

Workplace Legislation  
Final Exam Question 1  
Nance  
Fall 2002

Emmett, a Wiccan (Wicca is a variety of witchcraft) enjoyed his job as a sterilization technician at Southwest Regional Federal Veterans Hospital. He had easily passed all of the preemployment screening. Given that he was well over 6' tall, the 5'8" height requirement (imposed so that the technicians could easily reach items stored in the stockroom) was not a problem. Likewise he had no difficulty pushing or lifting the various pieces of mobile equipment. And although he successfully completed the manual dexterity test, he injured a finger during the test.

The only thing Emmett didn't like about his job was that fact that despite the prevalence of religious material in the break room, he was not allowed to set out pamphlets on Wiccan. He also found it difficult to get time off to attend services.

Each day Emmett would arrive at work at 7:30 a.m., make coffee and prepare the various equipment and solutions so that he and his coworkers could begin working promptly at 8:00 a.m. Each evening he stayed until 5:15 p.m. to give turnover to the next shift. During the day, Emmett often worked through his lunch due to the workload, but he was happy with the pay he received for his 8 hour day.

Because of a recent increase in staph infections around the medical center, the Chief of Staff of the hospital required each unit to screen all employees for potential infectious diseases. As a result all employees required to submit to blood tests for a variety of conditions including HIV positivity. Employees were also asked to complete health questionnaires about their health, medications and family history of disease, which became a permanent part of their personnel files. The laboratory also screened the employees' blood samples for potential genetic defects as well as for drug and alcohol use.

Emmett tested positive for the HIV virus. At about this time his work performance began to deteriorate. Emmett missed several days of work on a regular basis. He attended counseling for stress and anxiety, but soon reached his HMO's \$2000 lifetime cap on mental health benefits. Due to concerns about possible financial exposure, the medical center dropped Emmett's health insurance altogether. In addition, because of the heightened concern for the health of medical center patients and Emmett's coworkers, the medical center required Emmett to obtain a complete physical. The results of the physical were faxed from the medical center's HMO to Human Resources. Emmett's HIV status became widely known around the hospital due to the small town nature of the hospital.

Discuss all the issues raised by this scenario, including the rights and responsibilities of the parties, and any potential claims as well as liabilities.

Bonus question (5 pts) What is Avert? What is it's relevance to this course?

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Elisa, an older Palestinian graduate student working on an advanced degree in Political Science at Hendrixson College in Arkansas, decided she needed additional money to make ends meet. She sought work at Trent's Truck Stop, a large truck stop on the interstate.

Elisa filled out an application dutifully responding to questions about her work history, dates of education, and availability for work. She provided a fake driver's license and current school records as proof of work eligibility. Trent's policy was to hire American but he was satisfied with the credentials Elisa presented. Trent required Elisa to take a polygraph test because she would be working the cash register as a part of her duties. His friend Deputy Dianne agreed to administer the test using a Lie-o-meter, a contraption Trent had rigged together for this purpose. During the exam Trent asked Elisa a number of personal questions. He required Elisa to take a personality test consisting of randomly selected questions from the Minnesota Multiphasic Personality Inventory.

As part of the preemployment screening Elisa was required to obtain a physical exam. During the exam, Dr. Noegud injured Elisa while performing a gynecological exam. He also failed to diagnose the fact that she had a very aggressive form of ovarian cancer.

Trent placed Elisa on the third shift since it was the least busy and he wanted younger waitress working the busy shifts, since they would likely bring in more money. The starting pay for a waitress working at Trent's was \$1.50 per hour plus tips and an additional 50¢ per hour shift differential for third shift. The tips were generally good, but Elisa was required to tip out the cook and the bus boy (Trent's 15 year old son). When customers paid with a credit card Trent took a 10% administrative fee out of the tip. On weekends Elisa often worked 12 hour shifts, and even at \$1.50 per hour her checks began to add up.

One of the cooks at Trent's had a problem with Elisa. He often muttered under his breath about her being dark and having a strange accent. He went out of his way to make sure that Elisa was aware of the noose tattooed on his upper arm. Trent on the other hand told Elisa that she could make better money if she were friendlier to him, since after all he was her boss.

After 2 months Elisa was promoted to Chief Waitress. Trent paid Elisa \$150 per week, though she made less if she missed a day because of illness or studying. Finally, fed up with working conditions at Trent's Elisa quit and applied at Dew Drop Inn Motel as a night clerk, but was denied employment because when asked for a reference Trent stated Elisa was "unreliable and had a strange way about her."

Elisa has seeks to hire you to represent her. Advise her potential as to any potential claims, the likelihood of success and any potential difficulties she might face as well as potential damages awards for each.