Test Bank for Employment Law for Human Resource Practice 5th Walsh

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Chapter 2
THE EMPLOYMENT RELATIONSHIP
Test Bank Questions, 5e

MULTIPLE CHOICE QUESTIONS

1. Distinguishing between employees and independent contractors is important because:
   a. income tax must be withheld for employees, but not independent contractors
   b. employers have fewer legal obligations to independent contractors
   c. employers can defend their actions under employment laws by proving that persons performing work are independent contractors
   d. all of the above
   e. none of the above

   Answer: D

2. Under the economic realities test:
   a. if the hired party depends on the job for the majority of her income, that favors the conclusion that she is an employee
   b. if the hired party performs tasks that are central to the hiring party's business, that favors the conclusion that she is an independent contractor
   c. if the hired party performs low-skilled work, that favors the conclusion that she is an independent contractor
   d. if the hired party provides her own tools and materials, that favors the conclusion that she is an independent contractor
   e. all of the above

   Answer: D

3. In *Narayan v EGL, Inc.*, the plaintiffs were drivers hired in California by a Texas firm, which had them sign independent contractor agreements under Texas law. They sued, contending they were employees, entitled to overtime pay and other benefits, and summary judgment was entered against them because of the independent contractor agreement. They appealed, and on appeal, the court ruled:
   a. that they were independent contractors, because they signed the independent contractor agreement
   b. that they were employees, because Texas law did not apply in California
   c. that summary judgment was vacated, and the case remanded for trial, since a jury could reasonably determine from the evidence that they were employees
   d. none of these

   Answer: C

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4. Which of the following is true of the common law test?
   a. it is especially useful for distinguishing partners from employees
   b. it focuses on the right of control
   c. it focuses on the hired party's ability to sell his services to a variety of hiring parties
   d. it is especially useful for determining whether individuals should be covered as family members under benefit plans
   e. none of the above
   Answer: B

5. If a worker is an employee, the employer must:
   a. withhold income taxes
   b. pay the employer's share of Social Security and Medicare taxes
   c. pay the employee's share of Social Security and Medicare taxes
   d. all of these
   e. a and b only
   Answer: E

6. Which of the following is an accurate statement regarding independent contractor agreements?
   a. they will usually be treated as indicators of independent contractor status, provided that they are signed and notarized
   b. they are useless as indicators of independent contractor status
   c. they can be renewed automatically and as often as necessary
   d. they can support a claim to independent contractor status, but the actual relationship is the most important factor
   e. a and c
   Answer: D

7. The primary lesson to be learned from the lawsuit brought by Microsoft's temporary workers in the 1990s is that:
   a. it is safest legally to hire temp workers through a temporary staffing agency
   b. employers must provide benefits to all of their employees
   c. companies that use temp workers will often be deemed joint employers of those workers
   d. employers cannot arbitrarily exclude some employees from benefit plans by labeling them as temporary workers
   e. none of the above
   Answer: D

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8. If a worker is an employee, the employer must:
   a. provide worker's compensation coverage for the employee
   b. provide unemployment insurance for the employee
   c. provide health insurance for the employee
   d. all of the above
   e. a and b only
   Answer: E

9. Persons performing volunteer work are more likely to be deemed employees if:
   a. their services are provided to non-profit agencies
   b. they receive significant remuneration for their services
   c. they retain control over their volunteer work schedule
   d. all of the above
   e. none of the above
   Answer: B

10. A company has one office with nine employees and a second office with 12 employees. If an employee who works in the first office is harassed and attempts to sue under Title VII, which of the following questions becomes a relevant issue:
   a. whether this is a single, integrated enterprise
   b. whether these are joint employers
   c. whether the multi-employer doctrine applies
   d. whether the joint payroll method applies
   e. whether Title VII applies extraterritorially
   Answer: A

11. Which of the following statements regarding managers is most correct?
   a. under most employment laws, managers are not deemed to be protected employees
   b. managers are usually not individually liable when they violate employees' rights
   c. employers are liable for the actions of managers taken within the scope of their employment
   d. a and c
   e. none of the above
   Answer: C

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12. Employers may be liable for the actions of their employees within the scope of employment. With regard to the actions of employees outside the scope of employment, which of the following statements is true?
    a. An employer can never be liable for the actions of its employee outside the scope of employment.
    b. An employer is always liable for the actions of its employee outside the scope of employment.
    c. An employer might be liable for the actions of its employee outside the scope of employment if the employer was negligent or reckless in allowing it to occur, or for other reasons.
    d. None of these is true

    Answer: C

13. You started your own business 2 years ago, and needed several part-time workers, but did not want and could not afford to pay them a minimum wage, or payroll taxes, so you classified them as independent contractors. At the time, a decent argument could be made that they were independent contractors, as there had been no rulings on your particular arrangement. Recently, for a business very similar to yours, the Department of Labor ruled that the workers of the business were employees, and not independent contractors. What should you do?
    a. nothing, unless the Department of Labor challenges your arrangement
    b. nothing, unless one of the workers complains
    c. have all of the workers sign independent contractor agreements immediately
    d. begin to treat them as employees, including paying a minimum wage, and withholding income taxes

    Answer: D

14. The main reason employers would rather hire independent contractors than employees is:
    a. its cheaper
    b. the employer has more control over independent contractors
    c. the independent contractor has fewer rights under law than an employee
    d. all of these
    e. a and c only

    Answer: E

15. A worker who is not an employee is likely:
    a. a partner
    b. a volunteer
    c. an independent contractor
    d. any one of these

    Answer: D

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16. What test is used to determine whether a worker is an employee or an independent contractor?

a. The Economic Realities Test
b. The Right to Control Test
c. The Common Law Test
d. Each agency or entity having an interest in the question uses a different test
e. None of these

Answer: D

17. Your sister works at a large, well- known firm which has had trouble sustaining the kind of profit margins their shareholders want to see. In order to keep their numbers up over the years, they have tried every cost-cutting measure they could think of, including some that were of questionable legality. You know about this only because you and your sister talk regularly. You know that she is concerned about losing her job, as there have been many rounds of downsizing, and you have promised her that you would not disclose these matters to anyone. Yesterday, she told you that the firm has been using temp workers for about the last two years, and they are a continuing problem. They come from a temp agency, and there are new workers every month or so, whom she must train. They do little to no work all day, and they are seemingly accountable to no one, since the supervisors don't make them work, yet they still get paid. Your sister knows you are taking this Employment Law course, and she wants you to tell her whether what the company is doing with the temp workers is illegal. Is it?

a. Yes
b. No

Answer: B

18. Regarding independent contractor (IC) agreements, which of the following statements is NOT true?

a. There is no point in using an independent contractor agreement.
b. A good, well-drafted independent contractor agreement can help avoid liability for the firm hiring the worker.
c. Independent contractor agreements can help the parties clarify their employment relationship.
d. A well-drafted IC agreement will address many issues that are used by agencies in determining the status of workers.

Answer: A

19. Which of the following items should NOT be included in a well-drafted independent contractor agreement?

a. a requirement that the worker hire his own assistants
b. a requirement that the firm provide health insurance for the worker
c. a flat fee payment arrangement for the work
d. a requirement that workers pay their own expenses

Answer: B

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20. Regarding employees, actions within the scope of employment are those which:
a. relate to work the worker was hired to perform
b. occur on company time at the usual place of work
c. occur during work hours
d. serve only the interests of the employer
e. all of these
f. a thru c only
Answer: F

ESSAY QUESTIONS

1. Why is each of the following good legal advice?

a. When using independent contractors, firms must be prepared to relinquish most of their control over how work is done.

Answer: Independent contractor status, right of control – The element of right of control is an important factor under both the economic realities and common law tests for determining independent contractor status.

b. Firms should closely review the status of long-term independent contractors and not assign new projects to them without renewing agreements.

Answer: Independent contractor status, duration of work – Independent contractors are typically utilized for short periods of time and to accomplish particular projects. An on-going, open-ended relationship raises serious questions about IC status.

c. Independent contractor agreements should be used, but only when they document actual independent contractor relationships.

Answer: Independent contractor status does not depend on pieces of paper or labels used by firms. However, a contractor agreement that incorporates substantial right of control and other features consistent with IC status can help document the relationship. It might also help avert disputes over the relationship.

d. Be particularly cautious about changing the status of workers from employees to contingent workers or having workers with different statuses perform the same work for long periods of time.

Answer: It is not illegal to do these things, but since different rights and privileges attach to contingent workers and "regular" employees, these circumstances will generally lead to invidious comparisons and dissatisfied persons who would be more likely to sue. Additionally, it is problematic to structure the same type of work as both employment and contracting.

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e. Client companies should refrain from closely supervising agency temporary workers or selecting individual temp workers for hiring or firing.

Answer: Joint employers – Under these circumstances, the client company may find that it shares in the liability for violations of temporary workers' rights.

2. Regarding undocumented workers (non-citizens in the US illegally), the policy of federal agencies has been to enforce employment laws for such workers without inquiring as to their legal status. However, the remedies available to such a worker may be limited because of his status. State and explain the policy reasons behind each of these decisions.

Answer: The policy of the federal government has been to enforce employment laws for all employees, regardless of legal status, in order to encourage compliance with employment laws. If the rule were otherwise, if undocumented workers could not bring action for violations of such laws unless they were in this country legally, that policy would act as an incentive to firms to hire more illegal workers, and ignore employment laws in the case of illegal workers, since there would be no adverse consequence to doing so. Further, the situation would be rife with opportunity to threaten such workers with disclosure of their illegal status to authorities, unless they did exactly what the employer wanted them to do.

The policy of limiting the remedies available to undocumented workers may be designed as a deterrent and punishment to them for their illegal status, as it does not permit them to have the benefit of employment laws as other workers do. It may, however, also act as an incentive to firms to hire undocumented workers, since the punishment, if any, that the firm encounters for a violation of employment law is likely to be far less than it would be for a documented worker.

3. With regard to Question # 2 above, do you agree or disagree with each stated policy? Why or why not? State and explain what kind of policies as to enforcement of employment laws and remedies for violations of such laws you believe would most encourage compliance with employment laws, and describe what the incentives would be in your preferred policies to encourage the desired conduct.

Answer: *This is an opinion question, which gives the student the opportunity to think through policy issues and apply his or her own policy beliefs. Answers may range from no enforcement of employment laws for undocumented workers, to enforcement of the laws and the same rights and remedies to undocumented workers. However, the student should be able to identify the issues, and recognize the incentives and disincentives.*

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