

MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Employment Discrimination Law

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Hypothetical Case 1

Jane Woe worked for The Salvation Navy from 1985 until she was fired on March 18, 2005. Woe's excellent work history at The Salvation Navy reflected increased advancement and responsibilities and numerous managerial positions. In May 2000, Woe accepted the position of Associate Director of Programs and was, in effect, during this period of time, Executive Director in all but title. Before her promotion, Woe and Larry Dugan, the Executive Director promised Woe that in exchange for Woe doing all the work and not disturbing him, he would promote her to the job of Executive Director when he retired.

At no time during the course of her employment at The Salvation Navy did Woe receive any oral or written warnings of any kind. All her evaluations show Woe as a hard working, responsible, talented, caring and dedicated employee with excellent administrative ability. When Dugan retired, Woe was eminently qualified for the position of Executive Director. Instead of selecting Woe for the position, The Salvation Navy hired John Sludge, a male from the outside, who was less qualified than Woe.

Sludge began working for The Salvation Navy in January 2005. In addition to at least one department head meeting, Woe had five different lengthy one-on-one meetings with Sludge between January 2005, when Sludge began working at The Salvation Navy, and March 18, 2005, the day Woe was fired. When Woe asked Sludge for his thoughts on her performance, Sludge was very positive and complimentary, stating that he had learned to trust and respect her work and thanked her for working so hard. At no time during any of the five meetings did Sludge ever express any criticism of Woe or Woe's job performance.

On March 16, 2005, Sludge told Woe to fire John Strait, a homosexual. Woe refused because there was no valid reason, except that Sludge did not like working with homosexuals. On March 18, 2005, Woe was terminated for what was reported as "inability to do her job."

Jane Woe has come to you for advice. What potential claims does Jane Woe have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Same facts as in Hypothetical 1. Jane Woe has brought a lawsuit against The Salvation Navy and filed suit in the state superior court including a federal claim. The Salvation

Navy has come to you for advice and to defend the case. What defenses are available to The Salvation Navy? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Tom Finn began his employment with Accidental Insurance Company ("AIC") in August 1977, as an outside claim representative. As a result of his professional competence and performance, Finn received raises and promotions and was promoted to Head of the Subrogation Unit in 2000. Finn always received above-average annual appraisals. While Finn was Head of the Subrogation Department from 2000 until 2004, the department never missed a year end major goal, and the Subrogation Unit always had excellent results. Finn went away on vacation and returned in late August 2004, at which time he was relieved of his duties as Unit Head Supervisor of the Subrogation Department, without any valid reason, and was assigned to the Auto Damage Unit performing the function of a Claim Representative, a demotion but one without loss of title or salary. Finn was replaced by a much younger person in her early twenties, who was not as well qualified as Finn.

From the beginning of his transfer in the Auto Damage Unit, Finn received a full case load, even though in his twenty-seven (27) years in the Claim Department he never directly handled that type of claim. Although Finn requested help, he received minimal help from his immediate supervisor, Terry Cotter, and rarely received any advice from Cotter regarding auto damage claim handling and the mechanics of handling the files.

Finn contends that AIC intentionally and systematically caused Finn to have excessive case loads, under staffing, and a stressful atmosphere to force Finn out. Finn's work load was so heavy and demanding, that he could easily be subjected to complaints about the quality of his work. Finn always performed his work in a fully competent and professional manner, and if there were any problems concerning his work performance, it was not as a result of his failure to perform to his best ability, but it was rather the fact that the work load was so heavy, that no one could perform it successfully.

Finn contends that AIC is engaged in a pattern or practice of discriminating against older workers by increasing their work load beyond their ability to perform it successfully, and that there were a number of employees over the age of 40 who were given excessive case loads and excessive work loads for the purpose of forcing them to quit.

As a result of the excessive work load and the constant harassment, Finn took a medical leave of absence on or about January 4, 2005. Finn began to have suicidal thoughts and tendencies with erratic and violent behavior. Finn required a reasonable accommodation in order to return to work. Finn was prepared to return to work at AIC, if AIC provided a reasonable accommodation. AIC refused to provide Finn a reasonable accommodation. Although Finn never received any formal notification, he contends that he was terminated, effective May 8, 2005, while he was out receiving workers' compensation benefits.

Tom Finn has come to you for advice. What claims does Tom Finn have? What course of action would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 4

Same facts as in Hypothetical 3.

AIC has come to you for advice. What defenses would be available to AIC? What course of action would you recommend and why?

LIMIT: Three (3) blue book pages

ALL ANSWERS MUST BE IN ONE BLUE BOOK.

Good Luck!!