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**EMPLOYMENT DISCRIMINATION**  
**Semester I, 1999-2000**

**UNM School of Law**  
**Final Examination**

**Professor Margaret Montoya**  
**Wednesday, December 8, 1999**  
**Saturday, December 18, 1999**  
**9:00 a.m. to 1:00 p.m.**

**INSTRUCTIONS:** This is an open book exam. You may use the course casebook and supplement, your notes and any materials you have prepared yourself or with others. However, you are not to use any other written or electronic materials, including Lexis or Westlaw. You have up to four hours to complete the exam. [The first two scenarios are from the opinions of actual cases from the 10<sup>th</sup> Circuit; the third is from an article in the ABA Journal of Dec. 1999.]

**QUESTION #1(50 pts.):**

The Colorado Mental Health Institute at Pueblo (CMHIP) hired Lillian Rubidoux in 1989 as an entry-level registered nurse (Nurse IA) and Dana Wistoff in 1991 as a psychiatric technician to work in the Child and Adolescent Treatment Center (CATC). CATC was divided into five residential treatment units called "Cottages," and both Plaintiffs were assigned to Cottage A where Leonard Jimenez was lead nurse. Although Jimenez could not alone make hiring and firing decisions, he interviewed both Plaintiffs, and his recommendation was "quite possibly" the sole basis for their hiring, according to Division Director Dr. Kailish Jaitly. Jimenez set schedules, granted leave, conducted performance reviews, and could initiate hearings to formally consider employee performance.

Both women reported similar incidents in which Jimenez, weighing over 200 pounds, grabbed their faces and forcefully kissed them on the mouth; ordered them to isolated places in the cottage or on the grounds for some ostensible work assignments and used the isolation to grab their breasts, buttocks, and press himself against them. He also asked both to stay after work to discuss some problem and used the meeting to pry into personal matters, comment on their appearance, and hug or touch them upon departing. In each incident, Plaintiffs told Jimenez to stop or not to touch them.

In Ms. Rubidoux's case, although a Nurse IA is traditionally promoted to Nurse IB within a year, after twenty months Ms. Rubidoux asked Jimenez about her promotion, and he responded, "What's in it for me," if he got her promoted. After her last encounter when he forced her up against an examination table, told her he wanted to do a pelvic examination table, and reached under her clothes, she claimed because she rejected his advances, Jimenez subjected her to demeaning and humiliating treatment in front of the other Cottage A employees, calling her a "*pendeja*" (a stupid woman), and telling her she needed to go to obedience school.

When Ms. Wistoff was hired, Jimenez stated she "could be fired for anything," and his advances promptly began. In a final incident, Jimenez asked Ms. Wistoff to come into his office to discuss her recent divorce. Instead, he groped her, and she screamed and slapped Jimenez to make him release her.

Although neither Plaintiff reported these incidents, another female employee filed a complaint about similar actions taken by Jimenez against her. CMHIP immediately suspended Jimenez, investigated, and ultimately discharged him. Discuss each Plaintiff's claims of discrimination under Title VII.

**QUESTION #2 (50 pts.):**

Plaintiff Sharon Wright-Simmons, an African-American, began working in the Metro Transit Department in August 1990, where, as the Clerical Coordinator, she supervised four or five customer service clerks. From August 1990 until March 1993, Plaintiff's immediate supervisor was Vicki Harty. In March 1993, Harty was moved aside and Plaintiff thereafter reported directly to Terry Armentrout, the Assistant Director of Metro Transit. Armentrout, in turn, reported to Steve Klika, the Director of Metro Transit.

Armentrout frequently made racial slurs and racially derogatory comments. Armentrout also expressed the opinion that too many blacks worked in the department, and he treated the black employees in the department different than the white employees. In the summer of 1993, Plaintiff complained to Klika about Armentrout's racist language and conduct. Klika informed Plaintiff he would talk to Armentrout about his language, but told Plaintiff she should understand that Armentrout grew up in southern Oklahoma and was not racially sensitive. Klika subsequently told Armentrout to watch his language. Armentrout later took Plaintiff to task for complaining about his conduct to Klika, rather than directly to him. On December 12, 1993, Klika resigned as Director and Armentrout became Acting Interim Director. Armentrout immediately informed Plaintiff she was being demoted, and either Armentrout or Harty told her that she no longer needed to attend supervisory meetings. Armentrout also informed Plaintiff that she would no longer report to him, but would report to Harty.

Harty constantly watched Plaintiff on Armentrout's instructions. Harty and Armentrout discussed putting a monitoring device on Plaintiff's telephone. In January 1994 Plaintiff went to the personnel department and mentioned that she had been documenting discriminatory incidents and had names of witnesses who could corroborate her allegations. In investigating, the personnel department interviewed thirteen employees who confirmed Plaintiff's allegations concerning Armentrout. Armentrout was interviewed and allowed to respond to the allegations. After the personnel department report was prepared concluding that Armentrout's conduct was inappropriate regardless of the circumstances, the City Manager met with him and asked for his resignation. Armentrout resigned. Discuss Plaintiff's claims of racial discrimination and/or a racially hostile environment under Title VII.

**BONUS QUESTION (up to 10 pts):**

Pamela Martens sued Smith Barney for sexual harassment by her boss who bragged that his Long Island office was "the biggest whorehouse in Garden City." He routinely referred to women as "slits and tits," and he used to summon male brokers to a "Boom Boom" room where a toilet hung from the ceiling and men drank Bloody Marys from an oversized garbage can. During her eleven years of employment, Martens repeatedly complained about the harassment and hostility toward women but Smith Barney took no action until she went to an attorney. Then they placed her boss on leave, eventually announced his retirement, gave him a party and sent him off with full benefits.

Then Smith Barney fired Pamela Martens. She sued and was joined by 22 named plaintiffs representing a class of 23,000. Virtually every stock brokerage firm requires that employees sign compulsory arbitration agreements as a condition of employment (such provisions are valid under *Gilmer v. Interstate/Johnson*, 500 U.S. 20 (1991)). Martens is challenging the use of arbitration for employment discrimination claims. Discuss the pros and cons of such agreements in the context of the Title VII rights of employees.

**(END OF EXAMINATION)**