**Final Examination**

**Summer 2020**

**Part 1 – Problem 1**

“The Button Blues” 40 Points

Archie was hired on April 1, 2011 at a non-unionized, privately owned, Michigan company called the *Rosemary and Family Button Works* (hereinafter referred to as RFBW) as a “Mixer.” It was his job to follow a recipe to mix the plastic “goop” which was extruded, formed, pierced, and heat-fused into buttons.

Archie, who was employed as a computer technician at a unionized, “just cause” company at the time of his hire by RFBW, had learned of the job opening from his girlfriend of two years, Delilah, who is the president/owner’s (Rosemary’s) “baby” daughter.

Delilah told Archie that if he was hired, he could make a career of button making, as the company would employ him permanently, unless he was fired for “just cause.” The 18 year old company had grown from one of just family members to one with an annual gross income of $17,000,000.00 and 80 employees. It specialized in single-run, custom made buttons made in the USA.

Archie wanted to work both at his computer job and the RFBW job. He would be able to cut the computer job back to 24 hours per week at work it in the evenings after he was done at RFBW. Archie applied for the Button Works job, and indicated his plans to keep the computer job as part time to Delilah’s mother, Rosemary. She said that she wouldn’t hire Archie if he “moonlighted” on another job. Archie quit his computing job so that he would be hired at the Button Works, as it would hinder his ability to direct his full attention to a career at RFBW.

Archie appeared for work on the appointed day and began his employment at RFBW by “processing in” at the HR office. He received and signed for an *Employee Manual* describing a number of benefits, responsibilities, and rules. Among them were as follows:

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| Section 7. | We pride ourselves on our relationship with our employees and we value each and every one of them. We will work with you to insure that you are treated fairly in all matters concerning your employment. |
| Section 11. | We here at RFBW appreciate your hard work and dedication to your duties. Accordingly, we have an “open door” policy. Please feel free to address any grievances that you have regarding your employment directly with the RFBW president by making an appointment to meet with her in her office. |
| Section 19. | Nothing in this manual is to be construed to create a contract of employment. Any of its provisions may be changed by the employer at any time without consultation with the employees. All employees of this company are “*At-Will*.” This At-Will policy applies to all employees and can be changed only by the President of the company in writing. Either the employer or employee may terminate the employment relationship orally or in writing at any time for any reason or no reason, with or without advance notice. |

Archie was shown a safety movie and given a tour of the facilities by an OU HRD intern who was working at RFBW for the semester. Directly thereafter, Archie had lunch with Delilah and asked her about the statements in the Employee Manual in relation to what she had told him earlier about job security. Delilah told Archie not to worry – the employees were all pretty good, and no one had ever been fired from the company during its 18-year history unless they had done something really bad. She correctly stated that “in fact, only two people have ever been fired in total – one who was caught stealing and one who punched the supervisor.”

Archie started to work after lunch, and was assigned to the mixing department under the direct supervision of his girlfriend, Delilah. She instructed him as to his duties and told him that he would be on “Probation” for 6 months.

By October of 2012, Archie had become quite proficient at mixing. He had never received any discipline. He had been the *Employee of the Month* six times, the last time being in May of 2012. He had a perfect attendance record for all of 2011 and 2012.

As part of his duties, Archie would mix batches of “boutone” large enough to make 5,000 buttons each in an extra-large, industrial-sized, American-made, *Hobart* mixer by putting in the normal resins and chemicals and then adding colors according to the color formula and instructions from Delilah.

On October 15, Delilah told Archie that she would be going to an Alumni Seminar at Oakland University the next day, and that he was to fill an extraordinarily large order for 30,000 buttons of “*324 Blue*” in her absence.

On October 16, Archie proceeded to follow Delilah’s instructions. It took him all day to make the six batches. Near the end of the day, however, when Rosemary, the owner, entered the production department from the office, she saw the blue buttons and loudly screamed “What idiot did this‽” It seemed that everyone in the place stopped what they were doing and looked at Archie. It turned out that the buttons were supposed to be “329 Teal” and not “324 Blue.”

The whole plant had been engaged all day in making unusable custom color buttons wasting both time and materials resulting not only in a monetary loss, but a dissatisfied customer who needed the buttons to continue production at her US shirt factory.

As the other employees standing nearby listened, Archie told Rosemary that he had followed the specific instructions of Delilah in making the blue buttons. Rosemary immediately told Archie that he was fired and ordered him off the property – signaling for Knuckles, the Security Officer, to escort him out. A number of the employees, who had witnessed the exchange, quickly averted their eyes and returned to their duties so as not to draw the attention and/or wrath or Rosemary.

Archie immediately texted Delilah, urgently asking her to call him ASAP. She called him that evening as soon as she got home from the rather interesting and enlightening Oakland University Alumni Seminar presented by the HRD Student Association and honor Society. The next morning, Delilah and Archie went to Rosemary’s office. Delilah admitted that the whole mix-up was her mistake and not Archie’s. Rosemary said that Archie was still fired because his statement that it was Delilah that had made a mistake was insolent and had embarrassed the family in front of the other employees. Besides, she never liked him anyway and wished that Delilah would find a more ambitious and perhaps wealthier boyfriend.

Since that time, Archie has been without a job. He has also spent significant time seeing his Aunt Kelly, a psychiatrist, to help deal with his emotional and trust issues that have arisen from this whole incident. Aunt Kelly gives him a family discount on her services, but it’s still tough since he has no income. He has looked for jobs and interviewed, but when he discloses his former employment and the circumstances of his departure, these potential employers thank him and tell him that he might be contacted in the future. No employer has contacted him.

Archie indicates to you that he feels that there was no just cause for his discharge. He wants his job back for some kind of money damages other than the Unemployment Compensation he received ($310/week for 20 weeks). He doesn’t think that Rosemary could legally require him to stop working at his computer job as a condition of employment at RFBW. Now he can’t return there because they are angry at him for quitting. He can’t even visit Delilah at work, because he is too embarrassed to face the other employees after what happened. Archie believes that he was discriminated against.

**Please separately answer the questions below pertinent to Archie’s scenario, and explain them along with Archie’s chances of winning on each of them using 100 words or fewer, each.**

1. Was the “No Moonlighting” rule legal – especially in light of the fact that it would not have interfered with Archie’s work at RFBW?
2. Assume (for purposes of this section) that it was; did Archie’s compliance with it causing him to relinquish his “just cause” computer job create an implied contract of employment producing a “just cause” standard for continued employment?
3. Does the fact that Archie successfully served as a probation period create a just cause contract of employment?
4. Does Archie’s excellent employment record create the necessity for the employer to have just cause to terminate Archie’s employment?
5. Is the termination of Archie’s employment legal in light of the fact that the mistake was not Archie’s fault?
6. Can Archie be legally fired for “embarrassing the family,” even though the mistake was 100% a family member’s fault?
7. Based on the facts presented, decide if Archie has a valid claim of illegal discrimination.
8. Are there any other claims that Archie could successfully file against RBFW?

**Part 1 – Problem 2**

“After the Spike” 25 Points

Carmella is a bright and vivacious young woman of 27 years. She is attractive and absolutely physically fit. Carmella played volleyball in college and was named to the all-league team for two years running. That is where she met her husband of only three months, Lincoln (Linc for short) Montgomery.

Carmella has been an employee in the HR Department of the Botsford Bank at its headquarters in Farmington Hills, Michigan since she graduated from Oakland University in 2006. The bank president, Montgomery (Monty for short) Botsford, after learning of Carmella’s prowess at volleyball, recruited Carmella to head up a company sponsored recreational volleyball team to compete in the Midwest League as good public relations and advertising for the bank. Carmella didn’t want any part of volleyball as she and Linc were “trying” to have a baby. Carmella, however, was convinced to do it by Monty who indicated that Carmella’s strong leadership could put her in line for a nice promotion to Vice President of Human Resources.

Carmella agreed to organize and captain the recreational league team even though neither she nor any of her teammates were paid anything extra for participating, and all the games were on weekends, outside of working hours.

The team, under Carmella’s leadership did very well in the league and earned a berth in the Midwest Championship Tournament of the top 4 teams in the consortium of leagues. At the tournament held in beautiful downtown St. Paul, Minnesota, each of the team members, including Carmella, paid all their own expenses. Carmella played her heart out as the team continued to win. In the final championship game, with the score tied at 14, Carmella leaped higher than ever for a spike, hit the ball (left handed) harder than ever aiming for the near right corner of the opponent’s side. As Carmella landed a “snap, snap, thud” was clearly audible throughout the field house as Carmella’s ankle twisted as she landed on it and then her hip. Carmella’s face revealed that she was in great pain as she lay there until carried from the arena on a stretcher. Carmella had broken her ankle and dislocated her hip. She would be bedridden for 6 to 12 weeks, and her ability to have a child might be severely impeded due to internal injuries resulting from the hip injury.

Unfortunately, the Botsford team lost the game and the championship. Monty, who attended the game with his father and uncle, was mortified. He felt that Carmella was showing off and that her arrogance cost Botsford the game and her injuries. Three weeks after the incident Monty sent Carmella, who was at home recuperating, a certified letter informing her that her employment was terminated immediately.

**Answer the following questions in 30 words or fewer each:**

1. Is Carmella entitled to Workers’ Compensation for lost wages even though she has been fired, and if so, for what period?  Explain.
2. Regardless of your answers above, suppose that Carmella is entitled to Workers' Compensation; who pays the doctor's bills and prescription costs – prior to Carmella’s being fired; and who pays the doctor's bills and prescription costs after she was fired – assuming that there are more medical bills and costs?
3. Supposing, arguendo, that Carmella is entitled to Workers' Compensation benefits, what should she expect in terms of compensation for pain and suffering, loss of consortium and her inability to conceive a baby?
4. Assuming that Carmella was entitled to Workers' Compensation and that she has recovered and is now able to perform all the essential functions of the job, is Carmella legally entitled to reinstatement to employment?  Why or why not?
5. Assuming arguendo that she is legally entitled to reinstatement, is Carmella legally entitled to a promotion to Vice-President of the Botsford Bank? Why or why not?

**Part 2**

**Please answer each of these questions, explaining your answer in 50 words or fewer**

1. Socrates, a Michigan at-will employee (who works using a company-issued laptop) opened his *Facebook* account at work, and was surprised to find a very sexually suggestive photograph of a co-worker that was posted by that co-worker on his news feed. He immediately “hid” and reported the picture, but not before a different employee had passed by his cubicle and saw the photo.  The passing employee complained to the HR department which resulted in Socrates’ termination.  Socrates now wants to file suit against the employer for wrongful discharge – claiming that he did not know of the *Facebook* posting prior to opening his account, and he did not forward it or intentionally show it to anyone else.   No action was taken regarding the co-worker who posted the photograph. Does Socrates have a cause of action against the employer?
2. An employee was called into a private meeting in the HR Manager's office on a Friday afternoon and was severely reprimanded by the HR Manager for non-productive behavior at work.  During the reprimand, the HR Manager called the employee a thief, a bully and a coward and told the employee she was a poor excuse for a human being.  The employee wants to file suit against the employer, stating that she had been defamed.  Assuming that she can prove that she has stolen nothing, is a good person, and has not bullied anyone, does she have a cause of action?

1. Duke, an at-will, Michigan employee at the Oakland Swing Dancing Studio with 6 years of seniority has a step-daughter who plays on a travel soccer team. The day after his daughter’s team beat the boss’s daughter’s team, the boss fired him because the boss said that Duke’s daughter gloated in front of the other girls after her team won. Does Duke have any legal rights regarding damages and/or reinstatement to his job? If so, what?
2. Euphemia was hired at a law firm as a legal librarian, and has worked there for twelve years. She has been named the Employee of the Month 17 times and has received the Employee of the Year Award for the past two years. She uses a special parking spot designated for the *Employee of the Year*. When she hired in, she was told by the firm’s principal that she was a “Job Security” employee, and could not be fired except for just cause. This was reiterated in a letter from the firm’s HR department (led by a graduate of Oakland’s HRD program) confirming her employment. This year the firm’s principal retired, and a new one was appointed. One of the first things the new principal did was to declare that all the firm’s employees were at-will. Each employee (including Euphemia) was notified of this in a letter attached to their paychecks. Two weeks ago, the new principal issued Euphemia a Notice of Employment Termination that stated:

“Effective at the end of your work day today, your employment is terminated. Abigail Goiter will be taking your place. She will be working with you today to learn all important aspects of the job. Please show her every courtesy.”

Euphemia contacted the new principal and asked the reason for her discharge. The City Manager said that she thought it best for the benefit of the firm, but refused to give any reason other than that. It turns out that the new employee, Abigail, is the niece of the new principal.

Euphemia states that she never agreed to any change in employment status from “just cause” to “at-will,” and that there was no just cause, so she should be reinstated to her job. She also demands that the employer state the reason for her discharge. Does Euphemia have any legal rights regarding statement of reason for discharge, damages and/or reinstatement to her job? If so, explain?

1. At a non-unionized, private company in Michigan, the annual performance evaluation procedure includes a blood test. Tests run on the blood include one for the presence of drugs, and one that determines genetic traits that are related to the ability of the applicant to perform the job duties without putting himself or herself in danger. The results are shared with the employee’s direct supervisor as well as the division manager and members of the company’s health and safety department. Any legal problems here? Please explain.

**Part 3**

**Answer “True” or “False” or the most appropriate Multiple Choice letter. If you answer “True,” do not explain your answer. If you answer “false,” explain your answer in 50 words or fewer. Remember – do not assume any facts not presented.**

1. The U.S. Constitution protects public employees, but does not protect private sector employees against searches and seizures without "probable cause" by the employer on the employer's property.
2. An at-will employee cannot be legally discharged based upon an evaluation of her work even if the evaluation was negligently done and is truly inaccurate.
3. In Michigan it is legal for the employer to secretly video record (without sound) employees at their duty stations, but is illegal for the employer to secretly audio record employees at their duty stations.

1. Where an employee of a bar, who works as a bartender, and who has an extensive criminal record for felonious assault, assaults another employee at work, the employer may be held liable for negligent hiring or retention of the bartender by the assaulted employee even though the employer had no knowledge of the bartender’s past record.
2. Ms. Desperado accepts employment as a salesperson at Oakland Industries, even though, during her interview for the job, she learned that the male salespersons have larger offices than she would, and are given a company car, while she would not.  Ms. Desperado quits shortly after beginning work, and sues Oakland claiming that because of the more favorable conditions of employment received by male salespersons, she was wrongfully constructively discharged.  Her action against Oakland will be:
   1. Successful, because bigger offices and company cars for males, but not for females, amount to illegal sex discrimination.
   2. Unsuccessful, because bigger offices and company cars for males, but not for females, do not amount to conditions of employment so intolerable that a reasonable employee would feel involuntarily forced to resign.
   3. Successful, because unequal conditions and privileges of employment, constitute, as a matter of law, constructive discharge.
   4. Successful, because bigger offices and company cars for males, but not for females, violates the public policy exception of the at-will rule.
   5. Successful because the employer intentionally misled her during the pre-employment interview.
   6. The following combination of choices above \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   7. None of the above.