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Legal Regulations of Business Test II Study Guide

**Exam is again in A 100**

**Get there by 8:45 to start**

**The last question is more substantial than the others**

**First questions shouldn’t take that much time, question four is weighted more heavily**

**There are 4 questions**

**Remember to write in pen, write in sentences**

* **Respondeat superior (“Let the master answer)**
  + Makes employers **directly liable** for harm to others caused by employees acting within the **scope of employment**
  + Matters in different cases because of **negligence and negligent hiring**
  + To establish a case of negligent hiring plaintiff must show
    - 1) A standard of conduct or duty to others existed with respect to taking reasonable steps to avoid hiring unfit employees. The extent of any such duty is based on:
      * **Foreseeability** of harm to others if an unfit person is hired for a job
      * **Knowledge** of unfitness that the employer had or should have had if proper hiring procedures were used
      * **Public policy**
    - 2) The employer failed to exercise the **proper degree of care** and hired an unfit employee.
    - 3) A coworker or a third party was harmed by the unfit employee.
    - 4) The employer’s failure to exercise the proper degree of care in hiring was the **proximate cause** of the harm or injury that occurred
  + **Negligent hiring** 
    - **1) Foreseeability**
    - **2) Knowledge**
    - **3) Proximity**
  + Example is the case when the supervisor failed to run the background check
* **What you can and cannot ask in an interview** 
  + You cannot ask about arrests in an interview
  + EEOC recommends questions not be asked check on convictions, pleas of guilty, **Nalle Prosegui:** No prosecution, charges were dropped as if they never occurred, and arrests pre employment `
    - Length of time, seriousness of offense and connection to the business must be considered
* **Fair credit reporting act**
  + The major federal law regulating the gathering, sharing and use of information by employers and consumer reporting agencies
  + If based in any part on information from a consumer credit report, an employer intends to take an adverse action against a job applicant or empoloyee, the employer must first provide the individual with a pre adverse action disclosure
* **References** 
  + Employer cannot engage in defamation (Untrue and published)
  + Can be no defamation claim if a good faith statement is given (Dan Cummings was a crook, if this is can be proven true there is no defamation)
* **Negligent Referral** 
  + Example is John Doe was convicted of sexual assault, and applies for a job with children and is hired
  + If employer fails to mention information about John Doe’s sexual assault to potential employer, they could be liable for negligent referral
* **Drug Testing**
  + Random vs. reasonable suspicion
    - Public vs. private
    - Public employees are subject to the 4th amendment ) Unreasonable searches and seizures), no random testing, there must be reasonable suspicion
  + Union vs. non-union
    - Duty to bargain- You must have permission of the union, must bargain with how they are going to drug test
  + Private non-union firms can drug test whenever they please
  + Most common way to challenge the results of a drug test are to challenge the chain of custody
    - Firm must prove that the correct urine was tested
  + Alcohol testing cannot be given preemployment
* **Burden is on employer to show business necessity of tests** 
  + **Four-fifths rule:** States that if the **selection rate**- the percentage of applicants who pass the test and are hired or continue to be considered for employment- for one race or sex or other protected class group is less than 80 percent of selection rate for the other protected class or group that was most successful at passing the test, that result constitutes evidence of discriminatory effects. Could have a disparate impact case if the rule holds true
  + **Content vs. Criterion Validation** 
    - Can both be applied to determine if there is disparate impact
    - **Content Validation:** Has content validity to the extent that it requires the performance of the same behaviors and skills as the job in question.
    - **Criterion Validation:** Demonstration of a statistical association between performance on a test and performance on the job.
* **Reverse Discrimination and Affirmative Action**
  + Use of affirmative action by an employer where protected class characteristics are considered in making employment decisions that other employees find discriminatory
  + Reverse discrimination can be justified if the hiring is done to remedy past discrimination
    - 3 requirements for affirmative action
      * Formal written plan
      * Must be temporary, remedial
      * Cannot have “quotas”
* **Various hiring and promotional decisions** 
  + **BFOQ:** Bona fide occupation qualification
  + Rarely permitted, one example of when it is permitted is the hiring in prisons of female prison guards to be around female inmates
* **Sexual Stereotyping** 
  + “Midwestern girl look” case
  + Is a form of sexual discrimination
* **Interview Process Age Discrimination**
  + Substantially younger age discrimination can occur when there is a difference of at least 6 years even if the applicant is older than 40 years
* **An Offer that is Revoked**
  + Promissory estoppel
    - Situations where injustice would otherwise occur because a person has reasonably relied to her detriment on the promises of another
* **Women Denied Promotion** 
  + Women who are denied promotion can often file disparate impact cases relying on statistics
* **Unlawful Harassment** 
  + Harassment is not applicable unless it impacts a protected class, being mean is not harassment
  + Must have a tangible employment action
  + Constructive discharge
    - The victim does not have to put up with an intolerable work condition if the employer is not doing anything about the harassment. The employee is still able to sue after quitting because of the intolerable work condition. Must be severe and pervasive.
  + 2 types of sexual harassment
    - Quid pro quo (This for that)
    - Hostile work environment (Must be severe and pervasive as well as unwelcomed)
  + Vicarious liability
    - Employer can be held liable for the actions of supervisors
    - Can be avoided if they can establish the two prongs
      * The employer exercised reasonable care to prevent and correct promptly any harassment
      * The plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise
  + Three elements
    - Prompt investigation
    - Thorough investigation
    - Appropriate remedy
  + Negligence standard (harassment by third parties or coworkers)
    - Company is liable if
      * The employer knew or should have known about the harassment
      * The employer failed to take prompt and appropriate action to stop the action
* **Bostock vs. Clayton County**
  + Sexual orientation and gender identity are protected under title VII
  + Same sort of unlawful harassment standards apply to sexual orientation and gender identity cases