**Chapter 01**

**The Regulation of the Employment Relationship**

**True/False Questions**

1. The law relating to the employment relationship is based on the traditional law called master and servant, which evolved into the law of agency.

Answer: True

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: The law relating to the employment relationship is based on the traditional law called master and servant, which evolved into the law of agency. In an agency relationship, one person acts on behalf of another. The actor is called the agent, and the party for whom the agent acts and from whom that agent derives authority to act is called the principal.

2. In an employment–agency relationship, if an agent acts beyond his or her authority, the principal is not liable for any resulting loss to a third party.

Answer: False

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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 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).

3. An employer has vicarious liability if an employee causes harm to a third party while the employee is in the course of employment.

Answer: True

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

4. The National Labor Relations Act of 1935 (NLRA) protects independent contractors from unfair labor practices of employers.

Answer: False

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: The National Labor Relations Act of 1935 (NLRA) protects only employees and not independent contractors from unfair labor practices. However, independent contractors may be considered to be employers; so they may be subject to these regulations from the other side of the fence.

5. Kevin provides auditing services to the Global Trusted Bank as an independent contractor. Thus, the bank is responsible for paying Kevin’s federal unemployment compensation (FUTA), Social Security (FICA), and the FICA excise tax.

Answer: False

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Global Trusted Bank is not responsible for paying Kevin’s Social Security (FICA), the FICA excise tax, and federal unemployment compensation (FUTA) as Kevin is an independent contractor. 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), 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.

6. Employers are liable for most torts committed by an independent contractor within the scope of the working relationship.

Answer: False

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Employers will not be liable for most torts committed by an independent contractor within the scope of the working relationship 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.

7. There is one commonly accepted definition of “employee” used by courts, employers, and the government.

Answer: False

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

8. A willful misclassification of workers by an employer under the Fair Labor Standards Act of 1938 (FLSA) may result in imprisonment and up to a $10,000 fine.

Answer: True

LO: 01-03 Delineate the risks to the employer caused by employee misclassification.

Topic: Introduction to the Regulatory Environment

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

9. The Food Cult Restaurant (FCR) employs part-time workers through a staffing firm. After the staffing firm sent over a part-time waitress, FCR asked the firm to replace her with someone from a different race. If the replaced waitress proceeds with a discrimination claim under Title VII of the Civil Rights Act, FCR cannot be liable because the part-time waitress was never its employee.

Answer: False

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Food Cult Restaurant (FCR) will be 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.

10. Under the economic realities test, courts consider whether a worker is economically dependent on the business or is in the business for himself or herself.

Answer: True

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: Under the economic realities test, courts consider whether a worker is economically dependent on the business or, as a matter of economic fact, is in business for himself or herself. In applying the economic realities test, courts look to the degree of control exerted by the alleged employer over the 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.

11. The Civil Rights Act of 1866 applies to employers with 15 or more employees.

Answer: False

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

12. The Rehabilitation Act of 1973 applies to federal contractors who maintain contracts with the federal government in excess of $10,000 annually for the provision of personal property or nonpersonal services.

Answer: True

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

**Multiple Choice Questions**

13. Arber Systems Inc. solicits bids from various independent contractors to develop and maintain the grounds of its new office complex. Carl, the head of facilities management at Arber Systems tells Rosie, his secretary, that he will not accept any bids from Asian contractors. He goes ahead and rejects a bid made by an Asian contractor without any legitimate reason. The Asian contractor brings a lawsuit against Arber Systems for discrimination. Which of the following is true of the scenario?

A) Carl’s refusal to hire Asian companies is a violation of the Social Security Act.

B) Carl’s refusal to hire Asian companies is a violation of the Consumer Protection Act.

C) Carl’s refusal to hire Asian companies is not an offense because employers in the United States are free to discriminate against employees based on their race or national origin.

D) Carl’s refusal to hire Asian companies is not a violation of Title VII of the Civil Rights Act because that law does not cover discrimination against independent contractors.

Answer: D

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Arber Systems Inc. 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.

14. Jeremy, a freelance accountant, is hired by Ave Supermarket whenever there is some auditing work at the supermarket’s back-end office. Jeremy is called to the office on a need basis and is paid $200 per day for his services. Which of the following is true of this scenario?

A) Ave Supermarket will need to withhold a certain percentage of Jeremy’s wages for federal income tax purposes.

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

C) Ave Supermarket will be liable to Jeremy if he makes any discrimination or wrongful discharge claims.

D) Jeremy cannot claim for medical or retirement benefits from Ave Supermarket as he is an independent contractor.

Answer: D

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Jeremy cannot claim for medical or retirement benefits from Ave Supermarket as 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.

15. 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:

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

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

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

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

Answer: C

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: 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).

16. Tobin is an independent contractor for Pagoneer Inc. While driving to a meeting at Pagoneer’s headquarters, Tobin causes a car accident in which a cab driver is hurt. Upon investigation, it was learnt that Tobin was talking to one of the managers at Pagoneer over the phone when he was driving on that unfortunate day. Which of the following is true in the context of liability for the accident?

A) Pagoneer has no liability only if Tobin is a member of a protected class.

B) Pagoneer has vicarious liability.

C) Pagoneer has strict liability.

D) Pagoneer has no liability because Tobin is not a full-time employee.

Answer: D

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Pagoneer Inc. has no liability because Tobin is an independent contractor. 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. In addition, employers will not be liable for most torts committed by an independent contractor within the scope of the working relationship.

17. Sanah works as a salesperson at Ave’s Garden Needs. While demonstrating to a customer how to use a hedge trimmer, she accidentally cuts the customer on the arm, requiring a visit to the hospital and several stitches. Which of the following is true of the scenario?

A) Ave’s Garden Needs is not vicariously liable because it was an accident.

B) Ave’s Garden Needs is vicariously liable because Sanah was not acting within the course of employment.

C) Ave’s Garden Needs is not vicariously liable because Sanah was not acting within the course of employment.

D) Ave’s Garden Needs is vicariously liable because Sanah was acting within the course of employment.

Answer: D

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Ave’s Garden Needs is vicariously liable because Sanah 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.

18. Nebusa Inc. is a consulting firm. Sam and Arnie are analysts for Nebusa. Sam was hired as an employee, and Arnie was hired as an independent contractor. They both work five days a week during standard business hours in the same Nebusa office and under the same supervisor. Both almost share the same job responsibilities. Sam is paid a salary and the required federal and state tax withholdings are also made by the company. In contrast, Arnie is paid by the project with no federal and state withholdings and does not even receive benefits such as retirement and health insurance. Which of the following is an implication of this scenario?

A) Nebusa has properly classified Arnie as an independent contractor.

B) Nebusa has willfully misclassified Arnie as an independent contractor and is liable under Fair Labor Standards Act of 1938.

C) Nebusa has no rights to withhold federal and state taxes for Sam if he is classified as a full-time employee.

D) Nebusa has to provide more health and retirement benefits to Arnie than Sam because Arnie is an independent contractor.

Answer: B

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Nebusa has willfully misclassified Arnie 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.

19. Clarence works as an independent contractor for a law firm jointly owned and managed by Allan, Rose, and Grisham. Which of the following implications can be drawn from the scenario?

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

B) The law firm will be completely responsible for paying Clarence’s federal unemployment compensation (FUTA), Medicare, and state taxes.

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

D) The law firm will have to mandatorily include Clarence in its dental, medical, pension, and profit-sharing plans.

Answer: A

LO: 01-02 Identify who is subject to which employment laws and understand the implication of each of these laws for both the employer and employee.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Clarence 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 (RRTA) 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.

20. Gabriel is a nursing assistant in a retirement home run by RedTree Care Home. 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 the 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 Gabriel take against RedTree Care Home?

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

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

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

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

Answer: B

LO: 01-03 Delineate the risks to the employer caused by employee misclassification.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Gabriel 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.

21. Mega Big Box Stores has been hiring programmers at its headquarters to maintain its online retail operation. As the size of the online business grew, Mega 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?

A) 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.

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

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

D) 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.

Answer: A

LO: 01-03 Delineate the risks to the employer caused by employee misclassification.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: The Internal Revenue Service (IRS) can hold Mega Big Box 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.

22. The three main tests courts use to classify employees and independent contracts are:

A) the Master-servant rule, the *Darden* test, and the economic realities test.

B) the Master-servant rule, the common-law agency test, and the GAP analysis.

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

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

Answer: C

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

23. To determine whether a worker is an employee or an independent contractor, the Internal Revenue Service (IRS) 20-factor analysis includes a consideration of whether:

A) the worker was previously employed in the same industry.

B) an employer is engaged in interstate commerce.

C) an employer provides training to the worker.

D) the worker is the member of a minority group.

Answer: C

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: One of the factors of the Internal Revenue Service (IRS) 20-factor analysis is training. Training a worker indicates that an employer exercises control over the means by which the result is accomplished.

24. Which of the following factors is part of the economic realities test used by courts to determine whether a worker is an employee or an independent contractor?

A) The worker’s investment in an employer’s business.

B) The worker’s productivity.

C) The worker’s age and national origin.

D) The worker’s personal savings and total liability.

Answer: A

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

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

A) employee hired and trained directly by an employer.

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

C) full-time worker.

D) independent contractor.

Answer: D

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

26. Sun Supermarket 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 supermarket 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?

A) The salesperson cannot bring a legal case against the supermarket because she is an employee of the staffing firm.

B) The supermarket can be held liable for discrimination under Title VII of the Civil Right Act.

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

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

Answer: B

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Sun Supermarket 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.

27. 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:

A) send an e-mail inquiry about the job.

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

C) simply use the Internet to find potential jobs for oneself.

D) submit an expression of interest in employment through the Internet.

Answer: D

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

28. Just Systems Inc. often hires Abdul 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 Just Systems 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 Abdul himself. When he is not hired by Just Systems, Abdul works for other smaller companies as a trainer. Thus, Abdul is mostly like a(n):

A) full-time employee at Just Systems Inc.

B) social worker.

C) independent contractor for Just Systems Inc.

D) trade creditor.

Answer: C

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: Abdul is mostly like an independent contractor for Just Systems Inc. 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.

29. Paula works as an accountant at Axva Inc. Per the company’s payroll Paula is currently an independent contractor. Paula will be misclassified as an independent contractor if:

A) Axva Inc. has the right to discharge Paula at any time.

B) Paula can realize a profit from the business through management of resources.

C) Paula has significant investment in the business.

D) Axva Inc. allows her to work for more than one firm at a time.

Answer: A

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Paula will be misclassified as an independent contractor if Axva Inc. has the right to discharge Paula 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.

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

A) Emily has a good case against MMC because her email was clear that she was interested in the entry level position at the firm, and they did not even consider her.

B) Emily 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.

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

D) Emily would have had a valid case against MMC had she submitted her resume via a third-party job board.

Answer: C

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Emily does not have a valid discrimination case against the Melica Marketing Company (MMC) 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.

31. Under the common-law agency test, the most critical factor in determining employee status is whether a(n):

A) employer has the right or ability to control the work.

B) worker has more than two years of experience in a particular industry.

C) employer is engaged in interstate commerce.

D) worker belongs to a protected group of individuals.

Answer: A

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: The common-law agency test, a persuasive indicator of independent-contractor status, is the ability to control how the work is performed. The common-law test is specifically and consistently used to determine employee status in connection with employment taxes (e.g., FUTA and FICA), as well as in federal income tax withholding.

32. Which of the following is true of contingent workers hired by a company using a staffing firm?

A) They are required to be treated as employees of the company hiring them, not as independent contractors.

B) They are on the payroll of the company using the staffing firm’s service.

C) They can often give joint liability between the staffing firm and the company hiring them.

D) They can be legally discriminated by the company using the staffing firm’s service.

Answer: C

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: 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.

33. Title VII of the Civil Rights Act of 1964:

A) prohibits individuals with temporary or permanent disabilities from seeking employment.

B) prohibits discrimination in employment based on specified protected class.

C) applies to government-owned corporations.

D) applies to bona fide private membership clubs.

Answer: B

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on specified protected class. It applies to all firms or their agents engaged in an industry affecting commerce that employ 15 or more employees for each working day in each of 20 or more weeks in the current or preceding calendar year.

34. Title I of the Americans with Disabilities Act of 1990 applies to:

A) all employers with 20 or more workers, excluding state and local government employers, employment agencies, and labor unions.

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

C) Indian tribes and bona fide private membership clubs.

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

Answer: B

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

35. The First Family Painting Company (FFPC) employs two supervisors, seven painters, four helpers, two schedulers, two carpenters, and one office manager. They are all permanent workers of the company who work throughout the year for eight hours each day. The company’s owner wants to know whether her employees are covered under Title I of the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act of 1967. In this context, which of the following is true?

A) All three laws apply to the employees of the company because the company has at least 15 employees who work throughout the year for eight hours each day.

B) The employees are covered only under Age Discrimination in Employment Act.

C) Only the painters and carpenters are covered under Title VII of the Civil Rights Act.

D) 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.

Answer: D

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

Feedback: The employees of First Family Painting Company 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. However, the Age Discrimination in Employment Act of 1967 applies to all entities or their agents that employ 20 or more employees on each working day.

36. Benjamin, a 45-year-old white male, is denied employment at a private club. He notices that the club has younger, white male employees working for it. Thus, Benjamin decides to file a discrimination claim against the club. As per the Age Discrimination in Employment Act, Benjamin:

A) cannot file a complaint of race, sex, or age discrimination because he is white.

B) can bring an age discrimination claim because the act does not recognize the business necessity defense.

C) can file a complaint because the act does not exempt private membership clubs.

D) cannot file a complaint of age discrimination because only individuals above the age of 60 can make such claims under the act.

Answer: C

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Benjamin can file a complaint under the Age Discrimination in Employment Act (ADEA) of 1967 because the act does not exempt private membership clubs. Exemptions 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 ADEA, unlike Title VII of the Civil Rights Act of 1964, does not exempt Indian tribes or private membership clubs.

37. Which of the following laws must an employer operating a private membership club comply with, even though the business does not serve the general public?

A) Title VII of the Civil Rights Act of 1964.

B) Title I of the Americans with Disabilities Act of 1990.

C) The Age Discrimination in Employment Act of 1967.

D) The Whistleblower Protection Act of 1989.

Answer: C

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

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

38. The Civil Rights Act of 1866:

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

B) prohibits individuals with temporary or permanent disabilities from seeking employment.

C) regulates the actions of all individuals entering into a contract to employ someone else.

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

Answer: C

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

39. In the context of the Fair Labor Standards Act of 1938, individual coverage refers to the protections offered to:

A) shareholders if a publicly held company incurs a minimum loss of $ 300,000.

B) consumers if the damages incurred by them from using a product is more than $10,000.

C) employees if their work regularly involves them in commerce between states.

D) employers if their work is temporary or seasonal.

Answer: C

LO: 01-05 Articulate the various ways in which the concept “employer” is defined by the various employment-related regulations.

Topic: The Definition of “Employer”

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: The Fair Labor Standards Act (FLSA) of 1938 mandates wages, hours, and ages for employment in the United States, among other labor standards. Individual coverage refers to the protections offered to employees if their work regularly involves them in commerce between states (“interstate commerce”). The FLSA provides coverage, even when there is no enterprise coverage, to workers who are “engaged in commerce or in the production of goods for commerce.” 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.

40. In an employment relationship, a non-compete agreement is enforceable:

A) when the agreement violates the doctrine of promissory estoppel.

B) when the employee receives something in exchange for the agreement.

C) when the competitor receives something in exchange for the agreement.

D) when the agreement is contrary to the public interest.

Answer: B

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: Once a non-compete agreement has been found to be valid, in order to be enforceable, it must also be supported by consideration offered in a bargained-for exchange. In other words, the agreement by an employee not to compete with his or her employer is only enforceable if the employee also receives something in exchange for this agreement.

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

A) must be reasonable in scope and duration.

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

C) should be contrary to public interest.

D) should provide benefits only to the employer.

Answer: A

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Remember

Difficulty: 1 Easy

AACSB: Analytical Thinking

Feedback: 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.

42. Patty worked as a chief chef in the Red Tales Restaurant (RTR) in Jacksonville, Florida. When the management of the restaurant changed, Patty was asked to sign a non-compete agreement to keep her job. The non-compete agreement required Patty not to work as a chef for any other restaurant or open her own restaurant in the United States for the next 15 years if she decided to quit her job at RTR. A court would likely determine that this non-compete agreement:

A) violates common law.

B) is reasonable.

C) is enforceable.

D) violates the doctrine of unconscionability in contract law.

Answer: A

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: A court would likely determine that the non-compete agreement violates common law. 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.

43. Carl was employed as a chief architect with Splendid Infrastructure Inc. in Winston-Salem, North Carolina. He signed a covenant not to compete when he was hired two years ago. The agreement states that Carl cannot work with Splendid Infrastructure’s competitors in the state of North Carolina for one year in case his employment with the company ends. Carl’s employer finds out that Carl has been working part-time for himself, and is immediately terminated. Carl now wants to be an architect with Harold’s Structures Inc. in Greensboro, North Carolina. Which of the following is true of this scenario?

A) Carl can take up the new job without any restrictions because he did not voluntarily quit his job at Splendid Infrastructure Inc.

B) Carl can take up the new job without any restrictions because a covenant not to compete is only valid for six months, and Carl had signed the agreement two years ago.

C) Carl cannot take up the new job if the location and time restrictions in the not-to-compete agreement are deemed to be reasonable by a court.

D) Carl cannot take up the new job because he was terminated from Splendid Infrastructure Inc., which makes him ineligible for a new job for the next two years.

Answer: C

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Apply

Difficulty: 3 Hard

AACSB: Reflective Thinking

Feedback: Carl cannot take the job if the location and time restrictions in the 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.

44. Under the theory of inevitable disclosure, courts:

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

B) 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.

C) protect government-owned corporations against the practice of whistleblowing.

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

Answer: B

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: 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.

45. Which of the following refers to a clause in a contract that identifies the state law that will apply to any disputes that arise under the contract?

A) Supremacy clause.

B) Just cause clause.

C) Due process clause.

D) Forum selection clause.

Answer: D

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

Feedback: 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 Questions**

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

Answer: 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.

LO: 01-01 Describe the balance between the freedom to contract and the current regulatory environment for employment.

Topic: Introduction to the Regulatory Environment

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

47. Cara’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 Cara’s employer will have to face for misclassifying her?

Answer: 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.

LO: 01-03 Delineate the risks to the employer caused by employee misclassification.

Topic: Introduction to the Regulatory Environment

Blooms: Apply

Difficulty: 2 Medium

AACSB: Reflective Thinking

48. List the four criteria that must be satisfied by an employer to classify a worker as an independent contractor.

Answer: An employer must provide the following evidence if he or she is 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 company must treat all workers in positions substantially similar to the worker in question as independent contractors.

(4) The company has a reasonable basis for treating the worker as an independent contractor.

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: Introduction to the Regulatory Environment

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

49. What are the main factors when determining joint employer, or joint and several, liability?

Answer: In finding liability based on the joint employer concept, the courts hold that not all outsourcing relationships would be classified as joint employers and that that all relevant factors should be considered, including (but not limited to)

1. Whether the work was done on the employer’s premises.

2. Whether the subcontractor brought his or her business from one employer to another.

3. Whether the subcontractor performed a specific role that was integral to the employer’s work process of production.

4. Whether the responsibility under the contract could pass from one subcontractor to another without a lot of change.

5. The degree to which the employer supervised the subcontractor’s work.

6. Whether the subcontractors worked exclusively or predominantly for the employer.

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.

LO: 01-04 Explain the difference between an employee and an independent contractor and the tests that help us in that determination.

Topic: The Definition of “Employee”

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking

50. What are the qualifications for a valid restrictive covenant?

Answer: 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, even without a non-compete agreement, 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.

LO: 01-06 Describe the permissible parameters of non-compete agreements.

Topic: Covenants Not to Compete (Non-Compete Agreements)

Blooms: Understand

Difficulty: 2 Medium

AACSB: Analytical Thinking