

Instructions:

1. This examination consists of four (4) pages, including this cover page. There are two questions.
2. Read the whole exam and figure out what goes where before you begin your answer.
3. This is an open book, open material exam.
4. Time allowed is three hours. Watch your time so you can fully answer both questions.
5. Use ink and write on every other page of the bluebook. Write legibly.
6. **THIS EXAM MUST BE RETURNED WITH YOUR BLUEBOOK(S).**
7. Good luck!

Continue on to the questions...

QUESTION I

(one hour and thirty minutes)

Starbucks Coffee Franchises of Northern New Jersey (SCFNNJ) opened 12 coffee houses since 1993, with 8% of those hired being African Americans. Khaleen Brooks, an African American, tried to apply for a job at the Livingston store but was told by a cashier that since there were no openings, there was no point in having him fill out an application. The following day Steven Storeson, who is white, applied. After filling out the application and being briefly interviewed by Polly Paulsen, who told Storeson that she was an assistant manager, Storeson was hired to start work the next day.

When asked why the cashier had told Brooks that there were no openings, the Livingston store manager, John Petillio, said that cashiers could not be expected to know of job openings. He also said generally people applying for jobs did ask the employees behind the counter, including cashiers, for applications and that the assistant manager on duty was to review the application on the spot and decide whether to proceed to an interview. If there was an opening and if the interview went well, the assistant manager was authorized to hire the person. If no opening existed at that moment, the assistant manager was supposed to decide whether or not to put the application in a "call back" file maintained in the manager's office. When openings subsequently arose, the store manager could use the call back file if necessary.

Sandra Levinsky, the human resources director for SCFNNJ, said that the same system was used at all its stores and that store managers and assistant managers made all hiring decisions based on the applications and the interview of the applicants.

Dr. Rosalind Greenman, a professor at Fairleigh Dickenson's statistics department, did an analysis of the labor market in Northern New Jersey. Based on Census Bureau statistics, African Americans comprise 24% of the food preparation and service workers in Northern New Jersey. She then did an analysis of average travel times for African American workers in the food services industry and compared that to the residential patterns surrounding the 12 Starbucks stores. Based on the demographics of each of these distinct markets and the relevant travel times, Dr. Greenman concluded that blacks comprised 20% of the relevant labor pool for 10 of the 12 Starbucks stores and but only 10% for the remaining two.

Employing the binomial distribution statistical technique, Dr. Greenman concluded that there was less than one chance in 100,000 (0.00001) that Starbucks's observed hiring patterns in the 10 store group could have resulted from race-neutral hiring practices. She found not statistically significant the difference between the number hired and the number which would be expected to be hired in the other 2 stores.

Reviewing the applications from the 10 store group, Dr. Greenman found that 30% of the approximately 1,000 applicants of known race were African Americans. Comparing the rate of application with the rate of hiring, Dr. Greenman again used binomial distribution and concluded that there was less than one chance in ten thousand (0.0001) that Starbucks' observed hiring practices resulted from race-neutral hiring practices in that 10 store group.

Dr. Nathan Casman, a statistics professor at Kean College, did a study finding that in the 10 store group, more than half of all workers lived within one mile of the store at which they worked, and more than 80% lived within three miles. Almost half of the employees were high school students and a majority of the employees worked part time.

He concluded that most persons working for Starbucks are young, are seeking part time employment and reside within a short distance from the store.

Assuming the above reflects the record in the case, what theories of discrimination law apply and what outcomes would you predict?

Continue on to Question II on page 4...

QUESTION II
(One hour and thirty minutes)

Michele Michaels worked for Prudential Life Insurance Company as a manager of information services. In that job she had to maintain a large group of computer stations and PC networks and train and upgrade clerical workers in the use of computers at the Roseland, New Jersey office of the health insurance branch of Prudential. In early 1995, Michaels, a Baptist, took a religious vow to at all times wear an anti-abortion button "until abortion ends or I drop dead." The button was about three inches in diameter and showed a color photograph of an aborted twenty-two week old fetus. Printed on the button was the message, "Stop Abortion Now."

Michaels' wearing of the button caused an uproar in the workplace. On the first day she wore it, several employees who she worked with regularly asked her to stop wearing the button because it upset them. Felicia Brown, a Roman Catholic, told her that she supported position on abortion but that the button evoked deep anxiety for her because it brought to mind her earlier miscarriage and the death of her sister's premature baby. Sylvan Snyder also asked Michael's to stop wearing the button because it made him think of the infertility problems he and his wife were facing. Michaels explained that God had told her she had no choice but to wear the button and that they would just have to tolerate it.

Some of the reaction to Michaels was less reasoned. After Michaels had worn the button every day for a week, a number of employees in the office gathered at the office of the supervisor, Harold Wackstrom, to complain. In loud voices that everyone, including Michaels could hear, Danny Delano and Barbara Palmer, shouted words to the effect that, "We just can't take any of this holier than thou crap! PLEASE, make her stop this campaign to turn us all into Jesus freaks."

The next morning when Michaels came to work, she found a cartoon on her desk of a stick figure on a crucifix, with the words, "Get off our case or get to this place." Some red liquid was poured over the papers on Michaels' desk and on her computer keyboard.

That morning Harold Wackstrom met with Michaels and told her she had to stop wearing the button or, at least, cover the button up when she was in the office. He told Michaels that "work was grinding to a halt over this button and something had to be done." Michaels responded, "Just order the heathens to do their jobs or fire them. God told me I must show that I am bearing witness to the righteous cause. How can I do that covering up my beliefs?"

After Wackstrom met with all the employees in the office outside Michaels' presence, he again called Michaels into his office and told her, "I just can't get them to agree to back off. They are too upset to listen. So, the ball is in your court." Michaels said, "Well, then I have to quit." She then left the workplace and has not returned.

What claims can Michaels bring and will they be successful?

END OF EXAM, PLEASE TURN IN THE EXAM WITH YOUR BLUEBOOKS.