***Employment Law for Business, 9e* (Bennett)**

**Chapter 1 The Regulation of Employment**

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

2) 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.

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

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

5) 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.

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

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

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

9) 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.

10) One criteria for determining whether a worker is an employee or an independent contractor is the economic realities test. Under the economic realities test, a court considers whether a worker is economically dependent on the business, or is in business for himself or herself.

11) The Civil Rights Act of 1866 applies to all employers, regardless of the number of employees.

12) The Rehabilitation Act of 1973 applies to government contractors that maintain contracts with the federal government in excess of $10,000 annually.

13) CMS, Inc. 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?

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

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

C) 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.

D) 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.

14) Roger is a freelance accountant hired by Rudy's Hot Dogs whenever auditing work is needed in the back office. Roger is called to the office on a need basis and is paid $200 per day for his services. Which of the following is likely true of this scenario?

A) Rudy's Hot Dogs will need to withhold a certain percentage of Roger's wages for federal income tax purposes.

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

C) Rudy's Hot Dogs will be liable to Roger if he makes any discrimination or wrongful discharge claims.

D) Roger cannot make a claim for medical or retirement benefits from Rudy's Hot Dogs as he is an independent contractor.

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.

16) Nelson is properly classified as an independent contractor for FunTime Toys. 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?

A) FunTime has no liability, because Nelson is not a full-time employee.

B) FunTime has vicarious liability.

C) FunTime has no liability, but only if Nelson is a member of a protected class.

D) FunTime has strict liability.

17) Cassie works as a salesperson at Lumber Needs. While demonstrating to a customer how to use a power saw, 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) Lumber Needs is not vicariously liable because it was an accident.

B) Lumber Needs is vicariously liable because Cassie was not acting within the course of employment.

C) Lumber Needs is not vicariously liable because Cassie was not acting within the course of employment.

D) Lumber Needs is vicariously liable because Cassie was acting within the course of employment.

18) 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 the likely true?

A) Acme properly classified Annette as an independent contractor.

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

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

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

19) 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?

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

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

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

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

20) 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 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 Carol take against Sun Retirement Systems?

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

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

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

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

21) 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?

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.

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

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

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.

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.

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.

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.

26) 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?

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

B) Karla's Boutique 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.

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

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

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

28) 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):

A) full-time employee at Acme Solutions.

B) social worker.

C) independent contractor for Acme Solutions.

D) trade creditor.

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

A) Legal Staffing, Inc. has the right to discharge Danielle at any time.

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

C) Danielle has significant investment in the business.

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

30) 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?

A) 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.

B) 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.

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

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

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.

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

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

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

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

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

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

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

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

C) apply to government-owned corporations.

D) apply to bona fide private membership clubs.

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

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

B) all employers with 35 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.

35) The Plumbing Company (TPC) employs 2 supervisors, 7 plumbers, 4 helpers, 2 schedulers, 2 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?

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 the ADEA (Age Discrimination in Employment Act).

C) Only the plumbers 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.

36) Jack, a 43 year old white male, applied for a job at a private club. He was not hired. During the application process, Jack noticed that the club employed younger, white male individuals. Can Jack file a discrimination claim under the ADEA (Age Discrimination in Employment Act) against the club?

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

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

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

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

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

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.

38) In an employment context, 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 or entities when entering into a contract to employ someone else.

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

39) Individual coverage under the Fair Labor Standards Act of 1938 refers to the protections (wages, hours, and ages for employment in the United States) 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.

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

A) the agreement violates the doctrine of promissory estoppel.

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

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

D) the agreement is contrary to the public interest.

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

A) must be provide benefits to only the employer.

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

C) must have a reasonable scope and duration.

D) should be contrary to public interest.

42) Harold works as head chef at the Italian Olive Restaurant in Macon, Georgia. When the management of the restaurant changed, Harold was asked to sign a non-compete agreement to keep his job. The non-compete agreement required Harold not to work as a chef for any other restaurant or open his own restaurant in the United States for the next 15 years if he decided to quit his job at the Italian Olive. 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.

43) 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?

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

B) 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.

C) 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.

D) 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.

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 whistle blowing.

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

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) Non-compete clause.

B) Forum selection clause.

C) Due process clause.

D) Just cause clause.

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

47) 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?

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

49) 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.

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