The permanence of the working relationship.

As used by the Equal Employment Opportunity Commission (EEOC), the term contingent worker includes a(n):

employee hired and trained directly by an employer.

permanent worker who works for only one employer at a time.

full-time worker.

independent contractor.

Karla's Boutique hired a temporary salesperson through a staffing firm. The salesperson is on the payroll of the staffing firm. After three months, the manager of the boutique asked the staffing firm to replace the salesperson with someone of another race. The replaced salesperson decides to file a case of racial discrimination. Which of the following is true of this scenario?

The salesperson cannot bring a legal case against Karla's Boutique because she is an employee of the staffing firm.

Karla's Boutique can be held liable for discrimination under Title VII of the Civil Right Act.

The salesperson cannot bring a case against the staffing firm because it did not initiate the discriminatory action.

The staffing firm alone will be held liable for discrimination because third parties cannot be held liable for violation of Title VII.

According to the Office of Federal Contract Compliance Programs (OFCCP), one of the criteria for an individual to qualify as an Internet applicant for a job is to:

send an e-mail inquiry about the job.

submit an expression of interest in employment through the Internet.

simply use the Internet to find potential jobs for oneself.

post his or her resume on a third-party job board.

Acme Solutions often hires Nicco to train its employees. He is paid \$300 for every session. His job also requires him to travel once a month to different branches of Acme Solutions and train employees there. When he is required to travel, the company pays him \$450 per session. All training materials have to be provided by Nicco himself. When he is not hired by Acme Solutions, Nicco works for other smaller companies as a trainer. Thus, Nicco is mostly like a(n):

full-time employee at Acme Solutions.

social worker.

independent contractor for Acme Solutions.

trade creditor.

Danielle works as an accountant at Legal Staffing, Incorporated. Per the company's payroll, Danielle is currently an independent contractor. Danielle will be misclassified as an independent contractor if:

Legal Staffing, Incorporated has the right to discharge Danielle at any time.

Danielle can realize a profit from the business through management of resources.

Danielle has significant investment in the business.

Legal Staffing, Incorporated allows her to work for more than one firm at a time.

After graduating from college with a bachelor's degree in business administration, Joe sent an email, with his resume attached, to the Media Blitz Company (MBC). In his email, he was only inquiring about an entry level position at the firm. When he found out that MBC had hired two of his classmates who were not of his race, Joe filed a discrimination complaint against MBC under Title VII of the Civil Rights Act. Which of the following is true of this scenario?

Joe has a good case against MBC because his email was clear that he was interested in the entry level position at the firm, and they did not even consider him.

Joe does not have a valid case because employment laws do not permit people to apply for a job via the Internet or related electronic data technologies.

Joe does not have a valid case because sending an email inquiry about a job does not qualify the sender as an applicant.

Joe would have had a valid case against MBC had he submitted his resume via a third-party job board.

Under which test(s) is (are) an employer's degree of control an important factor in determining employee status?

The common law agency test and the economic realities test.

The common law agency test but not the economic realities test.

The economic realities test but not the common law agency test.

Neither the common law agency test nor the economic realities test.

When a company uses a staffing firm to acquire contingent workers, which of the following may be true?

The contingent workers can legally be discriminated against by the company using the staffing firm's services because they are not employees.

The contingent workers must be treated as employees of the company hiring them, and not as independent contractors.

The contingent workers can argue that there is joint liability between the staffing firm and the company hiring them.

The contingent workers are transferred to the payroll of the company using the staffing firm's services.

The provisions of Title VII of the Civil Rights Act of 1964:

apply to firms engaged in an industry affecting commerce that employ 15 or more employees.

apply to Indian tribes.

apply to government-owned corporations.

apply to bona fide private membership clubs.

Title I of the Americans with Disabilities Act (ADA) of 1990 applies to:

all employers with 15 or more workers, excluding state and local government employers, employment agencies, and labor unions.

all employers with 35 or more workers, including state and local government employers, employment agencies, and labor unions.

Indian tribes and bona fide private membership clubs.

corporations fully owned by the U.S. government and the executive agencies of the U.S. government.

The Plumbing Company (TPC) employs 2 supervisors, 9 plumbers, 6 helpers, 2 schedulers, 3 carpenters and 1 office manager. All are permanent, full-time (8 hours per day) workers. Are the employees of TPC covered under the provisions of Title I of the Americans with Disabilities Act (ADA) of 1990, Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act (ADEA) of 1967?

All three laws apply to the employees of the company because the company has at least 20 employees who work throughout the year for eight hours each day.

The employees are covered only under the ADEA (Age Discrimination in Employment Act).

Only the plumbers and carpenters are covered under Title VII of the Civil Rights Act.

The employees are covered under Title VII of the Civil Rights Act and the Americans with Disabilities Act, but not under the Age Discrimination in Employment Act.

Jack, a 43-year-old disabled male, applied for a job at a private tax-exempt club. He was not hired. During the application process, Jack noticed that the club employed younger, white male individuals. Under what law can Jack file a discrimination claim?

The Americans with Disabilities Act and the Age Discrimination in Employment Act.

The American with Disabilities Act only.

The Age Discrimination in Employment Act only.

Neither the American with Disabilities Act nor the Age Discrimination in Employment Act.

An employer who operates a private membership club (one that does not serve the general public) may be liable under:

Title VII of the Civil Rights Act of 1964.

Title I of the Americans with Disabilities Act of 1990.

The Age Discrimination in Employment Act of 1967.

The Whistleblower Protection Act of 1989.

In an employment context, the Civil Rights Act of 1866:

requires employers to include independent contractors in their dental, medical, pension, and profit-sharing plans.

prohibits individuals with temporary or permanent disabilities from seeking employment.

regulates the actions of all individuals or entities when entering into a contract to employ someone else.

mandates wages, hours, and ages for employment in the United States, among other labor standards.

Enterprise coverage under the Fair Labor Standards Act (FLSA) offers protection to which employees?

Employees who work for organizations that have at least two employees and do at least \$50,000 a year in business.

Employees who work for organizations that have at least two employees and are involved in specified industries such as hospitals.

Employees if their work regularly involves them in interstate commerce.

Employees if their work is temporary or seasonal.

A non-compete agreement (or covenant not to compete) is generally enforceable when:

the agreement violates the doctrine of promissory estoppel.

the employee receives something in exchange for the agreement.

the competitor receives something in exchange for the agreement.

the agreement is contrary to the public interest.

To be enforceable by a court, a non-compete agreement within an employment relationship:

must provide benefits to only the employer.

must not be supported by any additional consideration to the employee.

must protect a legitimate business interest.

should be contrary to public interest.

Carly works as a cosmetologist at a local hair salon. The salon offers significant training to its employees. Thus, as a condition of employment, Carly was asked to sign a non-compete agreement. The non-compete agreement required that Carly not work as cosmetologist within 2 miles of the salon for a period of 6 months. A court would likely determine that this non-compete agreement:

violates common law.

is reasonable.

violates the doctrine of unconscionability.

violates federal law.

Colton was hired by Varney Associates in Atlanta, Georgia, as its chief architect. At the time of his hire (two years ago), Colton signed a covenant not to compete stating that he cannot work with Varney's competitors in the state of Georgia for a period of one year in case his employment with Varney Associates ends. Varney found out that Colton was working part-time for himself and immediately terminated him. Colton is now interested in being an architect for Team Architect in Macon, Georgia. Which of the following might be true in this situation?

Colton can work for Team Architect without any restrictions because he did not voluntarily quit his job at Varney Associates.

Colton can work for Team Architect without any restrictions because a covenant not to compete is only valid for six months, and Colton signed the agreement two years ago.

Colton cannot work for Team Architect if the location and time restrictions in the covenant not to compete agreement are deemed to be reasonable by a court.

Colton cannot work for Team Architect because he was terminated from Varney Associates which makes him ineligible for a new job for the next two years.

Under the theory of inevitable disclosure, courts:

allow an employee to disclose trade secrets of his former employer to a customer.

prohibit a former employee from working for an employer's competitor if the employer can show that there is imminent threat that a trade secret will be shared.

protect government-owned corporations against the practice of whistle blowing.

require publicly-traded companies to publish all their financial activities at the end of every financial quarter to protect the investors' interests.

Charlie travels for his job and works in several states. The corporation for which he works is based in Georgia. If there is a contract dispute, which of the following refers to a clause in a contract that identifies the state law that will apply?

Non-compete clause.

Forum selection clause.

Due process clause.

Just cause clause.

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

Describe how the freedom to contract is important to freedom of the market.

Stephanie's employer intentionally misclassifies her as an independent contractor in order to avoid the costs associated with a full-time employee. What are the consequences that Stephanie's employer will have to face for misclassifying her?

To successfully classify a worker as an independent contractor, four criteria must be satisfied. List and briefly describe the four criteria.

Both staffing firms and clients of staffing firms may be held responsible as employers of an employee under a joint employer theory or joint and several liability. What are the significant factors used to determine whether joint employer liability exists.

What are the qualifications for a valid restrictive covenant?

Answer Key

Test name: Ch1_Employment Law for Business_2025

TRUE

Laws relating to employment relationships are based on the traditional law called master and servant, which evolved into the law of agency. In an agency one person (the agent or employee) works on behalf of another (the principal or employer).

TRUE

In an employment-agency relationship, the employee-agent is under a specific duty to the principal to act only as authorized. As a rule, if an agent goes beyond his or her authority or places the property of the principal at risk without authority, the principal is responsible to the third party for all loss or damage naturally resulting from the agent's unauthorized acts (while the agent remains liable to the principal for the same amount).

FALSE

Great Northern is not responsible for withholding and paying Myra's employment taxes (Social Security (FICA), the FICA excise tax, and federal unemployment compensation (FUTA)). Myra is an independent contractor, and employers are only responsible for withholding and paying these taxes for employees. In addition, an employer is responsible for withholding a certain percentage of the employee's wages for federal income tax, and state and local taxes where applicable. As an independent contractor, Myra is responsible for all of these taxes herself.

TRUE

Employers are prohibited from discriminating against their employees under Title VII of the Civil Rights Act. This same prohibition against discrimination does not apply from employers to independent contracts. In addition, employers are generally not liable for most torts committed by an independent contractor within the scope of the working relationship. Determining one's status as an employee or an independent contractor is important for many reasons.

FALSE

The courts, employers, and the government are unable to agree on one definition of "employee" and "employer," so it varies, depending on the situation and the law being used. In addition, some statutes do not give effective guidance.

FALSE

Fresh Ideas can be found liable because an employer using a staffing firm cannot avoid liability for discriminating against a temporary worker merely because it did not "employ" the worker. Employers may be held liable as "third-party interferers" under Title VII of the Civil Rights Act of 1964. For example, if an employer decides to ask its staffing firm to replace the temporary receptionist with one of another race, the receptionist could proceed with a Title VII claim against the employer because it improperly interfered with her employment opportunities with the staffing firm.

A

An employer has vicarious liability if an employee causes harm to a third party while the employee is in the course of employment. While the employee may be required to reimburse the employer if the employer has to pay for the damages, generally the third party goes after the employer because the employee does not have the funds to pay the liability.

B

The National Labor Relations Act of 1935 (NLRA) protects employees from unfair labor practices. However, employees may be considered to be employers; so, they may be subject to these regulations from the other side of the fence.

B

An employer who maintains employees has the responsibility to pay Social Security (FICA), the FICA excise tax, Railroad Retirement Tax Act (RRTA) withholding amounts, federal unemployment compensation (FUTA), Internal Revenue Service (IRS) federal income tax withholdings, Medicare, and state taxes. Employers may intentionally misclassify employees in order to avoid these other costs and liabilities. A willful misclassification under the Fair Labor Standards Act of 1938 (FLSA) may result in imprisonment and up to a \$10,000 fine, imposed by the Department of Labor.

A

The common-law agency test is now considered to be the leading test to determine employee status.

D

The Civil Rights Act of 1866 regulates the actions of all individuals or entities when entering into a contract to employ someone else. There is no requirement for a minimum number of employees in order to qualify as an employer under the Civil Rights Act of 1866.

C

The Rehabilitation Act of 1973 applies not only to all entities, programs, and activities that receive federal funds and to government contractors, but also to all programs and activities of any executive agency as well as the U.S. Postal Service. A covered federal contractor is one who maintains a contract with the federal government in excess of \$10,000 annually for the provision of personal property or nonpersonal services.

D

CMS, Incorporated will not be charged for discrimination because Title VII of the Civil Rights Act of 1964 applies to employers and prohibits them from discriminating against employees. It does not, however, cover discrimination against independent contractors.

D

Riley cannot claim for medical or retirement benefits from Bob's Burgers because he is an independent contractor. In an effort to attract and retain superior personnel, employers offer employees a range of benefits that generally are not required to be offered such as dental, medical, pension, and profit-sharing plans. Independent contractors have no access to these benefits.

C

In an employment-agency relationship, the employee-agent is under a specific duty to the principal to act only as authorized. As a rule, if an agent goes beyond her authority or places the property of the principal at risk without authority, the principal is now responsible to the third party for all loss or damage naturally resulting from the agent's unauthorized acts (while the agent remains liable to the principal for the same amount).

B

FunTime Toys likely has vicarious liability because Nelson was improperly classified independent contractor. An employer has vicarious liability if the employee causes harm to a third party while in the course of employment.

D

The grocery store is vicariously liable because Chris was acting within the course of employment. An employer has vicarious liability if the employee causes harm to a third party while the employee is in the course of employment. Liability may extend from an employee to the employer on this basis if the employee is acting within the scope of her or his employment at the time the liability arose.

B

Acme willfully misclassified Annette as an independent contractor and is liable under Fair Labor Standards Act (FLSA) of 1938. Where a worker is considered an employee, the FLSA regulates the amount of money an employee must be paid per hour and overtime compensation. Employers may intentionally misclassify employees in order to avoid these and other costs and liabilities. A willful misclassification under FLSA may result in imprisonment and up to a \$10,000 fine, imposed by the Department of Labor.

A

Jeffrey will be responsible for making payments for his Social Security (FICA), federal income tax, state taxes, and Medicare. An employer who maintains employees has the responsibility to pay Social Security (FICA), the FICA excise tax, Railroad Retirement Tax Act (RTTA) withholding amounts, federal unemployment compensation (FUTA), IRS federal income tax withholdings, Medicare, and state taxes. In addition, it is the employer's responsibility to withhold a certain percentage of the employee's wages for federal income tax purposes. On the other hand, an independent contractor has to pay all of these taxes on his or her own.

B

Carol can bring a complaint to the U.S. Department of Labor, under the Fair Labor Standards Act of 1938 (FLSA). The FLSA was enacted to establish standards for minimum wages, overtime pay, employer record keeping, and child labor. Employers may intentionally misclassify employees in order to avoid these and other costs and liabilities. A willful misclassification under FLSA may result in imprisonment and up to a \$10,000 fine, imposed by the Department of Labor.

A

The Internal Revenue Service (IRS) can hold Blockbuster Stores liable for its share of Social Security (FICA) and federal unemployment compensation (FUTA) that should have been withheld. If a worker is classified as an independent contractor but later is found to be an employee, the punishment by the IRS is harsh. The employer is not only liable for its share of FICA and FUTA taxes but is also subject to an additional penalty equal to 20 percent of the FICA taxes that should have been withheld. In addition, the employer is liable for 1.5 percent of the wages received by the employee.

C

Several tests have been developed and are commonly used by courts to classify employees and independent contractors. These tests include the common-law test of agency, which considers several factors but focuses on who has the right to control the work; the Internal Revenue Service (IRS) 20-factor analysis; and the economic realities test.

A

Several of the factors of the Internal Revenue Service (IRS) 20-factor analysis are location of work, establishment of hours, and training. Control is indicated if the work is performed on the employer's premises; the employer establishes the hours of work; and the employer trains the worker. Whether the worker was previously employed in the same industry is not a factor considered by the IRS.

B

In applying the economic realities test, courts look to the degree of control exerted by an alleged employer over a worker, the worker's opportunity for profit or loss, the worker's investment in the business, the permanence of the working relationship, the degree of skill required by the worker, and the extent the work is an integral part of the alleged employer's business. Typically, all of these factors are considered as a whole with none of the factors being determinative.

D

A contingent worker is one whose job with an employer is temporary, is sporadic, or differs in any way from the norm of full-time employment. As used by the Equal Employment Opportunity Commission (EEOC), the term contingent worker includes those who are hired by an employer through a staffing firm, as well as temporary, seasonal, and part-time workers, and those considered to be independent contractors rather than employees.

B

Karla's Boutique can be held liable for discrimination under Title VII of the Civil Right Act of 1964. Title VII prohibits staffing firms from illegally discriminating against workers in assignments and opportunities for employment. Further, employers may be held liable as "third-party interferers" under Title VII. Therefore, an employer using a staffing firm cannot avoid liability for discriminating against a temporary worker merely because it did not "employ" the worker.

B

According to the Office of Federal Contract Compliance Programs, there are four criteria that define an Internet applicant:

1. The individual submits an expression of interest in employment through the Internet or related electronic data technologies.
2. The employer considers the individual for employment in a particular position.
3. The individual's expression of interest indicates the individual possesses the basic qualifications for the position.
4. The individual does not remove himself or herself from the selection process at any time prior to receiving an offer or otherwise indicate that he is no longer interested in the position.

Thus, an e-mail inquiry about a job does not qualify the sender as an applicant, nor does posting a resume on a third-party job board.

C

Nicco is mostly like an independent contractor for Acme Solutions. An independent contractor is generally a person who contracts with a principal to perform a task according to her or his own methods and who is not under the principal's control regarding the physical details of the work.

A

Danielle will be misclassified as an independent contractor if Legal Staffing, Incorporated has the right to discharge Danielle at any time. The right of an employer to discharge a worker indicates that he or she is an employee. A worker is an employee if the right to end the relationship with the principal is available at any time he or she wishes without incurring liability.

C

Joe does not have a valid discrimination case against the Media Blitz Company (MBC) because an email inquiry about a job does not qualify the sender as an applicant, nor does posting a resume on a third-party job board. However, technology has changed the way people apply for jobs and also has raised questions about who is an applicant in the Internet age.

A

The most persuasive indicator of independent-contractor status under the common law agency test, is the ability to control how the work is performed. In applying the economic realities test, courts look to the degree of control exerted by the alleged employer over the worker.

C

As used by the Equal Employment Opportunity Commission (EEOC), the term contingent worker includes those who are hired by an employer through a staffing firm, as well as temporary, seasonal, and part-time workers, and those considered to be independent contractors rather than employees. What is unique about the worker placed by a staffing firm is the potential for joint liability between the staffing firm and the client.

A

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on specified protected class. It applies generally to all firms or their agents engaged in an industry affecting commerce that employ 15 or more employees for each working day in the current or preceding calendar year.

A

Title I of the Americans with Disabilities Act (ADA) of 1990 applies to all employers engaged in interstate commerce with 15 or more workers, including state and local government employers, employment agencies, labor unions, and joint labor-management committees.

A

The employees of TPC are covered by Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act of 1990. Both the acts apply to all firms or their agents engaged in an industry affecting commerce that employ 15 or more employees. The employees are also covered by the Age Discrimination in Employment Act of 1967 which applies to entities or their agents that employ 20 or more employees on each working day.

C

Jack can file a complaint under the Age Discrimination in Employment Act (ADEA) of 1967 because the act does not exempt private membership clubs. Those exempted from ADEA are American employers who control foreign firms where compliance with the ADEA in connection with an American employee would cause the foreign firm to violate the laws of the country in which it is located. The American with Disabilities Act of 1990 exempts bonafide private membership clubs that are not labor organizations and that are exempt from taxation under the Internal Revenue Code.

C

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination in employment against anyone over the age of 40. ADEA, unlike Title VII of the Civil Rights Act of 1964, does not exempt Indian tribes or private membership clubs.

C

The Civil Rights Act of 1866 regulates the actions of all individuals or entities when entering into a contract to employ someone else. The Civil Rights Act of 1991 added a section to the CRA of 1866 to cover actions by the employer after the contract has been formed, including discrimination during employment or termination.

B

The Fair Labor Standards Act (FLSA) of 1938 mandates wages, hours, and ages for employment in the United States, among other labor standards. *Enterprise coverage* refers to the protections offered to employees who work for businesses or organizations (i.e., “enterprises”) that have at least two employees and do at least \$500,000 a year in business or that are involved in certain specified industries such as hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies.

B

To be enforceable, a non-compete agreement must be supported by consideration offered in a bargained-for exchange. In other words, the employee must receive something in exchange for his agreement not to compete with his employer. Often a non-compete agreement is signed at the time an employee is first hired. In most cases, the offer of employment is considered to be sufficient consideration for the agreement.

C

Generally, in order to be considered reasonable, the restrictive covenant will meet the following qualifications:

1. It protects a legitimate business interest.
2. It is ancillary to a legitimate business relationship.
3. It provides a benefit to both the employee and employer.
4. It is reasonable in scope and duration.
5. It is not contrary to the public interest.

B

A court would likely determine that the non-compete agreement is reasonable. The common law generally prohibits the restriction if it is more broad than necessary to protect the employer's legitimate interests or if the employer's need is outweighed by the hardship to the employee and likely injury to the public. Six months and 2 miles are probably reasonable.

C

Colton cannot take the job with Team Architect if the location and time restrictions in the covenant-not-to-compete agreement are deemed reasonable by a court. To determine reasonableness, courts look to the location and time limitations placed on the employee's ability to compete.

B

Under the theory of inevitable disclosure, employers are protected against disclosure of trade secrets even if no non-compete applies. A court may prohibit a former employee from working for an employer's competitor if the employer can show that there is imminent threat that a trade secret will be shared.

B

Because of the state-by-state differences in laws related to employment, it is critical to have forum selection clauses in contracts that stipulate the state law that will apply to the contract in question.

Essay

The freedom to contract is crucial to freedom of the market; an employee may choose to work or not to work for a given employer, and an employer may choose to hire or not to hire a given applicant.

As a result, though the employment relationship is regulated in some important ways, Congress tries to avoid telling employers how to manage their employees or whom the employer should or should not hire. It is unlikely that Congress would enact legislation that would require employers to hire certain individuals or groups of individuals (like a pure quota system) or that would prevent employers and employees from freely negotiating the responsibilities of a given job.

Employers historically have had the right to discharge an employee whenever they wished to do so. However, Congress has passed employment-related laws when it believes that there is some imbalance of power between the employee and the employer. For example, Congress has passed laws that require employers to pay minimum wages and avoid using certain criteria such as race or gender in reaching specific employment decisions. These laws reflect the reality that employers stand in a position of power in the employment relationship. Legal protections granted to employees seek to make the "power relationship" between employer and employee one that is fair and equitable.

Essay

Workers and employers alike make mistakes about whether a worker is an independent contractor or an employee. If a worker is classified as an independent contractor but later is found to be an employee, the punishment by the Internal Revenue Service (IRS) is harsh. The employer is not only liable for its share of Social Security (FICA) and federal unemployment compensation (FUTA) taxes but is also subject to an additional penalty equal to 20 percent of the FICA taxes that should have been withheld. In addition, the employer is liable for 1.5 percent of the wages received by the employee. These penalty charges apply if 1099 forms (records of payments to independent contractors) have been compiled for the worker. If, on the other hand, the forms have not been completed, the penalties increase to 40 percent of the FICA taxes and 3 percent of wages. Where the IRS determines that the worker was deliberately classified as an independent contractor to avoid paying taxes, the fines and penalties can easily run into six figures for even the smallest business.

Essay

The employer must provide evidence of each of the following to successfully classify a worker as an independent contractor.

1. The business must never have treated the worker as an employee for the purposes of employment taxes for any period.
2. All federal tax returns for the worker must be filed consistently with the claim that the worker is an independent contractor.
3. The employer must treat all workers in any position substantially similar to the worker in question as independent contractors.
4. The company must have a reasonable basis for treating the worker as an independent contractor.

Essay

In finding liability based on a joint employer concept, courts consider all relevant factors when determining if the staffing firm and client should be classified as joint employers. These factors include, but are not limited to, the following:

1. Whether the employers jointly determine, share, or allocate the power to direct, control, or supervise the workers;
2. Whether the employers jointly determine, share, or allocate the power to hire or fire the worker or modify the terms of conditions of the worker's employment;
3. The degree of permanency and duration of the relationship between the joint employers;
4. Whether, through shared management or a direct or indirect ownership interest, one joint employer controls, is controlled by, or is under common control with the other joint employer;
5. Whether the work is performed on a premises owned or controlled by one or more of the joint employers; and
6. Whether the employers jointly determine, share, or allocate responsibility over functions ordinarily carried out by an employer, such as handling payroll; providing workers' compensation insurance; paying payroll taxes; or providing the facilities, equipment, tools, or materials necessary to complete the work.

Further, employers may be held liable as "third-party interferers" under Title VII. Therefore, an employer using a staffing firm cannot avoid liability for discriminating against a temporary worker merely because it did not "employ" the worker.

Essay

One employment constraint that has received varying degrees of acceptance by different states is the covenant not to compete or non-compete agreement. While individuals in positions of trust and confidence already owe a duty of loyalty to their employers during employment, a non-compete agreement usually includes prohibitions against disclosure of trade secrets, soliciting the employer's employees or customers, or entering into competition with the employer if the employee is terminated. All states allow employers some control over what information a former worker can use or disclose in a competing business and whether a former worker can encourage clients, customers, and former co-workers to leave the employer.

Generally, in order to be considered reasonable, a restrictive covenant should not prevent the employee from earning a living of any sort under its terms. It is generally accepted that a valid restrictive covenant will meet the following qualifications:

1. It protects a legitimate business interest.
2. It is ancillary to a legitimate business relationship.
3. It provides a benefit to both the employee and employer.
4. It is reasonable in scope and duration.
5. It is not contrary to the public interest.