

**Question 1.**

Susie loves roller coasters. Recently, Susie went to an amusement park that had a roller coaster advertised to be one of the best in the world. While Susie was on the roller coaster, she was ejected from her seat and suffered T.B.I. when the roller coaster went slightly off its track. The malfunction was the result of a manufacturer's defect, but had she been properly secured in the roller coaster's seatbelt by one of the ride operators, she would not have been injured. Susie cannot identify which ride operator buckled her in.

Susie seeks legal advice.

- A) Susie can sue the amusement park, and will probably win, because one of the ride operators failed to properly buckle her in.
- B) Susie can sue the amusement park, and will probably win, because the ride operators did not perform a reasonable inspection of the ride and did not discover the ride's defect.
- C) Susie can sue the amusement park, but will probably lose because she cannot specifically identify which employee was negligent.
- D) Susie can sue the amusement park, but will probably lose because her injury was caused by a defect that was present in the roller coaster at the time it was purchased from the manufacturer, and thus only the manufacturer is liable.

Answer: (A) – The amusement park is vicariously liable for the negligence of its employees, so long as the negligence occurs within the scope of their employment. Here, the ride operator was an employee and securing the seatbelt was within his job duties. When he performed his job negligently, he exposed his employer to liability. Here, it does not matter that Susie cannot identify the specific employee (if she could, she should sue him, too).

## Question 2.

Victor works as an angio tech at University Hospital. Victor is also a veteran member of the United States Army Reserve, and has obligations one weekend per month and two weeks per year. Sally is Victor's supervisor at the Hospital. Sally finds Victor's monthly responsibilities with the reserves disruptive to the members of the angio unit and openly criticizes Victor for choosing to engage in a "bunch of smoking and joking and a waste of taxpayers' money." Although Victor advises Sally that he must report to the Reserves the first weekend of June, she schedules him to work at the hospital anyway. When Victor does not show up to work for the first weekend in June, Sally fires Victor.

Victor seeks advice of counsel.

- A) Victor has no case because the default rule in New Jersey is that employment is "at will"—either party can terminate the relationship for any reason, or no reason at all.
- B) Victor has no case because the law only protects soldiers who are deployed, not reservists.
- C) Victor has a case under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq.
- D) Victor does not have a case, but the U.S. Army Reserve, as a unit of the federal government, can bring a lawsuit against the Hospital for interfering with their operations.

Answer: (C) – USERRA prohibits adverse employment actions based on military status. 38 U.S.C. § 4311(a), (c)(1).

### Question 3.

Same as above, except Sally does not have the authority to fire Victor. Frank, the Manager of Human Resources for University Hospital, oversees all hiring and firing. After Victor does not show up during the first week of June, Sally writes Victor up and issues a warning. The same scenario repeats in July, and Sally notifies Frank that Victor has a problem with absenteeism. Frank does not know Victor well, and is not aware that he is in the U.S. Army Reserve. Frank reviews Sally's report and the warnings she issued to Victor. Frank does not investigate any further because it is clear that on multiple occasions Victor was scheduled to work and failed to show up. Frank terminates Victor.

Victor seeks advise of counsel.

- A) Victor has no case because although Sally had animus towards him, Frank did not even know that Victor was a reservist and it was Frank who made the ultimate decision.
- B) Victor has no case because he was absent on days that he was scheduled to work, and that was what he was fired for.
- C) Victor has a case under USERRA because Frank did not conduct an independent investigation.
- D) Victor has a case because it does not matter who discriminates, as long as someone in the company discriminated against him.

Answer: (C) – Because Frank did not conduct any investigation, he merely adopted Sally's position, including her discriminatory intent. This is referred to as the "cat's paw" theory, which is named after a fable in which a monkey tricked a cat into reaching into burning flames to retrieve roasting chestnuts. The monkey got the chestnuts using the "cat's paw," and the cat (like the hospital) got burned.

#### Question 4.

Phil is in a car accident and suffers various serious injuries, which ultimately leave Phil paralyzed from the waist down. After several months of recovery and as a result of Phil's perseverance, Phil is able to move around using a wheel chair and can perform most daily tasks. While he was recovering, Phil's employer held his job for him and agreed to let Phil come back to work. Phil is ready to go back to work, and arranges a meeting with his boss to discuss a few accommodations so that Phil can do the work he did before. At the meeting, Phil's boss responds that although he was able to hold Phil's job, he will not consider making any of Phil's proposed accommodations, and that Phil can either take his old job back or leave it.

Phil meets with a lawyer to discuss his options.

- A) Phil's employer has already its their burden under the applicable federal and state law because they held Phil's job for him. Thus, Phil has no case.
- B) Phil's employer has already satisfied its burden under the applicable federal and state law because they held Phil's job for him and met with him to hear his request for accommodations. Thus, Phil has no case.
- C) Phil's employer has not satisfied its burden under the applicable federal and state law because even though they held Phil's job and met with Phil, they did not engage in a back-and-forth discussion about what Phil would need to return. Thus, Phil has a valid case.
- D) Phil's employer has not satisfied its burden under the applicable federal and state law because the employer has a duty to accommodate whatever needs Phil has, and the employer failed to do so. Thus, Phil has a valid case.

Answer: (C) – Under the federal Americans with Disabilities Act and New Jersey's Law Against Discrimination, Phil's employer is required to engage in an interactive process—a back-and-forth discussion—regarding Phil's needs. After the interactive process, the employer will be required to make reasonable accommodations.

### Question 5.

Nurse Helen works at Special Care Clinic. One day in June, Nurse Helen learns that some of the medical waste the clinic produces is disposed of in contravention to state regulations. Nurse Helen is very disturbed by her discovery because it can be extremely dangerous to patients and the public at large. Nurse Helen discusses her discovery with the Director and CEO of the Clinic, who assures her that he will investigate what she has discovered. Several weeks later, Nurse Helen notices that the same problems she observed are still occurring. Nurse Helen contacts the Board of Medical Examiners (BME) to discuss the issue she observed and to find out what she should do. The BME commences an inquiry into Nurse Helen's allegations. The CEO realizes that it must have been Nurse Helen who probably filed a complaint with the BME and he terminates her employment at Special Care Clinic, stating she had caused Special Care too much trouble by being a complainer. Ultimately, the BME concludes that no violation occurred.

Nurse Helen goes to see an attorney.

- A) Special Care Clinic will likely prevail because in New Jersey, employment is "at-will." An employee may be terminated at any time for any reason or no reason at all.
- B) Special Care Clinic will likely prevail because, and the BME ultimately confirmed, they did nothing wrong and Nurse Helen caused trouble over nothing.
- C) Special Care Clinic will prevail because Nurse Helen was a complainer and therefore a difficult employee.
- D) Nurse Helen will prevail because she reasonably believed Special Care Clinic was violating a law or regulation, and a further reasonable belief that Special Care's conduct constituted improper quality of patient care.

Answer: (D) – Under the Conscientious Employee Protection Act ("CEPA"), section 34:19-3, an employer shall not take any retaliatory action against an employee because the employee discloses, or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the employer that the employee reasonably believes is in violation of a law, or a rule or regulation, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care.

### Question 6.

Dr. Wilma and Dr. Mark work together in the same hospital. Dr. Mark is Dr. Wilma's direct supervisor. Soon after Dr. Wilma starts working for Dr. Mark, he asks her to meet with him for dinner and tells her he wants to discuss their work at the hospital. Dr. Wilma agrees, but when she meets Dr. Mark for dinner he is only interested in discussing how attractive he finds her and how he wishes to see Dr. Wilma "outside the hospital." Dr. Wilma explains that she wishes to keep their relationship professional only. Not deterred, Dr. Mark begins to send Dr. Wilma flowers at work, he takes opportunities to find Dr. Wilma alone to remind her that he is still interested in pursuing a romantic relationship with her, and he starts to text message Dr. Wilma sexually suggestive messages. After several weeks and no success, Dr. Mark tells her that if she does not go out with him, her tenure at the hospital will probably be very unpleasant. Dr. Wilma files a formal complaint, but no action is taken. A few weeks later, Dr. Wilma quits because she does not want to deal with Dr. Mark anymore.

Dr. Wilma goes to see a lawyer.

- A) Dr. Mark is probably liable for sexual harassment for the persistent comments and threat to Dr. Wilma's employment.
- B) Dr. Mark and the hospital are liable for violations of federal and state anti discrimination laws—Dr. Mark for his actions, and the hospital for doing nothing about it.
- C) The hospital is liable for Dr. Mark's actions and for their own inaction, both of which are violations of federal and New Jersey anti-discrimination laws.
- D) The hospital will likely prevail because nothing bad really happened, and Dr. Wilma quit on her own accord.

Answer: (B) – Both the harasser and the employer are liable—the harasser for the actual acts, and the employer because the harasser was acting on the employer's behalf. The hospital is further liable for taking no action, which it has an obligation to do once a complaint is made. Although the appropriate action is determined by the hospital, the hospital cannot do nothing. Also, even though Dr. Wilma quit, the hospital's inaction caused the termination of her employment, resulting in a constructive discharge, or equivalent of termination.