

Which Company Committed Employment Discrimination?



Human rights laws make it illegal to base employment decisions on a person's race, religion, national origin, gender, disability, and other personal characteristics listed in the law. But there's also a major exception. It's not discrimination to deny employment on the basis of protected characteristics that legitimately interfere with the person's abilities to carry out the functions of the job. This is called the "bona fide occupational requirement" (BFOR) rule and here's a scenario-based quiz to show you how it works in the real world.

Situation

Company A, a taxicab company, reassigns a driver to a non-driving position after he loses his vision in an accident.

Company B, a company that performs drug testing, advertises a position that involves collecting urine samples from male prison inmates as "male only."

Company C, a warehouse company, refuses to consider hiring a female for a job that requires manual lifting of heavy crates.

Company D, a telecommunications company, refuses to hire an immigrant who speaks English with a heavy accent as a customer sales receptionist.

Question

Which company/companies committed employment discrimination?

Answer

Company C is the one most likely to be found liable for discrimination.

Explanation

While all 4 companies denied employment to a person based on a protected characteristic, unlike the other 3, Company C doesn't have a strong BFOR defence.

Explanation: To justify an otherwise discriminatory policy or practice as a BFOR, the employer must prove that it:

- Serves an important, non-discriminatory purpose rationally connected to the purpose of the job.
- Was adopted in the good faith and honest belief that it was necessary to fulfill the non-discrimination purpose.
- Really was reasonably necessary and that there was no other reasonable way to accomplish the purpose.

Company C would have the weakest BFOR case. While heavy lifting may be essential to the job, a woman might be just as capable of performing those tasks as a man. So, categorically ruling out women for the job isn't based on a female applicant's actual physical capabilities but on gender-based stereotypes about women being less physically strong than men. So, Company C would be the most likely to be found liable for discrimination.

Why Wrong Answers Are Wrong

Company A wouldn't be liable even though visual impairment is a disability that human rights laws protect against discrimination. That's because the ability to see is a BFOR for a driving position. As a result, it wouldn't be discriminatory to remove the driver from that job because he lost his sight. **Caveat:** Employers must make reasonable accommodations for disabled employees and job applicants to the point of undue hardship. While allowing a blind employee to keep driving would be undue hardship, Company A must consider reasonable accommodations that would allow him to stay with the firm, such as reassigning him to a non-driving job, as an alternative to terminating his employment.

Company B wouldn't be liable because it should be able to prove that being male is a BFOR to the extent that having medical workers of the same sex as the patient collect urine samples and conduct other intimate operations is deemed essential to patient dignity. Forcing employers to hire females to collect urine samples from male patients would be unreasonable and impose undue hardship on the employer.

Company D wouldn't be liable if it can show that speaking unaccented English is a BFOR for the service representative position and that having a heavy accent would interfere with the applicant's ability to engage in the kind of communication with English-speaking customers that's essential to do the job effectively.