

2020 FINAL EXAM ANSWER KEY

Thank you to everyone who participated in Nexsen Pruet's 2020 Employment and Labor Law Final Exam. We hope the exam was challenging and informative. You will find the answers below each questions.

1. To obtain a valid release of an age discrimination claim by a terminated employee who is 40 or older and is not part of a group reduction in force, an employer must allow the employee ___ days to consider the release. To obtain a valid release of an age discrimination by a terminated employee who is 40 or older in a group reduction in force, an employer must allow the employee ___ days to consider the release:
 - (a) 21, 21
 - (b) 21, 45
 - (c) 7, 21
 - (d) 14, 28

Answer: (b) is the correct answer. The Older Workers Benefit Protection Act ("OWBPA") requires that individuals 40 and older provide a "knowing and voluntary" release of their age discrimination claims. To meet this requirement, a release for an employee who is not part of a group reduction in force should, at minimum, meet the following criteria:

- Be in writing.
- Be written in a manner reasonably calculated to be understood by the employee.
- Specifically refer to the Age Discrimination in Employment Act ("ADEA").
- Not require the employee to waive claims that arise after the execution of the release.
- Provide consideration to the employee in addition to what the employee is already entitled.
- Advise the employee to consult an attorney before executing the release.
- Allow the employee 21 days to consider the offer, and then 7 days to revoke their agreement to the release after execution.

The OWBPA places additional requirements on employers when the release is in connection with a reduction in force ("RIF") of two or more employees who are 40 or older. Those requirements are as follows:

- The employee must be given 45 days to consider the release.
- The employer must disclose to the affected employees, in writing, (1) the class or group of employees covered by the RIF; (2) the eligibility factors for the RIF; (3) the job titles and ages of all individuals eligible for or selected for the RIF; and (4) the ages of all employee in the same class or group of employees who were not eligible or selected for the RIF.

2. Under the Families First Coronavirus Response Act (“FFCRA”), employees may qualify for up to an additional 10 weeks of paid expanded FMLA leave at two-thirds the employee’s regular rate of pay for which of the following reasons:
- (a) The employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
 - (b) The employee is unable to work due to quarantine pursuant to a health care provider’s advice or order of government.
 - (c) The employee is unable to work due to a bona fide need to care for an individual who has COVID-19 or is subject to quarantine.
 - (d) All of the above.

Answer: (a) is the correct answer. Under the FFCRA, the only qualifying event for the additional 10 weeks of paid expanded FMLA leave is an employee’s inability to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

3. Under the Family and Medical Leave Act (“FMLA”), time spent working for an employer as a temporary employee counts toward the FMLA 12 month and 1,250 hour eligibility requirements, even when the temporary employee has been placed by a professional staffing firm or employee leasing agency.
- (a) True
 - (b) False

Answer: (a) is the correct answer. Time spent working for an employer as a temporary employee counts toward the FMLA 12-month and 1,250 hours eligibility requirements, even when the temporary employee has been placed by a professional staffing firm or employee leasing agency. In addition, an employer must include temporary employees in their headcounts when determining whether the employer employs 50 or more employees within a 75-mile radius of the worksite.

4. Under the Fair Labor Standards Act (“FLSA”), which of the following deductions from salary will not convert an exempt worker into an overtime-eligible worker:
- (a) Full day absences for personal reasons other than sickness or disability.
 - (b) Full day absences due to illness or injury if bona fide sick pay/disability plans are in place or the employee takes unpaid FMLA leave.
 - (c) Offsets for amounts received by the employee for jury fees, witness fees, or military pay.
 - (d) All of the above.

Answer: (d) is the correct answer. Under the FLSA, deductions from pay for an exempt employee are permissible for the following reasons:

- When the employee is absent from work for one or more full days for personal reasons other than sickness or disability.
- When the employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness.
- To offset amounts employees receive as jury fees, witness fees, or military pay
- For penalties imposed in good faith for infractions of safety rules of major significance.
- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.
- During the first or last week of employment if the employee does not work each day of the workweek, *i.e.* the employer must pay the employee only for the days worked.
- For weeks in which the employee takes unpaid leave under the FMLA.

5. To qualify for the FLSA's "administrative exemption, which of the following tests must be met:

- (a) The employee's primary duty must be the performance of office or on-manual work directly related to the management or general business operations of the employer or the employer's customers, including the exercise of discretion and independent judgment with respect to matters of significance.
- (b) The employee must have a college degree or acquire their knowledge of how to perform their job through a prolonged course of specialized intellectual instruction.
- (c) The employee must be compensated on a salary or fee basis at a rate of not less than \$684 per week.
- (d) A & C only.
- (e) All of the above.

Answer: (d) is the correct answer. The requirements for the administrative exemption are as follows:

- The employee must be compensated on a salary or fee basis at a rate not less than \$684 per week.
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- The employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

No educational or field of study requirements apply to the administrative exemption.

The Department of Labor has provided the following additional guidance about the application of the primary duties test:¹

“Primary duty” means the principal, main, major or most important duty that the employee performs. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole.

To meet the “directly related to management or general business operations” requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work “directly related to management or general business operations” includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

The term “matters of significance” refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee’s duties may cause serious financial loss to the employer.

We hope you have enjoyed our eighth annual final exam. We hope to see you in 2021 at our other Employment Briefings. Stay tuned!
