

Employment Law  
Final Exam Question I  
Nance  
Spring 2003

Jolene Thurman is the Headmistress of the Happy Days Private Academy. Because Happy Day's pay scale reflects the typically low pay structure of the daycare industry, she is always faced with a great deal of turnover. Recently Jolene had to replace several employees in one month. She ran an ad which read, "*Youthful, energetic, nurturing teachers wanted. Happy Days is seeking diversity in its staff. Women and minorities preferred. Generous salary and benefits.*" Jolene also placed a call to Employees-to-Go employment agency requesting that it find potential employees for her. The agency took her information over the phone. Jolene and the agency were to split the placement fee which was 25% of the applicant's first three months salary. The agency would keep the processing and application fees.

Fortunately, several applicants were interested in positions with the daycare. One applicant Gaston, a former employee who was a veteran returning from the war in Iraq. Before Gaston left for the war, he was being considered for a position as Office Manager. In his absence, another employee who was much more familiar with the bookkeeping software and computerized phone system was given the position. Jolene (a radical pacifist) also reduced the number of sick and vacation days Gaston had accumulated before his departure stating, "He's had his playtime already. He doesn't need to miss any more work."

Jolene screened the other applicants Crystal, Nigel and Brennan, thoroughly. She called each of their past employers. Crystal's former employers stated, "That would be a good job for her. She is very child-like." "Quite a lovely little lady. Not only competent, but very well put together—if you know what I mean." (Crystal quit working for the source of this comment after she repeatedly solicited Crystal's sexual favors). Nigel's former employer told Jolene, "He is terrific. I think that you will be surprised by how much he adds to your institution." (In fact Nigel had been terminated for inappropriate contact with elementary students and for coming to work under the influence). Brennan asked Jolene not to contact his former employer and explained that he had been terminated for sleeping on the job and theft, but that it was not true. He explained that his employer promulgated this reason for his termination because Brennan had reported his superiors' ongoing embezzlement.

Each applicant was also required to provide a urine sample for drug testing. Jolene herself oversaw the collection of the samples. The applicants used the faculty washroom. She waited until all three applicants had provided samples and sent them off together. The lab she used was much less expensive than other labs in the area (and tended to make many more mistakes), but she was pleased that so many "bad eggs" were weeded out.

Please address all issues raised by this fact pattern. Be sure to discuss the strengths and weaknesses of any claim as well as the likelihood of success.

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The Human Resources (HR) Manager of Cedarville, a small city experiencing rapid growth, realizes it is time to update the city's HR policies. The prevalent method used to hire is nepotism, which is convenient for the city. Employees like it too because they are able to get their friends and relatives hired. In fact in some departments, many of the employees have the same last name. (However the city does not tolerate dating between members of management and subordinates.) In order to be considered for employment, an applicant must have lived within the city limits for a period of two years. As part of its efforts to update technologically, the HR department placed a kiosk in city hall which took applications electronically. The applications ask among other questions, "Do you have any health challenges which would prevent you from coming to work?," "What is the lowest salary you will accept for this position?" and "May we check your credit?" Applicants who are veterans of "conflicts" received a 15 point preference on a 50 point scale.

The city is very concerned with its image. For that reason it requires all employees to wear "uniform" clothing. The "uniforms" range from suits for managerial employees and male employees with office jobs to pink blouses and skirts for most women workers. To increase productivity, the city often records and monitors phone calls and emails. (This also allows the city to learn which employees are having problems outside of work so that it can refer those employees to the Employee Assistance Program and encourage coworkers to be sensitive towards them). For similar reasons, and also because of concerns about drug use--The city wishes to comply with the Drug Free workplace Act--HR occasionally goes through employees' lockers and desks after hours.

Because Cedarville is such a small town, HR encourages employees to be politically active. It is not uncommon to see employees making campaign calls and soliciting contributions on their breaks. Sometimes the discussions get a bit heated. Once a city water works employee described the Mayor's plans for a water tax as, "ridiculous and outrageous." She was terminated the next day. In fact, one of the biggest problems is the tremendous turnover amongst employees when the city administration changes hands.

In Cedarville, once an employee terminates employment with the city, all inquiries about that employee are routed directly to the employee's former supervisor, since this is the person who could most accurately comment on the former employee's work performance.

The HR Manager has come to you as the Cedarville City Attorney. She would like for you to evaluate the city's HR policies, to describe any potential liability, the advantages and disadvantage of the current policies, and make to recommendations for changes to existing policies.