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Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill Education

September 2017 Volume 9, Issue 2

Contents

Dear Professor,

The fall season is near! Welcome to McGraw-Hill Education's September 2017 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 2017 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A wrongful death lawsuit filed by the parents of Gabriel Taye against the Cincinnati Public School district for their son's suicide allegedly resulting from bullying on school grounds;

2. A United States Department of Justice settlement with EpiPen manufacturer Mylan NV for allegedly overcharging the government's Medicaid program;

3. A recent decision by the United States Department of the Interior to end an Obama administration rule on coal royalties that mining companies had criticized as burdensome and costly;

4. Videos related to a) cyber-criminals demanding millions of dollars in ransom for hacked HBO files and b) the current controversy surrounding affirmative action admissions policies of Princeton University and other Ivy League schools;

5. An "ethical dilemma" related to a controversial internal memorandum circulated by James Damore, a (now former) software engineer at Google, regarding his opinions of women and their capability of succeeding in technology-related employment; and

6. "Teaching tips" related to the newsletter's Ethical Dilemma ("Google CEO: Anti-Diversity Memo Was 'Offensive and Not OK'").

I hope your fall semester is off to a great start!

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) A wrongful death lawsuit filed by the parents of Gabriel Taye against the Cincinnati Public School district for their son's suicide allegedly resulting from bullying on school grounds;

2) A United States Department of Justice settlement with EpiPen manufacturer Mylan NV for allegedly overcharging the government's Medicaid program; and

3) A recent decision by the United States Department of the Interior to end an Obama administration rule on coal royalties that mining companies had criticized as burdensome and costly.

Hot Topics in Business Law

Article 1: "Parents of 8-Year-Old Who Hanged Himself File Lawsuit against Cincinnati Schools"

http://www.cnn.com/2017/08/07/us/gabriel-taye-school-lawsuit/index.html

Note: In addition to the article, please also see the related video included at the above-referenced internet address.

According to the article, the parents of Gabriel Taye, the 8-year-old boy who hanged himself with a necktie in his Cincinnati home in January, have filed a lawsuit against the Cincinnati Public School district.

The civil rights and wrongful death lawsuit alleges the school did not properly respond to Gabriel being bullied at school and did not inform his parents of a bullying incident in the bathroom of his school that occurred two days prior to his death.

Security footage shows Gabriel falling unconscious at school in an incident that may have led to the boy's suicide, an attorney for his family said.

Cincinnati Public Schools said in a statement recently that they were aware of the lawsuit, but would offer no further comments regarding the matter.

"Our hearts are broken by the loss of this child, and our thoughts are with his parents and extended family. He was an outstanding young man, and this is a great loss for his family and our school community," the school district said.

After his death, a Cincinnati police homicide detective reviewed security video from the boy's school, Carson Elementary.

In an e-mail, the detective told school administrators he noticed an incident in a school bathroom before the boy died. The detective said he saw "bullying" and behavior that "could even rise to the level of criminal assault."

In May, school officials released the footage to the public after the detective's e-mail surfaced, but cautioned that the video does not necessarily show bullying. "It is our firm position that the allegations portrayed in the media are not supported by the video," the statement says.

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The lawsuit, however, alleges that Gabriel was knocked unconscious for over seven minutes.

In the 24-minute-long video, Gabriel appears to be shaking hands with another boy in the entryway of a bathroom before he falls on the floor and lies motionless.

Children walk by the boy and over his legs. Some seemingly inspect and poke him for about five minutes until an adult enters the bathroom.

At least three adults enter the bathroom. They look at the boy, and some kneel down to get closer to him.

Eventually, Gabriel stands up and leaves with the adults.

The lawsuit alleges that the school knowingly withheld the bathroom incident from Gabriel's parents.

After the incident, Gabriel was taken to the nurse's office, and his mom carried him to the hospital later that day when he began showing signs of nausea.

At that point, accounts begin to diverge.

Jennifer Branch, an attorney for Gabriel's mother, Cornelia Reynolds, said the school told Reynolds her son had fainted. There was no mention of what happened in the bathroom, Branch said.

But school officials said in a statement in May that a school nurse called Reynolds to pick Gabriel up from school and take him to the hospital. The school's statement did not say what was wrong with the boy.

Cincinnati Public Schools said its employees followed proper procedures.

"The school nurse checked Gabriel's vital signs, which were normal. She also contacted Gabriel's mother and asked her to pick him up and take him to the hospital to be checked out," the district said in a statement.

Gabriel stayed home the day afterward and returned to school the following day. That afternoon, the boy's mother found him dead in his bedroom.

The lawsuit alleges that there is "a culture of violence at Carson Elementary School that the School hid from the parents," Branch said in the press release.

"We are committed to student safety and ensuring that all CPS schools foster a positive, learning environment," the school statement says.

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"Gabriel was a shining light to everyone who knew and loved him," the boy's mother said in a statement. "We miss him desperately and suffer every day. His life was not only stolen from him, but from those of us who expected to watch him grow up and enjoy life. If I could, I would give anything to have him back."

Discussion Questions

1. What is a "wrongful death" lawsuit?

In a wrongful death lawsuit, the surviving family members of a decedent seek to recover money damages for the loss of their loved one due to the negligence of the defendant. The jury in a wrongful death lawsuit must determine what amount of money damages are appropriate for the loss of a loved one's life.

2. Define negligence.

Negligence is defined as the failure to do what a reasonable person would do under the same or similar circumstances. In order to prevail in a negligence case, the plaintiff must demonstrate, by the greater weight (preponderance) of the evidence, the following four factors:

a. The defendant owed the plaintiff a duty of care;
b. The defendant breached the duty of care he or she owed the plaintiff;
c. The defendant proximately caused the plaintiff harm (in other words, the defendant's wrongful actions were closely related to the harm sustained by the plaintiff); and
d. The plaintiff experienced damages (physical, economic, or both) because of the defendant's wrongful action(s) and the resulting harm.

3. In your reasoned opinion, and based on the facts presented in the article, is the Cincinnati Public School District legally responsible for the death of Gabriel Taye? Explain your response.

This is an opinion question, so student responses will likely vary. Obviously, if the parties do not reach a dispute settlement, whether the Cincinnati Public School District is legally responsible for the death of Gabriel Taye will be for a jury to determine based on the evidence presented in court.

Article 2: "EpiPen Maker Finalizes Settlement for Government Overcharges"

http://abcnews.go.com/Health/wireStory/epipen-maker-finalizes-settlement-government-overcharges-49276963

Note: In addition to the article, please also see the related video included at the above-referenced internet address.

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According to the article, EpiPen maker Mylan has finalized a $465 million government agreement settling allegations it overbilled Medicaid for its emergency allergy injectors for a decade — charges brought after rival Sanofi filed a whistleblower lawsuit and tipped off the government.

It is the second settlement with the Department of Justice that Mylan has made since 2009 for allegedly overcharging the government for its medicines.

A prominent senator and a watchdog group both criticized the latest settlement for being far smaller than the amount Medicaid was overcharged.

Mylan NV, technically based in England but with operational headquarters near Pittsburgh, became a poster child for pharmaceutical industry greed for hiking the list price of EpiPens repeatedly. It raised the price per pair from $94 in 2007 to $608 last year, while experts estimate it costs less than $10 to produce one EpiPen.

Last September, a House panel grilled Mylan CEO Heather Bresch about the skyrocketing cost of the devices, which patients inject in the thigh to stop a runaway allergic reaction to foods such as nuts and eggs or insect bites and stings.

Recently, the Department of Justice disclosed that its EpiPen case began when Sanofi-Aventis US LLC filed a lawsuit against Mylan under the False Claims Act.

The law allows individuals and companies to sue on behalf of the government over improper charges to government programs and to receive a share of any money recovered. Sanofi is to receive about $38.7 million. The federal government and all 50 states will split the bulk of the settlement.

Sanofi made a rival auto-injector called Auvi-Q. The French drug-maker recalled nearly 500,000 of its devices from the market in 2015, due to some not administering the correct dose of the hormone epinephrine to reverse a severe allergic attack.

EpiPens have long dominated the market and continue to do so, between their name recognition and deals Mylan has made to get preferable or exclusive coverage from insurers and prescription benefit managers.

According to the Justice Department, Mylan paid Medicaid, the joint federal-state health program for the poor and disabled, too-low rebates for EpiPens by improperly classifying the brand-name product as a generic. Drugmakers are required to pay Medicaid rebates of 13 percent for generic products it purchases, versus a 23.1 percent rebate for brand-name drugs, which cost far more.

EpiPen has been incorrectly classified since late 1997 as a generic product under Medicaid. Mylan acquired rights to EpiPen in 2007 and didn't change its classification.

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In addition, Mylan wasn't paying Medicaid a second rebate required whenever a brand-name drug's price rises more than inflation, which averaged less than 2 percent a year from 2007 through 2016.

Last fall, members of Congress grilled the federal Centers for Medicare & Medicaid about the discrepancies and whether it was taking any action. Announcement of a tentative $465 settlement soon followed, which upset some critics.

"DOJ is letting Mylan get off on the cheap for ripping off the government, and with no admission of wrongdoing," Robert Weissman, president of the consumer watchdog group Public Citizen, said in a recent statement.

Weissman and Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, both noted that the Health and Human Services Department's Office of Inspector General's investigated and concluded that Medicaid programs paid Mylan $1.27 billion more than they should have between 2006 and 2016.

"It looks like the settlement amount shortchanges the taxpayers," wrote Grassley, who authored parts of the False Claims Act. "The Justice Department doesn't say how it arrived at $465 million. ... Did the Justice Department consider the inspector general estimate?"

In the finalized settlement, Mylan agreed to enter a corporate integrity agreement requiring it to have intensive outside scrutiny of its pricing practices with Medicaid for five years.

Such agreements are commonplace when drug-makers settle fraud charges with the government, but they don't always prevent future misconduct.

Mylan was one of four companies that in October 2009 settled charges they didn't pay appropriate rebates to state Medicaid programs for multiple medicines. The companies paid back a combined total of $124 million.

Discussion Questions

1. As the article indicates, Mylan NV raised the price per pair of EpiPens from $94 in 2007 to $608 last year, while experts estimate it costs less than $10 to produce one EpiPen. In your reasoned opinion, should a pharmaceutical company be allowed to charge whatever the “free market” will bear in terms of commodities that are essential for health care, or should the government regulate prices in the pharmaceutical/health care industry? Explain your response.

This question “goes to the heart” of whether free market principles should apply to health care, and if so, to what extent. Some students may refer to the exorbitant increase in EpiPen prices as price gouging, particularly since the facts demonstrate that it costs less than $10 to produce one EpiPen. Student responses will likely vary in response to this question.

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2. As the article indicates, the United States Department of Justice recently disclosed that its EpiPen case began when Sanofi-Aventis US LLC (Sanofi) filed a lawsuit against Mylan under the False Claims Act. The False Claims allows individuals and companies to sue on behalf of the government over improper charges to government programs and to receive a share of any money recovered. Sanofi is to receive about $38.7 million. The federal government and all 50 states will split the bulk of the settlement.

In your reasoned opinion, should a whistleblower like Sanofi be allowed to participate in monies recovered from a defendant due to the defendant's violation of law? Why or why not?

This is an opinion question, so student responses will likely vary. Generally, it is difficult to be a whistleblower (although any company in Sanofi's position may take great satisfaction in helping to "bring down" a competitor)—offering a financial reward incentivizes a party to come forward with information related to the unethical and/or illegal practices of another.

3. As the article indicates, both Robert Weissman, president of the consumer watchdog group Public Citizen, and Senate Judiciary Committee Chairman Chuck Grassley, have noted that the Health and Human Services Department's Office of Inspector General's investigated and concluded that Medicaid programs paid Mylan $1.27 billion more than they should have between 2006 and 2016. Mylan settled the case with the United States Department of Justice for $465 million.

The settlement amount represents approximately 37% of the overcharge. In your reasoned opinion, was justice served in this case? Why or why not?

Students may be surprised to learn that the government commonly accepts such plea deals for "pennies on the dollar," but such a practice is based on the realization that it will take precious government resources (both time and money) to fully litigate a dispute, with no guarantee that litigating to a jury verdict (and perhaps through the appellate process) will result in "better justice." A settlement finalizes the matter, guaranteeing the administration of some degree of justice in the subject case.

Article 3: "Interior Dept. Scraps Obama-Era Rule on Coal Royalties"

http://www.foxbusiness.com/markets/2017/08/07/interior-scraps-obama-era-rule-on-coal-royalties.html

According to the article, the United States Department of the Interior recently scrapped an Obama-era rule on coal royalties that mining companies had criticized as burdensome and costly.

The Trump administration put the royalty valuation rule on hold in February after mining companies challenged it in federal court. Officials later announced plans to repeal the rule entirely.

The final repeal notice was published recently in the Federal Register and takes effect September 6.

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Repealing the rule "provides a clean slate to create workable valuation regulations," said Interior Secretary Ryan Zinke, adding that the repeal will reduce costs that energy companies would otherwise pass on to consumers.

Still, he said Interior remains committed to collecting every dollar due, noting that public lands are assets belonging to taxpayers and Native American tribes.

The valuation rule, crafted under the administration of Democratic President Barack Obama, was aimed at ensuring that coal companies don't shortchange taxpayers on coal sales to Asia and other markets. Coal exports surged over the past decade even as domestic sales declined.

Federal lawmakers and watchdog groups have long complained that taxpayers were losing hundreds of millions of dollars annually because royalties on coal from public lands were being improperly calculated.

Interior disputed that, saying in the Federal Register notice that the soon-to-be-reinstated regulations "have been in place for more than 20 years and serve as a reasonable, reliable and consistent method for valuing federal and Indian minerals for royalty purposes." As evidence, the agency noted that the Obama-era rule would have increased royalty payments by less than 1 percent a year.

Rules in place since the 1980s have allowed coal companies to sell their fuel to affiliates and pay royalties to the government on that price, then turn around and sell the coal at a higher price, often overseas. Under the now-repealed rule, the royalty rate would have been determined at the time the coal is leased, with revenue based on the price paid by an outside entity, rather than an interim sale to an affiliated company.

House Natural Resources Committee Chairman Rob Bishop, R-Utah, hailed the repeal, saying it would encourage more responsible energy development and spur investment in federal and Indian lands.

But conservation groups criticized the action, calling it a "sweetheart deal" for the industry that will deprive states of much-needed revenues. About half the coal royalties collected by the federal government is disbursed to states including Wyoming, Montana, Colorado, Utah and New Mexico.

Discussion Questions

1. As the article indicates, the coal extraction that is the subject of this article occurs on public lands, assets belonging to United States taxpayers and Native American tribes. The Department of the Interior acknowledges this. In light of the fact that the coal extraction is from public lands, should not the Department of the Interior attempt to negotiate the highest possible royalties from coal companies? Why or why not?

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Arguably, the United States Department of the Interior, a government agency representing the people, has an obligation to negotiate the highest possible royalties from coal companies. Remember, public land is involved here, and public land is collectively owned by the people. Also, keep in mind that coal is an exhaustible resource. Representing the people, the government has a "one-time opportunity" to demand compensation for this resource. Once it is gone, it is gone.

There is a public policy issue involved in this case as well. If the government rewards the extraction of coal, it is essentially encouraging the use of such energy, rather than the use of new, "greener" energy resources (wind, solar, etc.) The cheaper traditional energy resources are to extract and sell to the public, the longer our nation delays the ultimate transition to other forms of energy.

2. According to Interior Secretary Ryan Zinke, repeal of the royalty valuation rule will reduce costs that energy companies would otherwise pass on to consumers. If the repeal results in lower costs to energy companies, are consumers guaranteed a lower price for energy? Explain your response.

In your author's opinion, the strongest argument for lowering royalties on coal extraction from public lands is that coal companies will recognize cost savings and share those cost savings with the public in terms of lower energy prices. Nowhere is it "written," however, that just because a company recognizes costs savings, it will automatically share those cost savings with consumers. Coal companies could choose to fulfill other purposes with the cost savings and resulting higher profits, including dividends to shareholders, higher compensation to executives, etc.

3. As the article indicates, the royalty valuation rule was designed to ensure that coal companies do not shortchange taxpayers on coal sales to Asia and other markets. Coal exports have surged over the past decade, even as domestic sales have declined. In your reasoned opinion, should the federal government reduce royalties on coal extraction from public lands in the United States, when a percentage of that coal is being exported to other countries? Explain your response.

Student may find the following statistics interesting and relevant in formulating an answer to this question:

*According to the United States Energy Information Administration, the United States exported 60 million short tons of coal in 2016, equal to about 8% of U.S. coal production (**https://www.eia.gov/energyexplained/index.cfm?page=coal_imports**).*

*Based on United States coal production in 2015 of about 0.9 billion short tons, the U.S. estimated recoverable coal reserves should last about 283 more years. The actual number of years that those reserves will last depends on changes in production and reserves estimates. (**https://www.eia.gov/energyexplained/index.cfm?page=coal_reserves**).*

Some students may be incensed to learn that an exhaustible domestic energy resource is being exported to other countries, with the United States consumer gaining nothing from the deal!

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However, as mentioned in the statistics above, in 2016 the United States exported only 8% of domestic coal production. By any objective measure, this is a relatively low number, but again, students must realize that coal is an exhaustible resource. Once it is gone, it is gone.

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Video Suggestions

Video 1: "HBO Hackers Demand Millions in Ransom, Post More Stolen Files"

https://www.usatoday.com/story/life/tv/2017/08/07/hbo-hackers-demand-millions-ransom-post-more-stolen-files/547523001/

Note: In addition to the video, please also see the related article also included at the above-referenced internet address:

"HBO Hackers Demand Millions in Ransom, Post More Stolen Files"

According to the article, hackers using the name 'Mr. Smith' posted a fresh cache of stolen HBO files online recently, and demanded that HBO pay a ransom of several million dollars to prevent further such releases.

The data dump included what appear to be scripts from five *Game of Thrones* episodes, including one upcoming episode, and a month's worth of e-mail from the account of Leslie Cohen, HBO's vice president for film programming. There were also internal documents, including a report of legal claims against the network and job offer letters to top executives.

HBO, which previously acknowledged the theft of "proprietary information," said it is continuing to investigate and is working with police and cybersecurity experts. The network said that it still does not believe that its e-mail system as a whole has been compromised.

This is the second data dump from the purported hacker. So far the HBO leaks have been limited, falling well short of the chaos inflicted on Sony in 2014. In that attack, hackers unearthed thousands of embarrassing e-mails and released personal information, including salaries and social security numbers, of nearly 50,000 current and former Sony employees.

Those behind the HBO hack claim to have more data, including scripts, upcoming episodes of HBO shows and movies, and information damaging to HBO.

In a video directed to HBO CEO Richard Plepler, 'Mr. Smith' used white text on a black background to threaten further disclosures if HBO doesn't pay up. To stop the leaks, the purported hackers demanded "our 6 month salary in bitcoin," which they implied is at least $6 million.

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Discussion Questions

1. Define "white-collar" crime.

A white-collar crime is a wrong against society that does not involve violence or physical harm. In many instances, white-collar crimes involve the wrongful appropriation or misappropriation of money.

2. Define extortion. Define blackmail. Does the subject article involve extortion, or blackmail?

Extortion is generally defined as an illegal demand made by a public officer. Some jurisdictions have expanded the definition of extortion to include illegal demands made by non-public officials.

In jurisdictions where extortion is limited to the conduct of public officials, a non-official commits blackmail by making demands that would be extortion if made by a public official. In terms of whether the subject article involves extortion or blackmail, it would depend on the jurisdiction, but regardless, it would still be prosecuted as an illegal demand.

3. In your reasoned opinion, should HBO succumb to the demands of "Mr. Smith?" Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, HBO should not negotiate with white-collar criminals.

Video 2: "Princeton President on Admissions Process: 'Everybody Gets a Fair Shake'"

http://www.cbsnews.com/news/princeton-university-president-chris-eisgruber-race-admissions-college/

Note: In addition to the video, please also see the related article also included at the above-referenced internet address:

"Princeton President on Admissions Process: 'Everybody Gets a Fair Shake'"

According to the article, Ivy League schools are bracing for a fresh review of the role race plays in college admissions.

The Trump administration is investigating a series of complaints against Harvard University that say Asian American students are at a disadvantage.

In recent interview, the president of Princeton University discussed why he believes race should be a factor in the admissions process.

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Earlier this year, documents revealed Princeton admissions officers discussing the race and ethnicity of potential students in stark, sometimes uncomfortable terms.

Princeton University's president, Chris Eisgruber, says it is a controversial process, but a race-conscious approach is necessary.

"If we wanted to, we could take students who had only perfect GPAs and only perfect board scores and fill a class with them," Eisgruber said.

Eisgruber will soon welcome a new freshman class, packed with some of the best students in America, but every year his admissions officers are considering more than just academics.

"Let's be clear about this. This is part of our policy. We do take race and ethnicity into account in building a diverse campus," Eisgruber said.

The Supreme Court has ruled repeatedly that race is an acceptable factor in college admissions. It is estimated that minorities accounted for more than 43 percent of incoming students at Ivy League schools in 2015 -- up from 37 percent in 2010.

"We want our students to go out in the world and have an impact in a multicultural and diverse society and to produce those kinds of students, we need to have a diverse student body on this campus," Eisgruber said.

A group called Students for Fair Admissions is accusing elite colleges of discriminating against Asian American and white students using illegal caps on enrollment and higher academic standards for admission.

In a Washington Post op-ed, the group's president, Edward Blum, writes that racial preferences "punish better-qualified individuals and pit Americans against one another."

"I had a 2230 in SAT, not a perfect score but still not bad. I had a perfect score on the ACT as well as a 4.67 GPA, I believe," said Michael Wang.

In 2012, Wang applied to almost every Ivy League school but was only accepted to one.

"Had I been African American or Latino, I might have gotten into more schools. I'm not even sure myself," Wang said.

In 2015, federal civil rights investigators reported "no evidence that the (Princeton) University used separate admissions processes, reviews, or tracks by race." But according to documents released this spring, admissions officers did discuss applicants in racial terms: "no cultural flavor," reads one

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review of an Hispanic applicant. "Very few African Americans with verbal scores like this," reads another.

"Yes, I can guarantee that all of our students are held to an equal standard. It's tough to get into Princeton and it's tough to get into our other Ivy colleges regardless of what group you're from, but everybody gets a fair shake," Eisburger said.

Harvard also stands by its policy to consider race to enroll diverse classes of students.

In a statement, the university said, "Harvard's admissions process considers each applicant as a whole person, and we review many factors, consistent with the legal standards established by the U.S. Supreme Court."

Discussion Questions

1. Define affirmative action.

An affirmative action plan seeks to cure past practices of discrimination by affording certain advantages to certain protected classes of individuals. It is based on the assumption that an institution must do something in order to "right the ship" in terms of discrimination.

2. Define reverse discrimination.

Reverse discrimination is the primary argument against affirmative action. This argument contends that if an organization affords certain advantages to certain protected classes of individuals, the effect will be to discriminate against individuals in non-protected classes. For example, pursuing this line of reasoning, if a university focuses affirmative action on African-Americans, Caucasians will experience the effect of discrimination.

3. As the article indicates, it is estimated that minorities accounted for more than 43 percent of incoming students at Ivy League schools in 2015 -- up from 37 percent in 2010. Comment on this statistical trend as it relates to the affirmative action admissions programs at Princeton, Harvard, and other Ivy League schools.

If the purpose of affirmative action is to ensure diversity, it would appear that Ivy League affirmative action is working, based on the percentage of minorities admitted to Ivy League schools.

4. As the article indicates, a group called Students for Fair Admissions is accusing Ivy League colleges of discriminating against Asian American and white students using illegal caps on enrollment and higher academic standards for admission. In a Washington Post opinion-editorial, the group's president, Edward Blum, has opined that racial preferences "punish better-qualified

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individuals and pit Americans against one another." Do you agree or disagree with Mr. Blum's assessment? Why or why not?

This is an opinion question, so student responses may vary. Depending on specific university admissions program, an affirmative action plan might credit a minority student five points toward a maximum one hundred-point admissions tally. This is a relatively small amount, representing only five percent of an overall one hundred-point admissions total, but it could very well make the difference in terms of admission versus rejection. This is particularly true in a hotly competitive environment like Ivy League admissions. Whether this serves to punish "better-qualified" individuals, or to "pit Americans against one another," is subject to interpretation.

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Of Special Interest

This section of the newsletter addresses a controversial internal memorandum circulated by James Damore, a (now former) software engineer at Google, regarding his opinions of women and their capability of succeeding in technology-related employment.

Ethical Dilemma

"Google CEO: Anti-Diversity Memo Was 'Offensive and Not OK'"

http://money.cnn.com/2017/08/07/technology/google-anti-diversity-memo-engineer/index.html

Note: In addition to the following article, please also see the related video included at the above-referenced internet address.

According to the article, Google CEO Sundar Pichai has condemned portions of a controversial memo sent by a male engineer at the company who argued that women are not biologically fit for tech roles.

Reuters and Bloomberg reported recently that the engineer had been fired, citing e-mails they received from him.

In an e-mail to Google employees, Pichai wrote that parts of the 3,300-word manifesto crossed the line by "advancing harmful gender stereotypes" in the workplace.

"Our job is to build great products for users that make a difference in their lives," he wrote in the e-mail. "To suggest a group of our colleagues have traits that make them less biologically suited to that work is offensive and not OK."

Pichai said he was cutting his family vacation short to return to the office.

"Clearly there's a lot more to discuss as a group," he wrote. "Including how we create a more inclusive environment for all."

Reactions to the memo inside Google have been fierce and divisive. Some employees used an internal discussion group to call for the engineer who wrote it to be fired, according to a source inside the company. Others have supported the employee's right to voice his opinions, if not supporting the opinions themselves.

Google has prided itself as an environment that encourages openness and diversity of opinions. But Pichai said that sections of the memo violate the company's Code of Conduct, which requires "each Googler to do their utmost

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to create a workplace culture that is free of harassment, intimidation, bias and unlawful discrimination."

A source inside the company said that when an employee violates the company's code of conduct, it often results in firing.

Pichai also said in his e-mail that there are Google employees who are questioning whether they can safely express their opinions, especially ones that might fall into a minority.

"They too feel under threat, and that's not OK," he wrote. "People must feel free to express dissent."

Discussion Questions

1. Does Google have a legal obligation to comply with the First Amendment to the United States Constitution's "free speech" provision? Why or why not?

In short answer, "No." The First Amendment to the United States Constitution's "free speech" provision proclaims that "Congress shall make no law…abridging the freedom of speech." The First Amendment proscribes the government's curtailment of speech; a private party such as an employer-corporation can impose more substantial restrictions on speech.

2. James Damore is the 28-year-old, now-former Google software engineer who wrote the memorandum referenced in the article. According to Mr. Damore's memorandum, "(w)omen, on average, have more openness directed towards feelings and aesthetics rather than ideas; extraversion expressed as gregariousness rather than assertiveness; a harder time negotiating salary, asking for raises, speaking up, and leading; and neuroticism (higher anxiety, lower stress tolerance.)"

Do these opinions, as expressed in the memorandum, violate Google's Code of Conduct? Why or why not?

As the article indicates, Google's Code of Conduct requires "each Googler to do their utmost to create a workplace culture that is free of harassment, intimidation, bias and unlawful discrimination." This is subject to some interpretation; however, in your author's opinion, suggesting (as Mr. Damore did in his memorandum) that women are generally less suitable for employment in the technology sector due to "higher anxiety, lower stress tolerance" would appear to violate the "bias" or "unlawful discrimination" prohibitions set forth in the Code of Conduct. In his memorandum, Mr. Damore made generalized, stereotypical assumptions about women based on their gender. The Civil Rights Act of 1964 prohibits discrimination in employment based on gender.

3. Google fired Mr. Damore for his memorandum and opinions expressed therein. Did Google have the legal right and/or ethical obligation to do so? Explain your response.

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Although student opinions may vary in response to this question, in your author's opinion, Google did have the right to terminate Mr. Damore for his memorandum. Although the article does not indicate whether Mr. Damore had a contract for a term (a length of time) with Google, Google could contend that Mr. Damore breached his employment contract with Google due to violation of the company's Code of Conduct, thus justifying termination of employment. Remember, as indicated in response to Ethical Dilemma Discussion Question Number 1, Google does not have a First Amendment "free speech" obligation to Mr. Damore. Further, if Google contends that Mr. Damore made a discriminatory assertion based on gender, in contravention of the Civil Rights Act of 1964, Google also (at least arguably) had an ethical obligation to react.

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Of Special Interest

This section of the newsletter will assist you in addressing the newsletter's Ethical Dilemma ("Google CEO: Anti-Diversity Memo Was 'Offensive and Not OK'").

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma—"Google CEO: Anti-Diversity Memo Was 'Offensive and Not OK'"):

"Exclusive: Here's the Full 10-Page Anti-Diversity Screed Circulating Internally at Google"

Note: For the complete language of the internal memorandum that is the subject of the recent controversy surrounding Google, please see the following internet address:

https://www.gizmodo.com.au/2017/08/exclusive-heres-the-full-10-page-anti-diversity-screed-circulating-internally-at-google/

Teaching Tip 2 (Related to the Ethical Dilemma—"Google CEO: Anti-Diversity Memo Was 'Offensive and Not OK'"):

"Fired Google Engineer Says His Memo Actually Empowered Women"

Note: For an interesting interview of James Damore, the Google engineer who was fired for the views he expressed regarding whether women are capable of performing technology jobs, please see the following internet address:

http://www.businessinsider.com/james-damore-interview-video-2017-8

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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 7 and 46	Chapters 5 and 25	Chapters 3 and 25	Chapter 25
Bennett-Alexander & Hartman, Employment Law for Business	N/A	Chapter 3	Chapters 1, 3, 4, 5, 8 and 15	Chapters 1, 3, 4, 5, 8 and 15
Kubasek et al., Dynamic Business Law	Chapters 9, 44 and 45	Chapters 7 and 43	Chapters 2, 42 and 43	Chapters 42 and 43
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 9, 44 and 45	Chapters 7 and 43	Chapters 2, 42 and 43	Chapters 42 and 43
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4, 7 and 25	Chapters 6 and 24	Chapters 2 and 24	Chapters 24
Liuzzo, Essentials of Business Law	Chapters 4 and 6	Chapters 3 and 32	Chapter 2 and 32	Chapters 31 and 32
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 7, 47 and 48	Chapters 5 and 51	Chapters 4 and 51	Chapter 51
McAdams et al., Law, Business & Society	Chapter 7, 8 and 15	Chapters 4 and 13	Chapters 2, 12, 13 and 14	Chapters 12, 13 and 14
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 9, 17 and 21	Chapters 12 and 21	Chapters 5 and 12	Chapters 11 and 12
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 10, 15 and 18	Chapters 13 and 20	Chapters 2 and 20	Chapters 20, 21 and 22
Sukys, Brown, Business Law with UCC Applications	Chapters 2, 6 and 15	Chapters 5 and 23	Chapters 1 and 23	Chapters 23 and 24

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 13th Edition ©2018 (1259722325) – *New edition now available!*
Bennett-Alexander et al., Employment Law for Business, 8th Edition ©2015 (0078023793)
Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585) – *New edition now available!*
Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition ©2013 (0078023777)
Kubasek et al., Dynamic Business Law: The Essentials, 3rd Edition ©2016 (007802384X)
Liuzzo, Essentials of Business Law, 9th Edition ©2016 (07802319X)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 16th Edition ©2016 (0077733711)
McAdams et al., Law, Business & Society, 11th Edition ©2015 (0078023866)
Melvin, The Legal Environment of Business: A Managerial Approach, 3rd edition ©2018 (1259686205) – *New edition now available!*
Pagnattaro et al., The Legal and Regulatory Environment of Business, 17th Edition ©2016 (0078023858)
Sukys, Brown, Business Law with UCC Applications 14th Edition ©2017 (0077733738)