

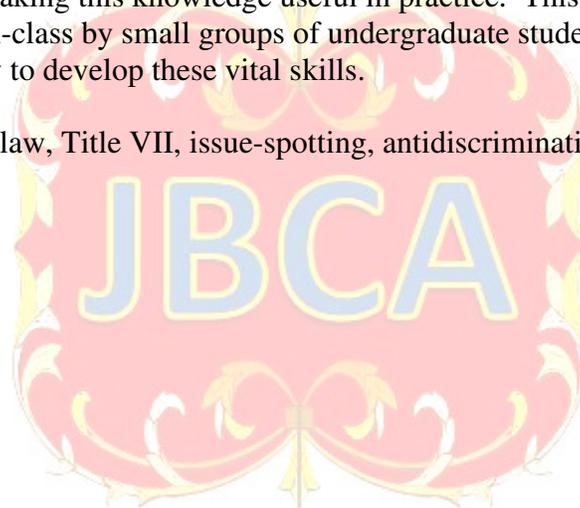
## **No Kidding Around: A case study to develop issue-spotting skills for Title VII issues**

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### **ABSTRACT**

Title VII of the Civil Rights Act of 1964 is the foundation of American antidiscrimination laws. Over time, the protections of Title VII have been slowly expanded by additional legislation (such as the Americans with Disabilities Act and Pregnancy Discrimination Act) and by Court rulings (such as the recent Bostock v. Clayton County decision). Understanding the basics of Title VII protections is a key skill for business leaders and a part of a standard undergraduate business curriculum. This case study provides students an opportunity to apply this knowledge. Issue-spotting skills, or the ability to study a situation and apply the learned knowledge, are vital to making this knowledge useful in practice. This fictional hiring case study, designed for use in-class by small groups of undergraduate students, provides a colorful and engaging opportunity to develop these vital skills.

Key words- employment law, Title VII, issue-spotting, antidiscrimination laws



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## INTRODUCTION

Developing a basic understanding of federal antidiscrimination laws, and in particular to Title VII of the Civil Rights Act of 1964 (Title VII) is a key learning goal for most undergraduate legal education courses. One effective strategy to build this understanding is through the use of case studies.

This case exercise is designed for use in a basic undergraduate legal education course. The case is intended to be studied as an in-class, group activity. By the use of colorful facts student dialogue and interaction is encouraged. The problem itself should encourage application and development of critical reading skills. Peer-to-peer interaction can form a critical part of the learning process and this exercise encourages this in a positive manner.

In terms of format, this assignment should follow introduction of relevant concepts from Title VII and other subsequent antidiscrimination laws. The activity can also be used as a test review, to confirm mastery of these concepts before a final evaluation on the Title VII and other employment law issues.

Student groups should be given time to read the assignment individually, followed by a period of time to discuss the questions posed and to formulate answers in small groups. During the group discussions the instructor may choose to visit each of the groups to answer questions and, as necessary, facilitate productive discussions. The groups should then prepare a set of answers that would be submitted upon the end of the class. All groups would then reconvene for a guided discussion on the law and facts. Attached at Table 1 (Appendix) is a proposed timeline for a 75 minute course.

Some factual issue raised in the problem may not have a clear answer with the information provided. This is intentional to facilitate discussion and to encourage students to reflect upon the deeper issues raised in this area of the law. Consideration of what additional information may be required to make a determination is a part of a critical thinking analysis. (Paul, 2010).

This is a fictitious case. All information contained herein was fabricated by the author(s). Any similarity contained herein to actual persons, businesses, events, etc. is purely coincidental and is the responsibility of the author(s). Please contact the case author(s) directly with any concerns.

## THE CASE

Jessica manages a children's clothing store named Well-Dressed Whipper-Snappers in Poosey Ridge, Kentucky. The boutique sells high-quality clothing for children aged birth to 10 years. The store is in need of new staff to deal with the holiday rush. While the immediate need is seasonal, the boutique always needs new workers and the employment could well become permanent with good performance.

The job duties involve selling clothes to parents, knowing about children's products and operating a cash register. Jessica places an ad on a local jobs web site and receives numerous applications. She selects 5 applicants that all appear qualified to interview. During interviews in which no inappropriate questions were asked, she learns the following about the applicants:

- Katie is a 20 year old college student with no retail experience who wants to work a few hours a week around her busy schedule of sorority events.

- Elise, age 43, is eager to leave her part time job at a major retail chain for a job with more hours. She has worked the past 5 years selling tires and usually hates children but says she can tolerate them for the extra money.
- Frank is a 52 year old who just moved to Ohio from Arizona. He is single and has never had children of his own. He has not worked for the past few years but before that worked for 10 years as the manager of children's clothing store of his own in Minnesota.
- Francis is 35 and has eight children of her own. She needs a job for money to care for her family. Without prompting, she volunteers that she hopes to have a seventh child so she can star on a reality TV show she has designed, called Eighth-Heaven. The show will chronicle her adventures as a wily single parent raising 8 crazy kids.
- Carol is 57 years old and is a recovered alcoholic. She has three grandchildren of her own and loves being around kids. She has never worked outside the home. Because of a science-lab accident in college she is forced to wear special dark glasses while in natural sunlight. Because of early arthritis, she cannot sit on any chairs that do not have cushions. She is concerned that the store only has a hard wooden stool for employees.

Jessica is disappointed with the applicant pool. She confides to her assistant manager that she believes that Katie is too young to be reliable and that she would not want to hire her. Jessica thinks Frank is creepy because he is a grown man who wants to work around children. Since the store is next to a restaurant that serves alcohol, she does not think she should hire Carol out of fear she will fall off the wagon. With this in mind, she hires Elise.

### CASE DISCUSSION QUESTIONS

1. Please identify any particular protected class designations that might be implicated for each applicant.
2. Please analyze if you believe any potential discrimination claims exist for each particular applicant. What factors should Jessica not consider in making her decision? What factors should be considered in evaluating job applicants?
3. Please analyze Jessica's statements in terms of Title VII and other antidiscrimination laws.
4. Please state who you would suggest she hire and why.
5. In this situation, which factors among the applicants should be considered in making the hiring decision?

### TEACHING NOTE/DISCUSSION GUIDE

There are a multitude of potential issues in the problem text. These various facts are designed to spark student enthusiasm and discussion of the core legal issues as well as the goals and challenges of applying antidiscrimination law.

The key issues raised by each of the applicants is as follows:

Katie- Many students might be tempted to identify her age (20) as an impermissible consideration. However, the Age Discrimination in Employment Act (ADEA), establishes only age greater than 40 years as a protected class. Her limited availability to work due to her social schedule is certainly a valid factor to consider.

Elise- She does have retail experience, which could certainly be considered (although the relevance of tires to clothing sales is debatable. Her attitude of hating children is not a protected

class but will probably be considered a less-than-ideal factor. Her desire for more hours is certainly a factor that could be considered.

Frank- In light of Jessica's comments, Frank may well have valid claims for discrimination based upon his sex and age. Jessica's statements about him should immediately flag students as to the possible issues here. Students may well discuss an alternative if Jessica had just considered him merely "creepy," without reference to his age or sex and if such an assertion might not violate antidiscrimination laws. His past work experience is certainly a positive factor but some students may raise questions about his recent period not working. Discussion should point out that relevant work experience is always a valid factor to consider in hiring decisions.

Francis- Students should explore the scope of the Pregnancy Discrimination Act of 1978 in their answer. Notably, this law protects not just individuals who are current pregnant from discrimination but also precludes consideration of future pregnancy (or the lack thereof) from consideration as a permissible factor in employment decisions. However, her desire to appear on a reality TV show is probably a factor that could be considered, either as a positive or negative. Some might argue the show might provide good publicity for the store. Others might consider this a negative. This may open the door to further discussions on the relevance of social media presence and appearance in making job decisions.

Carol- Carol's lack of work experience and love of children would certainly be permissible factors to consider in evaluating her job prospects. However, other aspects of her presentation give students an opportunity to apply ideas from the Americans with Disabilities Act (ADA). The ADA specifically prevents discrimination against recovered alcoholics and other addicts, such as Carol. Carol also suffers from two conditions (the need for special glasses and arthritis), which would also both be protected as disabilities under the ADA. Both her need to wear glasses and for a comfortable chair would likely be considered conditions for which an employer would be required to provide a reasonable accommodation, assuming Carol is a reasonably qualified employee.

The various issues described above should serve as a jumping-off point to further discussions on the applications, goals, and challenges in current federal antidiscrimination laws. The colorful facts will encourage student engagement and retention of the underlying concepts of law.

Students and groups should be graded for participation and engagement in the assignment, rather than with the expectation that they would all identify all of the issues present. This is an exercise to teach skills of issue-spotting by application of antidiscrimination laws, not intended as a comprehensive evaluation of those skills.

Students should be encouraged to debate the gray area questions and missing facts regarding some of the applicants. This sort of debate and discussion is a key part of the learning process. Debating what might be discrimination and what might not advances learning goals. The dialogue lets students learn from each other. This discussion can also illuminate one of the core difficulties of antidiscrimination laws in practice- oftentimes jurors, judges, and attorneys are tasked with diving the motivation of the defendant to a discrimination claim. The difficulty of reading, often after-the-fact, someone's "heart," is always a challenge in these types of cases. By engaging in constructive discussion and consideration of these topics, students will consider the larger goals and implications of antidiscrimination laws.

**REFERENCES**

- Age Discrimination in Employment Act, 29 U.S.C. § 621 to 29 U.S.C. § 634 (1968)  
Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).  
Paul, R. and Elder, L. (2010). *The Miniature Guide to Critical Thinking Concepts and Tools*.  
Dillon Beach: Foundation for Critical Thinking Press.  
Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e-(k) (1978))



**APPENDIX**

Table 1 Teaching Timeline

Activity	Time (Minutes)
Brief lecture review of key concepts, introduction to assignment	15
Individual Reading Time	10
Small Group Discussion, group appoints a scribe to prepare deliverable group answers and thoughts on topic and issues raised	25
Groups present and briefly discuss their responses, open discussion on interpretation of problems and application of law, guided discussion of issues	25
Total Time	75

