

Employment Law: Final Exam

Instructions

This is a take-home examination. You may not discuss the problem with anyone (including but limited to other students), but there are no other restrictions on reference material.

The exam consists of one essay problem. Your answer may not exceed 1500 words (approx. five (5) pages double-spaced 12-point type with 1-inch margins on all sides).

You should include references for any cases, statutes, or other sources you mention. Formal Blue Book citations are not necessary. Use short case names without reporter or page details (e.g. *Erie* (US 1938)), short titles or abbreviations for statutes (e.g. FLSA; Title VII), or similar short identification for other sources.¹

Your completed exam is **due no later than 4:00 pm Tuesday, December 12, 2017**. Submit your completed exam (either in hard copy or by email) to Janet Wright (Law School 2nd Floor Faculty Suite; jwright29@elon.edu).

Use your Exam ID Number (not your name) to identify your submission

Be sure to include this cover sheet with the completed Honor Pledge.

Honor Pledge

"On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect."

Exam ID Number: _____

¹References may be in footnotes or inline in parentheses (as above).

Problem

The U.S. House of Representatives recently approved a bill (H.R. 3441) that would change the standard for imposing “joint employer” liability under the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA):

A person may be considered a joint employer in relation to an employee only if such person directly, actually, and immediately, and not in a limited and routine manner, exercises significant control over essential terms and conditions of employment, such as hiring employees, discharging employees, determining individual employee rates of pay and benefits, day-to-day supervision of employees, assigning individual work schedules, positions, and tasks, or administering employee discipline.

Write a memo explaining how H.R. 3441 would change the standard for a joint-employer finding under the FLSA² and arguing for or against the change (you may take either position).

²While the bill also changes the standard under the NLRA, you do not need to discuss that statute. But you may refer to cases under the NLRA to the extent that they are relevant to your analysis and argument regarding the FLSA.