

# PRACTICE EXAM 40: ARKANSAS BUSINESS AND LAW SIMULATION (50 QUESTIONS)

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**Total Questions:** 50 | **Time Limit:** 2 Hours | **Passing Score:** 70% (35/50)

This is the final practice exam in the series. It mirrors the official Arkansas Contractor Business and Law Examination in format, domain weighting, and difficulty. Answer all questions by selecting the single best answer.

## **DOMAIN: BUSINESS ORGANIZATION (1 Question)**

1. A contractor considering forming an SCorporation asks their CPA to explain the key limitations of the SCorporation structure. Which of the following accurately describes a limitation that could affect the contractor's future business plans?

A. SCorporations cannot deduct any business expenses on the corporate tax return and must pass all deductions to shareholders individually

B. SCorporations are limited to 100 shareholders, all of whom must be U.S. citizens or resident aliens — this restriction prevents bringing in foreign investors and limits the company's ability to raise capital from nonresident sources, though it rarely affects small construction companies with only one or two domestic owners

C. SCorporations must pay corporate income tax at 21% on all earnings before any distributions to shareholders

D. SCorporations cannot own real property, requiring all construction companies to lease equipment and facilities

## **DOMAIN: LICENSING (4 Questions)**

2. A contractor holds a restricted commercial license with Building Construction (BU) and Mechanical Construction (ME) classifications. The contractor is approached to perform a \$900,000 commercial HVAC replacement project. The project involves only mechanical work

— removing and replacing the entire HVAC system in an existing office building. The contractor's restricted license caps projects at \$750,000. Can the contractor perform this project?

A. Yes, because HVAC replacement projects are classified as maintenance work exempt from the restricted license cap

B. Yes, because having dual classifications (BU and ME) doubles the restricted cap to \$1,500,000

C. No, but the contractor can split the project into two phases to keep each below \$750,000

D. No, because the \$900,000 project value exceeds the \$750,000 restricted cap regardless of the type of work — the restricted license limitation applies to the total contract value, not to the classification, and the contractor must either upgrade to an unrestricted license or decline the project

3. A licensed contractor in Arkansas completes a \$450,000 commercial renovation project. After the project is finished and the owner occupies the building, the contractor discovers they inadvertently failed to obtain a fire alarm permit — one of several permits required for the project. All other permits were properly obtained and all inspections passed. The fire alarm system was installed correctly and functions properly. What is the contractor's immediate obligation?

A. The contractor must immediately notify the local building department of the missing permit, arrange for a retroactive fire alarm inspection, and ensure the installation receives the required approval — operating without a required permit is a code compliance violation regardless of whether the work was performed correctly, and voluntary disclosure demonstrates good faith

B. No obligation because the fire alarm system is functioning properly and all other permits were obtained

C. The contractor should wait until the building's next annual fire alarm inspection to address the permit issue

D. The contractor should notify the ACLB but has no obligation to contact the building department because the project is already complete

4. The ACLB receives a complaint that a licensed contractor has been using unlicensed workers to perform licensed electrical work on commercial projects. The contractor argues that the workers are "helpers" who perform electrical tasks only under the direct supervision of a licensed journeyman electrician who is present on the jobsite at all times. Does this arrangement comply with Arkansas licensing requirements?

A. No, because all workers who physically touch electrical components must hold individual electrical licenses regardless of supervision

B. No, because "helper" classifications do not exist in Arkansas — all construction workers performing any trade work must be individually licensed

C. The arrangement may be compliant depending on Arkansas's specific rules for apprentices and helpers performing trade work under licensed supervision — many jurisdictions permit unlicensed apprentices and helpers to perform electrical tasks under the direct supervision of a licensed electrician, but the contractor must verify the applicable rules for the ratio of helpers to journeymen, the level of supervision required, and whether the helpers are enrolled in an approved apprenticeship program

D. Yes, because helpers on commercial projects are always exempt from individual licensing requirements as long as a licensed electrician is present somewhere on the jobsite

5. A contractor holds an unrestricted commercial license that is currently in good standing. The contractor receives notice that the ACLB has opened an investigation based on a complaint from a project owner alleging defective concrete work. While the investigation is pending, the contractor continues to bid on and win new projects. Can the contractor continue normal operations during an open investigation?

A. No, because all contractor operations are automatically suspended when the ACLB opens a formal investigation

B. Yes, because a pending investigation does not affect the contractor's license status — the contractor can continue normal operations including bidding, winning, and performing construction work until and unless the ACLB takes formal disciplinary action following the completion of the investigation

C. Yes, but only on residential projects because commercial work is suspended during investigations

D. No, because the contractor must disclose the pending investigation to all prospective clients and cannot enter into any new contracts

#### **DOMAIN: ESTIMATING AND BIDDING (4 Questions)**

6. A contractor's estimator calculates the following: direct costs \$1,080,000; annual overhead \$324,000 on annual direct cost volume of \$2,160,000; target net profit margin of 5% on selling price. What is the correct selling price?

A. \$1,307,368, calculated by allocating overhead at 15% (\$162,000), adding to direct costs (\$1,242,000), and dividing by 0.95 to achieve exactly 5% margin on selling price ( $\$1,242,000 \div 0.95$ )

B. \$1,242,000, calculated with overhead but without the profit margin adjustment

C. \$1,080,000 with no overhead or profit applied

D. \$1,404,000, calculated by applying a flat 30% combined markup

7. A public project requires sealed bids with a 10% bid bond. The lowest bidder (\$2,800,000) submits a bid bond of \$252,000 — which is 9% of the bid amount rather than the required 10% (\$280,000). The bid bond is \$28,000 short. Is the bid responsive?

A. Yes, because the \$28,000 shortfall represents less than 1% of the total bid and is a de minimis deviation

B. Yes, because the bid bond amount is close enough to satisfy the intent of the bonding requirement

C. No, but the contractor can correct the bond amount within 24 hours of the bid opening

D. No, because the bid bond does not meet the specified 10% requirement — a \$252,000 bond on a \$2,800,000 bid is 9%, and the \$28,000 shortfall is a substantive deficiency that cannot be cured postopening because allowing corrections to bid security amounts after opening would undermine the competitive process

8. A contractor needs to estimate the total concrete cost for a commercial building's equipment pad. The pad is 30 feet  $\times$  40 feet  $\times$  12 inches thick with reinforced concrete at \$190 per cubic yard. A 5% waste factor applies. Finishing labor is \$2.25 per square foot. What is the total estimated cost?

A. \$2,700 representing only the finishing labor

B. \$8,444 calculated without waste factor or finishing

C. \$11,567, calculated as concrete with waste ( $46.67 \text{ CY} \times \$190 = \$8,867$ ) plus finishing labor ( $1,200 \text{ SF} \times \$2.25 = \$2,700$ )

D. \$14,000, calculated using an 18inch thickness instead of the specified 12 inches

9. A contractor receives four subcontractor quotes for the painting scope on a commercial project: \$168,000, \$175,000, \$182,000, and \$155,000. The \$155,000 low quote excludes exterior painting of the building's decorative metal fascia system — work that the specification assigns to the painting contractor. The other three quotes include the fascia painting. The estimator contacts the low bidder, who adds \$18,000 for the fascia. What should the estimator do?

- A. Compare the adjusted low bid (\$173,000) against the three complete quotes (\$168,000, \$175,000, \$182,000) — the \$168,000 complete quote is the lowest and should be used unless the estimator has specific reliability or quality reasons to prefer another subcontractor
- B. Use the original \$155,000 and negotiate the fascia painting after award
- C. Average all four quotes and use the average as the painting budget
- D. Reject the \$155,000 bidder entirely because their initial exclusion shows poor estimating practices

**DOMAIN: CONTRACT MANAGEMENT (8 Questions)**

10. A contractor on a fixed-price commercial project encounters an abandoned septic system during parking lot excavation. The site survey and geotechnical report provided with the bid documents made no mention of any existing utilities or underground structures in the parking lot area. Removing the septic tank and contaminated soil costs \$45,000. Under the differing site conditions clause, who bears this cost?

- A. The contractor, because parking lot excavation contractors should always anticipate abandoned underground structures
- B. The environmental consultant who conducted the Phase I assessment, because they failed to identify the septic system
- C. The cost should be split equally because underground obstructions are a mutual construction risk
- D. The owner, because the site documents failed to disclose the abandoned septic system — the actual condition differs materially from what was represented (clear site with no underground structures), and the contractor relied on these documents when pricing, creating a Type I differing site condition

11. A general contractor receives a change order adding \$145,000 of additional roofing work. The contractor will subcontract \$115,000 of membrane installation and selfperform \$30,000 of parapet wall modifications. The contract allows 15% markup on selfperformed work and 8% on subcontracted work. What is the total billable amount?

- A. \$145,000 with no markup
- B. \$158,700, calculated as selfperformed ( $\$30,000 \times 1.15 = \$34,500$ ) plus subcontracted ( $\$115,000 \times 1.08 = \$124,200$ )
- C. \$166,750, at 15% on the full \$145,000
- D. \$152,250, at a blended 5% rate

12. A project owner issues a directive terminating a contractor for cause, alleging the contractor failed to maintain the required insurance coverage. The contractor produces documentation showing: (1) the CGL policy was briefly cancelled for 5 days due to a billing error by the insurance broker; (2) the broker corrected the error and retroactively reinstated the policy with no gap in coverage; (3) the contractor notified the owner the same day the billing error was discovered. If the contractor challenges the termination, what is the likely outcome?

A. The termination stands because any insurance cancellation — even if retroactively corrected — justifies for cause termination

B. The termination stands because the contractor should have paid the premium directly rather than relying on the broker

C. The termination will likely be found wrongful and converted to a termination for convenience — the 5-day cancellation was caused by the broker's billing error, was retroactively corrected with no coverage gap, and the contractor promptly notified the owner, demonstrating the cancellation was not caused by the contractor's negligence or willful noncompliance

D. The contractor can recover only direct costs because wrongful termination claims are limited to out-of-pocket expenses

13. A subcontractor on a commercial project provides a 2-year warranty on their waterproofing installation. Fourteen months after substantial completion, the building owner discovers water infiltration at the belowgrade foundation walls. The waterproofing subcontractor inspects and finds that the concrete foundation wall has developed structural cracks wider than the waterproofing membrane's movement capacity. The cracks were caused by differential settlement — a geotechnical issue — not by a waterproofing installation defect. Under the warranty, is the subcontractor responsible?

A. The subcontractor's defense has merit — the warranty covers defects in materials and workmanship, and if the waterproofing was properly installed per specification, water infiltration caused by structural cracking from differential settlement (a geotechnical issue beyond the membrane's design capacity) may fall outside the warranty's scope, provided the subcontractor can demonstrate the installation met all specification requirements

B. Yes, because all water infiltration through waterproofed surfaces during the warranty period is the subcontractor's responsibility

C. Yes, because the waterproofing subcontractor should have anticipated differential settlement and selected a membrane with greater movement capacity

D. No, because foundation wall warranties are provided by the concrete subcontractor, not the waterproofing subcontractor

14. A contractor completes a commercial project. The one-year warranty begins on October 15. On September 28 of the following year — seventeen days before expiration — the building owner discovers that the elevator machine room's ventilation system is undersized, causing the room to overheat and trigger frequent elevator shutdowns. The owner notifies the contractor on October 1. The contractor states their elevator specialist is unavailable until November 15. Is the warranty claim preserved?

A. No, because elevator system deficiencies are the elevator manufacturer's warranty responsibility, not the general contractor's

B. No, because the contractor must investigate all claims before the October 15 warranty expiration

C. Yes, but only if the owner obtains an independent HVAC evaluation before October 15

D. Yes, because the owner discovered the deficiency on September 28 and notified the contractor on October 1 — both within the warranty period — preserving the claim regardless of when the specialist investigates, and the contractor cannot defeat the obligation by citing scheduling delays

15. A contractor on a hospital renovation receives a written directive from the owner to install an MRI shielding room — a specialized radio frequency (RF) shielded enclosure not included in the original contract documents. The estimated cost is \$275,000. The owner states: "We added MRI services to our strategic plan after construction started." Under standard change order provisions, who bears this cost?

A. The contractor, because hospital contractors should anticipate medical technology additions in all healthcare renovation bids

B. The owner bears the full cost through a change order because the MRI shielding room was not in the original contract documents — it is a postcontract addition driven by the owner's updated strategic plan, and the contractor priced the project without this scope

C. The MRI equipment manufacturer should include the shielding room as part of the equipment purchase

D. The architect bears the cost because they should have included the MRI room in the original design

16. A contractor on a time-and-materials contract bills the owner for material purchases including a 15% markup. The owner's auditor discovers that the contractor purchased \$12,000 of plumbing materials from a supply house owned by the contractor's spouse. The price is 20% higher than the same materials from three independent suppliers. The contract states materials shall be billed at "reasonable market cost plus 15%." What is the correct billing approach?

- A. The \$12,000 price is acceptable because the contractor can purchase from any supplier regardless of ownership relationships
- B. The contractor should have disclosed the related party transaction and should not profit from both the supply sale and the contractor markup
- C. The contractor must bill materials at a price consistent with the competitive market — purchasing from a related party at 20% above market violates the "reasonable market cost" provision, and the correct approach is to bill at the competitive market price (approximately \$10,000) plus the 15% markup (\$1,500), totaling \$11,500 instead of the \$13,800 billed
- D. The related party premium is acceptable as long as it does not exceed 25% above market price

17. A project architect issues a directive requiring the contractor to upgrade the building's roof insulation from R30 to R49 because the energy code was updated after the contract was signed. The cost difference is \$32,000. The architect states the upgraded insulation is "required by code." Under the contract, who bears the cost of code changes that occur after the contract is signed?

- A. The owner bears the cost through a change order because the contractor priced the project based on the code in effect at the time of bidding — code changes enacted after contract execution constitute a change in project requirements, and the contractor cannot be expected to absorb the cost of regulatory changes that did not exist when the bid was prepared
- B. The contractor bears the cost because all construction must comply with the most current code regardless of when the contract was signed
- C. The code authority bears the cost because they changed the requirements after the project was designed
- D. The architect bears the cost because they should have anticipated the code change during the design phase

18. A contractor working on a commercial renovation discovers that the existing building's structural slab contains embedded electrical conduit not shown on any asbuilt drawing. The contractor's coredrilling operation for a new plumbing penetration severs several conduits, knocking out power to a section of the building. The repair cost is \$28,000. Under the differing site conditions clause, who bears this cost?

- A. The contractor, because coredrilling contractors should use groundpenetrating radar before all concrete penetrations
- B. The architect, because they should have investigated all existing conditions before designing the renovation

C. The cost should be split because concealed conduit is a shared renovation risk

D. The owner, because the asbuilt drawings failed to identify the embedded conduit — the contractor relied on these documents when planning the penetrations, and the actual condition (conduit in the slab) differs materially from what was represented (clear slab), creating a Type I differing site condition

19. A general contractor's subcontract includes a paywhenpaid clause requiring payment within 10 days of the GC receiving corresponding owner payment. The owner pays the GC on September 5. The GC does not pay the mechanical subcontractor until November 3 — 59 days later. The subcontractor demands interest on the overdue amount. Is the demand valid?

A. No, because paywhenpaid clauses establish only a timing trigger with no enforceable deadline

B. Yes, because the 10day deadline was September 15 and the November 3 payment is 49 days late — the subcontractor is entitled to interest from September 15 through November 3 for the GC's breach of the contractual payment timeline

C. No, because the subcontractor must file a formal mechanics' lien before interest can accrue

D. Yes, but only at the federal prime rate regardless of any higher rate in the subcontract

20. A project owner issues a deductive change order removing the entire building automation system (\$110,000) from a commercial project. The contractor's bid included \$88,000 in direct costs and \$22,000 in overhead and profit. The contract states: "Deductive change orders shall be calculated at direct cost savings." What is the correct deduction?

A. \$88,000, representing the direct cost savings only — the contractor retains the \$22,000 in overhead and profit because the contract calculates deductive change orders at "direct cost savings," protecting the contractor's margin on deleted scope

B. \$110,000, representing the full bid amount

C. \$55,000, representing 50% of the bid amount

D. \$99,000, representing 90% of the bid amount

**DOMAIN: PROJECT MANAGEMENT (6 Questions)**

21. A project manager on a \$7,200,000 commercial project calculates earned value at the 60% completion mark: BAC = \$7,200,000; PV = \$4,320,000; EV = \$3,960,000; AC = \$4,150,000. What are the SPI, CPI, and EAC?

- A. SPI = 1.09 and CPI = 1.04, indicating the project is ahead of schedule and under budget
- B. SPI = 0.954 and CPI = 0.917, with the indices reversed from their correct formulas
- C. SPI = 0.917 ( $\$3,960,000 \div \$4,320,000$ ) and CPI = 0.954 ( $\$3,960,000 \div \$4,150,000$ ) — both below 1.0, indicating the project is behind schedule and over budget, with an EAC of approximately \$7,547,000 ( $\$7,200,000 \div 0.954$ ) if the cost trend continues
- D. Both metrics are within acceptable tolerance and no action is needed

22. A contractor's superintendent discovers that the mechanical subcontractor installed galvanized steel ductwork in a swimming pool natatorium where the specification requires aluminum or stainless steel ductwork. The natatorium's chlorinated humid atmosphere causes rapid corrosion of galvanized steel, leading to premature duct failure, contamination of the indoor air with zinc oxide particles, and structural failure of the duct system. Approximately 500 linear feet has been installed. What should the superintendent do?

- A. Accept the galvanized ductwork and apply a corrosion-resistant coating to all exterior surfaces
- B. Allow the galvanized ductwork to remain and increase the facility's duct maintenance schedule from annual to quarterly
- C. Document the substitution in the asbuilt drawings and address corrosion issues through the warranty period
- D. Stop the mechanical subcontractor immediately, notify the architect, and require removal and replacement of all galvanized ductwork with the specified aluminum or stainless steel at the subcontractor's expense — galvanized steel in a chlorinated pool environment is a known incompatibility that leads to rapid corrosion, health hazards from zinc oxide contamination, and premature system failure

23. A project schedule shows the following critical path: Mobilization (6 days) → Excavation (12 days) → Foundation (16 days) → Steel (20 days) → Roofing (10 days) → MEP (18 days) → Drywall (12 days) → Finishes (14 days) → Closeout (4 days). Total: 112 days. The owner directs a 6-day stopwork during Steel for a redesign. The contractor's roofing subcontractor causes a separate 3-day delay during Roofing by delivering the wrong membrane material. What is the revised duration and how are the delays allocated?

A. 112 days unchanged because the delays occurred on different activities and cancel each other

B. 121 days — the owner's 6day stopwork is excusable (time extension and potentially compensation), and the contractor's 3day roofing delay is nonexcusable (contractor's responsibility) — both are on the critical path at different times, each independently extends the completion date by their respective durations, and the contractor may be assessed liquidated damages only for the 3 contractorcaused days

C. 118 days with only the owner's 6 days added because the contractor's delay is absorbed by float

D. 115 days with only the contractor's 3 days added because ownerdirected stopwork is the contractor's risk

24. A contractor managing a renovation in an occupied university science building needs to shut down the laboratory exhaust ventilation system for 4 hours to connect new ductwork. The science labs use chemicals that produce hazardous fumes requiring continuous exhaust ventilation. The contract requires maintaining laboratory exhaust ventilation at all times during construction. How should the contractor plan this work?

A. Coordinate with the university's Environmental Health and Safety (EH&S) department to temporarily relocate all hazardous chemicals from the affected labs, provide portable local exhaust ventilation at each fume hood during the shutdown, schedule the connection during a nonlaboratory period (weekend or academic break), and proceed only after EH&S confirms the temporary measures are adequate — because laboratory exhaust ventilation is a life safety system that requires compensating measures during any interruption

B. Perform the connection during normal lab hours and instruct students and faculty to avoid using chemicals during the 4hour shutdown

C. Install the new ductwork alongside the existing system and switch over during a brief interruption

D. Postpone the ductwork connection until the university's summer break when no labs are in session

25. A contractor's threeweek lookahead schedule identifies that the structural steel inspection for the second floor is due before the metal deck can be installed. The metal deck delivery is confirmed for next Wednesday. The steel inspection has not been scheduled. The building inspector requires 48 hours' notice. It is currently Monday morning. What should the project manager do?

A. Proceed with the metal deck installation Wednesday regardless of the inspection status

- B. Cancel the metal deck delivery and reschedule for the following week
- C. Contact the building inspector immediately to schedule the steel inspection for Wednesday morning (Monday to Wednesday satisfies the 48hour notice), coordinate with the deck subcontractor to begin installation Wednesday afternoon after the inspection, and prepare a contingency plan to delay the deck to Thursday or Friday if the inspection reveals deficiencies
- D. Have the contractor's quality control manager perform the steel inspection in lieu of the building inspector

26. A project's earned value analysis at the 75% completion mark shows the SPI has been declining for 6 consecutive months while the CPI has remained steady at 1.01. The current SPI is 0.87. What is the most critical management concern at this stage?

- A. The stable CPI indicates the project is healthy and the SPI will recover naturally in the final 25%
- B. Both metrics are within acceptable tolerance and no action is needed
- C. The declining CPI requires investigation into potential material cost overruns
- D. At 75% complete with an SPI of 0.87, the schedule deficit is extremely difficult to recover — only 25% of the work remains to make up a 13% schedule shortfall, and the steady decline over 6 months indicates a systemic problem rather than a temporary setback, requiring aggressive acceleration measures or a realistic discussion with the owner about a revised completion date

### **DOMAIN: INSURANCE AND BONDING (3 Questions)**

27. A contractor carries a CGL policy with a \$1,000,000 peroccurrence limit and a \$2,000,000 general aggregate. The contractor also carries a \$5,000,000 umbrella policy. During the policy year, two incidents occur: Incident 1 = \$1,500,000 (excavation collapse injuring utility workers); Incident 2 = \$900,000 (crane load drops through adjacent building's roof). How are the claims covered?

- A. CGL pays \$2,000,000 total and umbrella pays \$400,000, totaling \$2,400,000 with zero exposure
- B. CGL: Incident 1 = \$1,000,000 (peroccurrence cap); Incident 2 = \$900,000 (within peroccurrence limit and remaining aggregate). Total CGL = \$1,900,000. Umbrella: Incident 1 excess = \$500,000. Total covered = \$2,400,000 of \$2,400,000 — zero personal exposure
- C. CGL pays \$1,000,000 per incident and umbrella pays the remainder for each
- D. CGL pays only Incident 1 and umbrella covers Incident 2 entirely

28. A surety evaluates a contractor for a \$2,500,000 performance bond. The contractor's financial statements show: working capital \$195,000; net worth \$680,000; existing bonded backlog \$2,600,000. The surety uses a 15× working capital multiplier. What is the assessment?

- A. Automatic approval because the contractor's net worth adequately supports the request
- B. Approval because total capacity exceeds the single bond request
- C. Bonding capacity is \$2,925,000 ( $15 \times \$195,000$ ), with \$2,600,000 committed leaving only \$325,000 available — the \$2,500,000 request exceeds available capacity by \$2,175,000, and the surety will deny unless the contractor substantially increases working capital or completes existing bonded projects
- D. Conditional approval requiring additional personal collateral from company principals

29. A contractor's workers' compensation premium audit reveals that 4 workers classified as "interior painting" (\$6.00 per \$100 of payroll) have been performing "commercial roofing" (\$24.50 per \$100 of payroll) for the past year. The misclassified payroll totals \$280,000. The contractor's EMR is 1.05. What is the approximate additional premium owed?

- A. Approximately \$54,390, calculated as the premium difference:  $(\$280,000 \div \$100) \times (\$24.50 - \$6.00) \times 1.05 = 2,800 \times \$18.50 \times 1.05 = \$54,390$  — reflecting the dramatically different risk profiles between indoor painting and commercial roofing work
- B. \$16,800, at the painting rate without classification adjustment
- C. \$68,600, at the roofing rate without crediting the painting premium
- D. \$0, because classification disputes between painting and roofing are automatically resolved in the contractor's favor

**DOMAIN: OSHA RECORDKEEPING (3 Questions)**

30. A construction worker slips on wet concrete and falls, striking their elbow on a form board. The elbow swells immediately. The site medic applies ice and a nonrigid elastic elbow wrap. The worker visits an occupational health clinic where the physician orders Xrays (negative for fracture), prescribes OTC naproxen, applies a new elastic wrap, and recommends continued ice therapy. The worker returns to full duty the next day with no restrictions. Is this case OSHA recordable?

- A. Yes, because any fall on a construction site resulting in joint swelling is automatically recordable
- B. Yes, because the Xrays constitute diagnostic medical treatment beyond first aid
- C. No, but only if the worker signed a release declining further medical evaluation within 24 hours
- D. No, because all treatments — ice, nonrigid elastic wrap, diagnostic Xrays, and OTC medication — are first aid under OSHA definitions, and the worker returned to full duty with no restrictions or lost time

31. An employer with 165 employees in the construction industry (NAICS 236) reviews their OSHA electronic reporting obligations. What must they submit?

- A. Complete 300 Logs and 301 forms within 48 hours of each recordable incident
- B. The information from their OSHA 300A Annual Summary electronically through OSHA's Injury Tracking Application by March 2 of the following year — establishments with 20249 employees in highhazard industries including construction must submit 300A data annually
- C. No electronic submission because employers with fewer than 250 employees are fully exempt
- D. All logs and forms quarterly to both OSHA and the state workers' compensation board

32. A construction worker develops chronic shoulder pain after 4 months of overhead drilling work. A physician diagnoses workrelated rotator cuff tendinitis, prescribes a prescription antiinflammatory, and restricts the worker from all overhead work for 6 weeks. The worker is reassigned to groundlevel material staging and inventory duties. How should this case be classified?

- A. Not recordable because the worker continued working without missing complete workdays
- B. "Other recordable" because the prescription is the sole recordability trigger
- C. "Restricted work or job transfer" because the worker was restricted from overhead duties and reassigned — the restriction is the most significant outcome, taking precedence over the prescription medication which independently triggers recordability
- D. "Days away from work" because shoulder injuries are automatically classified at the highest severity

**DOMAIN: PERSONNEL REGULATIONS (8 Questions)**

33. A contractor with 60 employees has a project superintendent who earns \$2,100 per week. The superintendent manages three concurrent commercial projects, directs a total of 40 workers across all sites, has authority to hire temporary laborers and effectively recommend termination of underperforming workers, and spends approximately 15% of each week performing hands-on construction tasks. Under the FLSA, is the superintendent exempt from overtime?

A. Yes, because the superintendent meets all executive exemption elements — salary of \$2,100/week exceeds the \$684 threshold, primary duty is management across three projects, regularly directs more than 2 employees, has hiring authority and makes effective termination recommendations, and 15% physical work does not disqualify when the primary duty is management

B. No, because managing three concurrent projects exceeds the executive exemption's scope and triggers a "divided attention" disqualifier

C. Yes, but only if the superintendent holds a professional management certification

D. No, because 15% physical work participation automatically disqualifies any construction employee from the executive exemption

34. A nonexempt carpenter earns \$36.00 per hour and works 48 hours during a workweek. The employer provides a \$180 nondiscretionary weekly tool maintenance bonus. Under the FLSA, what is the correct total gross pay?

A. \$1,908.00 with no overtime adjustment

B. \$1,728.00 without the bonus or overtime

C. \$1,944.00, at the base overtime rate without the bonus

D. \$2,067.00, calculated as straighttime plus bonus (\$1,908.00) plus overtime premium ( $\$39.75 \text{ regular rate} \times 0.5 \times 8 \text{ hours} = \$159.00$ ), where the \$180 tool bonus is included in the regular rate ( $\$1,908 \div 48 = \$39.75$ )

35. An employer with 35 employees has a worker who files a workers' compensation claim for a shoulder injury. The employer's carrier accepts the claim. The worker undergoes surgery and returns to modified duty. Within 2 weeks of the return, the worker's supervisor begins scheduling the worker for exclusively outdoor assignments during winter weather, while all other modified-duty workers receive indoor assignments. The worker alleges retaliation. Is the claim viable?

A. No, because outdoor work assignments are within the employer's normal scheduling discretion

B. Yes, because selectively assigning a comp claimant to exclusively outdoor winter work — while other modified duty workers receive indoor assignments — creates a strong inference of retaliatory motive, combining temporal proximity (2 weeks after return) with discriminatory treatment (only the claimant gets outdoor assignments) to suggest targeted adverse action

C. No, because weatherbased work assignments cannot constitute adverse employment actions

D. Yes, but only if temperatures dropped below the OSHA cold stress threshold during the outdoor assignments

36. A contractor operating on a DavisBacon covered project has electricians who work 50 hours during a workweek. The prevailing wage specifies electrician wages of \$46.00/hour plus \$21.00/hour in fringe benefits. One electrician receives a \$275 nondiscretionary weekly certification premium. How must the overtime be calculated?

A. Overtime at 1.5 times the combined wage and fringe ( $\$67.00 \times 1.5$ ) for 10 hours

B. Overtime at 1.5 times only the base wage ( $\$46.00 \times 1.5$ ) without the certification premium

C. The overtime premium applies to the cash wage plus the prorated certification premium, while the fringe continues at straighttime — regular rate =  $(\$46.00 \times 50 + \$275) \div 50 = \$51.50$ ; overtime premium =  $\$51.50 \times 0.5 = \$25.75 \times 10 = \$257.50$ ; fringe at \$21.00 for all 50 hours

D. No overtime because electricians receiving certification premiums are classified as exempt professionals

37. An employer terminates a worker for four documented incidents of failing to use fall protection while working at heights exceeding 6 feet over a 10week period. The employer has: a comprehensive fall protection program signed by the worker, four incident reports with photographs showing the worker unprotected at height, a verbal warning after incident 1, a written warning after incident 2, a final warning after incident 3 stating the fourth violation would result in termination, and the worker's annual fall protection training certificate. The worker files for unemployment benefits. What is the likely outcome?

A. The worker will receive benefits because fall protection requirements are employerspecific policies, not legal requirements

B. The worker will receive benefits at a reduced rate because the violations occurred over a relatively short period

C. The unemployment agency will defer until OSHA completes an inspection of the employer's fall protection program

D. The worker will likely be denied benefits because repeatedly working at heights without fall protection on four documented occasions despite comprehensive training and progressive warnings constitutes willful misconduct — falls from height are the leading cause of construction fatalities, and the deliberate pattern after progressive discipline establishes disqualifying conduct

38. An employer with 55 employees has a worker who requests FMLA leave to accompany their elderly father to a series of radiation therapy appointments for prostate cancer. The appointments are 3 hours each, three times per week, for 8 weeks. The worker requests intermittent leave. Under the FMLA, is this leave covered?

A. No, because intermittent FMLA leave is only available for the employee's own medical condition

B. Yes, because the FMLA provides intermittent leave when medically necessary to care for a parent with a serious health condition — prostate cancer requiring scheduled radiation therapy qualifies, the appointments are medically necessary, the employer has 55 employees (above threshold), and each 3hour appointment is deducted incrementally from the 12week entitlement

C. No, because radiation therapy appointments are classified as routine medical care that does not meet the FMLA's serious health condition threshold

D. Yes, but only for the first 4 weeks because FMLA intermittent parental care leave is capped at half the standard entitlement

39. An employer's I9 audit reveals that 14 employees have I9 forms where Section 2 was completed 710 business days after their hire date instead of the required 3 business days. The forms are otherwise accurate and complete. What is the employer's exposure?

A. Each latecompleted I9 constitutes a technical violation subject to civil penalties — while the forms are otherwise correct, completing Section 2 beyond the 3businessday requirement violates the regulatory timeline, and the 14 violations may result in penalties particularly if ICE determines the systematic late completion reflects a pattern of noncompliance rather than isolated oversights

B. No exposure because the forms are complete and accurate, and the late completion is a minor clerical issue

C. Exposure limited to a single warning letter regardless of the number of late completions

D. No exposure because the 3day deadline is an aspirational guideline rather than an enforceable requirement

40. An employer with 50 employees has a worker who has exhausted 12 weeks of FMLA leave following back surgery. The worker's physician releases them with a permanent restriction: no lifting more than 15 pounds and no repetitive twisting. The worker's regular job as a duct installer requires lifting sheet metal sections weighing up to 50 pounds and extensive twisting in confined ceiling spaces. Under the ADA, what must the employer do?

A. Terminate the worker immediately because lifting and twisting are essential duct installation functions

B. Hold the duct installer position open for 6 additional months beyond FMLA

C. Engage in the ADA interactive process to evaluate whether the restrictions can be accommodated — potential accommodations include reassignment to available positions (estimating, material coordination, shop fabrication, layout and measuring), mechanical lifting aids, or restructuring the role so heavy lifting and confined space twisting are handled by other workers

D. Create a permanent light duty duct installation position for this worker

41. A contractor operating on a DavisBacon covered project has laborers who work 46 hours during a workweek. The prevailing wage specifies laborer wages of \$26.00/hour plus \$12.00/hour in fringe benefits. How must the 6 overtime hours be compensated?

A. All 46 hours at the combined overtime rate ( $\$38.00 \times 1.5 = \$57.00$ )

B. 40 hours at \$26.00 plus \$12.00, and 6 hours at \$26.00 plus \$18.00 ( $1.5 \times \$12.00$ )

C. No overtime because laborers earning under \$30.00/hour are exempt from FLSA overtime

D. 40 hours at \$26.00 wage plus \$12.00 fringe, and 6 overtime hours at \$39.00 wage ( $1.5 \times \$26.00$ ) plus \$12.00 fringe at the straighttime rate — the overtime premium applies only to the cash wage, while the fringe continues at straighttime for all 46 hours

42. An employer discovers that their payroll department has been paying 8 nonexempt workers overtime at 1.25 times the regular rate instead of the required 1.5 times for 16 months. Each worker averages 10 overtime hours per week at a regular rate of \$40.00 per hour. What is the approximate backpay exposure for the underpaid overtime premium?

A. \$0 because the workers received partial overtime compensation

B. Approximately \$55,600 in back pay ( $\$10.00$  underpaid premium per hour  $\times$  10 hours  $\times$  8 workers  $\times$  69.5 weeks), with potential FLSA liquidated damages doubling the amount to approximately \$111,200, plus attorney fees

C. \$27,800, representing only half the affected workers

D. \$5,560, representing one worker's underpayment without the other seven

43. An employer has a worker who reports that their supervisor has been making repeated derogatory comments about the worker's military service, including calling the worker "damaged goods" and suggesting they are "unstable" because of their combat deployment history. The worker reports to HR. HR investigates and confirms the conduct through witness statements. What is the appropriate employer response?

A. Immediate corrective action — formal written warning or suspension for the supervisor, mandatory antiharassment training that specifically covers military status as a protected characteristic, documentation of all corrective measures, and followup monitoring to ensure the comments have stopped, because derogatory comments about military service may violate USERRA and state antidiscrimination protections

B. A verbal reminder about workplace professionalism with no formal documentation

C. Transfer of the affected worker to a different project to resolve the interpersonal conflict

D. No action required because military service status is not a protected characteristic under federal employment law

44. An employer with 55 employees has a worker who requests 8 weeks of FMLA leave to care for their adult child (age 22) who was seriously injured in a construction accident and is hospitalized in a coma. The worker has been employed for 6 years. Under the FMLA, is this leave covered?

A. No, because FMLA leave for children covers only those under age 18

B. No, because the adult child's workers' compensation coverage precludes FMLA leave for family members

C. Yes, because the FMLA extends to adult children who are incapable of selfcare due to a physical or mental disability — a 22yearold in a coma following serious injuries is clearly incapable of selfcare, qualifying under this provision, and the employer has 55 employees with the worker meeting all eligibility requirements

D. Yes, because all children regardless of age are automatically covered without any limitation

45. An employer's workers' compensation carrier reports the EMR will increase from 0.90 to 1.26 at the next renewal. The annual base premium at EMR 1.0 is \$350,000. What is the total annual financial impact?

A. Premium increases by \$3,500 with no other consequences

B. Premium decreases because higher EMRs qualify for experience discounts

C. The EMR increase triggers mandatory OSHA safety program enrollment

D. Premium increases from \$315,000 (at 0.90) to \$441,000 (at 1.26) — a \$126,000 annual increase — and the 1.26 EMR exceeds the 1.0 prequalification threshold, disqualifying the contractor from safetyconscious projects and compounding the impact through lost bidding opportunities

46. A contractor organized as a sole proprietorship earns \$190,000 in net SE income with \$50,000 in W2 income from a parttime position. The Social Security wage base is \$168,600. After the 92.35% adjustment, adjusted SE income is approximately \$175,465. What is the approximate selfemployment tax?

A. \$29,070, at flat 15.3% without adjustments

B. Approximately \$19,794 — Social Security 12.4% on \$118,600 ( $\$168,600 - \$50,000$  W2) = \$14,706; Medicare 2.9% on \$175,465 = \$5,088; no surtax because \$175,465 is below \$200,000; total  $\approx$  \$19,794

C. \$14,706, only the Social Security portion

D. \$26,846, at 15.3% on the adjusted income without W2 offset

47. A contractor organized as an SCorporation has one shareholder working fulltime. The company earns \$420,000. The shareholder takes a salary of \$110,000 and a distribution of \$310,000. The IRS determines a reasonable salary is \$160,000. What is the approximate additional FICA exposure on the reclassified amount?

A. Approximately \$7,650 — the IRS reclassifies \$50,000 ( $\$160,000$  reasonable minus  $\$110,000$  paid) from distributions to salary at the 15.3% FICA rate ( $\$50,000 \times 0.153$ ), plus penalties and interest on the underreported payroll taxes

B. \$47,430, at 15.3% on the full \$310,000 distribution

C. \$0, because SCorporation distributions are exempt from reclassification

D. \$3,825, at 15.3% on only half the reclassified amount

48. A contractor organized as a CCorporation earns \$550,000 in taxable income and pays 21% corporate tax (\$115,500). The corporation distributes \$275,000 as dividends at the 15% qualified dividend rate. What is the total combined tax on the \$275,000 distributed?

A. \$57,750 (corporate only) at an effective rate of 21%

- B. \$41,250 (dividend only) at an effective rate of 15%
- C. \$99,000 (\$57,750 corporate tax on the distributed amount plus \$41,250 dividend tax) — effective combined rate of 36%, illustrating the CCorporation double taxation where the same earnings are taxed at the entity level and again when distributed to the shareholder
- D. \$115,500 (full corporate tax) at an effective rate of 42%

49. A contractor organized as a partnership earns \$650,000. Partner A (60%) has a \$390,000 distributive share with \$40,000 in W2 income. The Social Security wage base is \$168,600. After the 92.35% adjustment, adjusted SE income is approximately \$360,165. What is Partner A's approximate selfemployment tax?

- A. \$59,670, at flat 15.3% without adjustments
- B. \$15,946, only Social Security
- C. \$30,000, simplified estimate
- D. Approximately \$27,832 — Social Security 12.4% on \$128,600 ( $\$168,600 - \$40,000$  W2) = \$15,946; Medicare 2.9% on full \$360,165 = \$10,445; additional Medicare surtax 0.9% on \$160,165 (adjusted SE income exceeding \$200,000) = \$1,441; total  $\approx$  \$27,832

50. A contractor organized as an LLC with SCorporation election has one member working fulltime. The company earns \$380,000. The member takes a salary of \$125,000 and a distribution of \$255,000. The IRS determines a reasonable salary is \$155,000. What is the approximate additional FICA exposure?

- A. \$0, because LLCs with SCorp election are exempt from salary reclassification challenges
- B. Approximately \$4,590 — the IRS reclassifies \$30,000 ( $\$155,000$  reasonable minus  $\$125,000$  paid) from distributions to salary at the 15.3% FICA rate ( $\$30,000 \times 0.153$ ), plus penalties and interest on the underreported payroll taxes
- C. \$39,015, at 15.3% on the full \$255,000 distribution
- D. \$2,295, at 15.3% on only half the reclassified amount

## Practice Exam 40: Answer Key and Explanations

**1. B** — S-Corporations are limited to 100 shareholders who must be U.S. citizens or resident aliens. This prevents bringing in foreign investors or issuing stock to non-resident entities. While this limitation rarely affects small construction companies with one or two domestic owners, it restricts future growth options if the contractor ever seeks outside capital.

**2. D** — The \$900,000 project value exceeds the \$750,000 restricted cap regardless of the work type. The restriction applies to total contract value, not to the classification of work performed. Having dual classifications does not increase the cap — the contractor must upgrade to an unrestricted license or decline the project.

**3. A** — The contractor must immediately notify the building department of the missing fire alarm permit and arrange for a retroactive inspection. Operating without a required permit is a code compliance violation regardless of whether the work was performed correctly. Voluntary disclosure demonstrates good faith and may mitigate potential consequences.

**4. C** — The arrangement may be compliant depending on Arkansas's specific rules for apprentices and helpers. Many jurisdictions permit unlicensed workers to perform trade tasks under direct licensed supervision, subject to ratio limits and apprenticeship program requirements. The contractor must verify the applicable regulations before relying on this staffing model.

**5. B** — A pending investigation does not affect the contractor's license status. The contractor can continue normal operations — bidding, winning, and performing work — until the ACLB takes formal disciplinary action following the investigation's completion. An investigation is an inquiry, not a sanction.

**6. A** — Overhead rate:  $\$324,000 \div \$2,160,000 = 15\%$ . Allocation:  $\$1,080,000 \times 15\% = \$162,000$ . Total cost:  $\$1,242,000$ . Selling price:  $\$1,242,000 \div 0.95 = \$1,307,368$ . Dividing by  $(1 - \text{margin})$  ensures profit equals exactly 5% of the selling price.

**7. D** — The bid bond at \$252,000 is 9% of the \$2,800,000 bid — short of the required 10% (\$280,000) by \$28,000. This is a substantive deficiency, not a de minimis deviation. Allowing post-opening corrections to bid security amounts would undermine the competitive process and create an unfair advantage.

**8. C** — Volume:  $30 \times 40 \times 1.0 = 1,200 \text{ CF} \div 27 = 44.44 \text{ CY}$ . With 5% waste:  $46.67 \text{ CY} \times \$190 = \$8,867$ . Finishing:  $1,200 \text{ SF} \times \$2.25 = \$2,700$ . Total:  $\$11,567$ . The waste factor applies to concrete volume, and finishing is calculated on the net pad surface area.

**9. A** — After adding the excluded fascia scope (\$18,000), the adjusted low bid becomes \$173,000. Comparing normalized quotes: \$168,000, \$173,000, \$175,000, \$182,000. The \$168,000 complete quote is the lowest. Using incomplete quotes without scope normalization guarantees cost overruns when excluded work must be performed.

**10. D** — The site documents made no mention of underground structures. The abandoned septic system differs materially from what was represented (clear site). The contractor relied on these documents when pricing. This is a Type I differing site condition, and the \$45,000 removal cost is the owner's responsibility.

**11. B** — Self-performed:  $\$30,000 \times 1.15 = \$34,500$ . Subcontracted:  $\$115,000 \times 1.08 = \$124,200$ . Total:  $\$34,500 + \$124,200 = \$158,700$ . The different markup rates apply to each category based on who performs the work.

**12. C** — The 5-day cancellation was caused by the broker's billing error, was retroactively corrected with no gap, and the contractor promptly notified the owner. The cancellation was

not caused by the contractor's negligence. The termination will likely be converted to a termination for convenience with corresponding compensation.

**13. A** — The warranty covers defects in materials and workmanship. If the waterproofing was properly installed per specification, water infiltration caused by structural cracking from differential settlement is a geotechnical issue beyond the membrane's design capacity. The subcontractor's defense has merit provided they can demonstrate the installation met all specification requirements.

**14. D** — The owner discovered the deficiency on September 28 and notified the contractor on October 1 — both within the warranty period ending October 15. Timely notification preserves the claim. The contractor cannot defeat the warranty by citing specialist scheduling delays.

**15. B** — The MRI shielding room was not in the original contract documents. It is a post-contract addition driven by the owner's updated strategic plan. The contractor priced the project without this scope. The \$275,000 cost is the owner's responsibility through a change order.

**16. C** — The contract requires billing at "reasonable market cost." Purchasing from a related party at 20% above market violates this provision. The correct approach is to bill at the competitive market price (approximately \$10,000) plus the 15% markup (\$1,500), totaling \$11,500. The related-party premium is not a legitimate cost.

**17. A** — The contractor priced the project based on the code in effect at bidding. Code changes enacted after contract execution constitute a change in project requirements. The \$32,000 insulation upgrade is the owner's responsibility through a change order because the contractor cannot absorb regulatory changes that did not exist when the bid was prepared.

**18. D** — The as-built drawings failed to identify the embedded conduit. The contractor relied on these documents when planning penetrations. The actual condition (conduit in the slab) differs materially from what was represented (clear slab). This is a Type I differing site condition, and the \$28,000 repair is the owner's responsibility.

**19. B** — The 10-day deadline was September 15 (September 5 + 10 days). Payment on November 3 is 49 days late. The subcontractor is entitled to interest from September 15 through November 3 for the GC's breach of the contractual payment timeline.

**20. A** — The contract specifies deductive change orders at "direct cost savings." The deduction is \$88,000 in direct costs. The contractor retains the \$22,000 in overhead and profit. The provision protects the contractor's margin on deleted scope.

**21. C** —  $SPI = \$3,960,000 \div \$4,320,000 = 0.917$  (behind schedule).  $CPI = \$3,960,000 \div \$4,150,000 = 0.954$  (over budget).  $EAC = \$7,200,000 \div 0.954 = \$7,547,000$ . Both indices below 1.0 confirm the project is behind schedule and over budget, projecting a \$347,000 overrun.

**22. D** — Galvanized steel in a chlorinated pool natatorium is a known incompatibility. The chlorinated humid atmosphere causes rapid corrosion, producing zinc oxide particles that contaminate indoor air and structural failure of the duct system. All 500 feet must be replaced with specified aluminum or stainless steel at the subcontractor's expense.

**23. B** — Both delays are on the critical path. Owner stop-work: +6 days (excusable — time extension and potentially compensation). Contractor roofing delay: +3 days (non-excusable — contractor's responsibility). Revised:  $112 + 6 + 3 = 121$  days. Liquidated damages apply only to the 3 contractor-caused days.

**24. A** — Laboratory exhaust ventilation is a life safety system. The contractor must coordinate with EH&S to relocate chemicals, provide portable local exhaust at fume hoods during the shutdown, schedule during non-lab periods, and proceed only after EH&S confirms the temporary measures. Shutting down lab exhaust without compensating ventilation creates a hazardous atmosphere.

**25. C** — Monday to Wednesday satisfies the 48-hour notice requirement. The project manager should schedule the inspection for Wednesday morning, coordinate deck installation for Wednesday afternoon, and prepare a contingency plan for Thursday if deficiencies are found. Proactive scheduling keeps the metal deck delivery on track.

**26. D** — At 75% complete with SPI of 0.87, only 25% of work remains to recover a 13% schedule shortfall. Six consecutive months of decline indicates a systemic problem, not a temporary setback. Aggressive acceleration or a realistic conversation with the owner about a revised completion date is necessary.

**27. B** — CGL: Incident 1 = \$1,000,000 (per-occurrence cap). Incident 2 = \$900,000 (within per-occurrence and remaining aggregate). Total CGL = \$1,900,000. Umbrella: Incident 1 excess = \$500,000. Total covered: \$2,400,000. Zero personal exposure.

**28. C** — Bonding capacity:  $15 \times \$195,000 = \$2,925,000$ . Existing: \$2,600,000. Available: \$325,000. The \$2,500,000 request exceeds available capacity by \$2,175,000. The surety will deny unless the contractor substantially increases working capital or completes existing projects.

**29. A** — Premium difference:  $(\$280,000 \div \$100) \times (\$24.50 - \$6.00) \times 1.05 = 2,800 \times \$18.50 \times 1.05 = \$54,390$ . The dramatic rate differential reflects the vast risk difference between indoor painting and commercial roofing — one of the highest-rated construction classifications.

**30. D** — All treatments — ice, non-rigid elastic wrap, diagnostic X-rays, and OTC naproxen — are classified as first aid under OSHA definitions. The worker returned to full duty with no restrictions. No recordable outcome occurred. Joint swelling alone does not trigger recordability without a recordable treatment or outcome.

**31. B** — Establishments with 20-249 employees in high-hazard industries including NAICS 236 must submit 300A data electronically through OSHA's ITA by March 2. With 165 employees in construction, this employer meets the threshold.

**32. C** — The worker was restricted from overhead work and reassigned to ground-level duties for 6 weeks. "Restricted work or job transfer" is the most significant recordable outcome. The prescription anti-inflammatory independently triggers recordability, but restricted work takes precedence.

**33. A** — The superintendent meets all executive exemption elements: \$2,100/week salary (above \$684), primary duty is management across three projects, directs 40+ workers, has

hiring authority and makes effective termination recommendations. Performing 15% hands-on work does not disqualify when the primary duty is management.

**34. D** — Straight-time + bonus:  $(\$36.00 \times 48) + \$180 = \$1,908$ . Regular rate:  $\$1,908 \div 48 = \$39.75$ . Overtime premium:  $\$39.75 \times 0.5 \times 8 = \$159.00$ . Total gross:  $\$1,908 + \$159 = \$2,067.00$ . The tool maintenance bonus increases the regular rate and overtime premium.

**35. B** — Selectively assigning a comp claimant to outdoor winter work while other modified-duty workers receive indoor assignments creates a strong retaliation inference. The temporal proximity (2 weeks after return) combined with the discriminatory assignment pattern suggests targeted adverse action in response to the filing.

**36. C** — Under Davis-Bacon, the overtime premium applies to cash wage plus prorated non-discretionary bonuses. Regular rate:  $(\$46.00 \times 50 + \$275) \div 50 = \$51.50$ . Overtime premium:  $\$51.50 \times 0.5 \times 10 = \$257.50$ . Fringe at \$21.00 straight-time for all 50 hours. The certification premium increases the effective overtime cost.

**37. D** — Four documented fall protection violations despite comprehensive training and progressive warnings constitute willful misconduct. Falls from height are the leading cause of construction fatalities. The deliberate, repeated pattern after progressive discipline establishes disqualifying conduct for unemployment purposes.

**38. B** — The FMLA provides intermittent leave when medically necessary to care for a parent with a serious health condition. Prostate cancer requiring scheduled radiation therapy qualifies. Each 3-hour appointment is deducted incrementally from the 12-week entitlement. There is no cap on intermittent parental care leave below the standard 12 weeks.

**39. A** — Each I-9 completed beyond the 3-business-day requirement constitutes a technical violation. The 14 late completions (7-10 days instead of 3) may result in civil penalties, particularly if ICE determines the pattern reflects systematic non-compliance. Otherwise accurate forms do not excuse the timeline violation.

**40. C** — After FMLA exhaustion, the ADA interactive process applies. The employer must evaluate whether the lifting and twisting restrictions can be accommodated through reassignment, mechanical aids, or role restructuring. The employer cannot terminate without completing the interactive process and demonstrating no reasonable accommodation exists.

**41. D** — Under Davis-Bacon, the overtime premium applies only to the cash wage. Straight time:  $40 \text{ hours} \times (\$26.00 + \$12.00)$ . Overtime:  $6 \text{ hours} \times (\$39.00 \text{ wage } [1.5 \times \$26.00] + \$12.00 \text{ fringe at straight-time})$ . The fringe continues at straight-time for all 46 hours.

**42. B** — Underpaid premium per overtime hour:  $\$40.00 \times 0.5 - \$40.00 \times 0.25 = \$10.00$ . Weekly per worker:  $\$10.00 \times 10 = \$100$ . Total:  $\$100 \times 8 \text{ workers} \times 69.5 \text{ weeks} = \$55,600$  in back pay. FLSA liquidated damages may double to \$111,200 plus attorney fees. The failure to pay the full 0.5× premium violates the FLSA.

**43. A** — Derogatory comments about military service may violate USERRA and state anti-discrimination protections. Appropriate responses include formal warning or suspension, mandatory training specifically covering military status protections, documentation, and

monitoring. "Damaged goods" and "unstable" comments targeting combat veterans create a hostile work environment.

**44. C** — The FMLA extends to adult children incapable of self-care due to physical or mental disability. A 22-year-old in a coma following serious construction injuries is clearly incapable of self-care. The employer has 55 employees and the worker meets all eligibility requirements with 6 years of tenure.

**45. D** — Premium at 0.90: \$315,000. Premium at 1.26: \$441,000. Increase: \$126,000 annually. The 1.26 EMR exceeds the 1.0 prequalification threshold, disqualifying the contractor from safety-conscious projects and compounding the financial impact through lost bidding opportunities.

**46. B** — W-2 wages of \$50,000 reduce the SS wage base:  $\$168,600 - \$50,000 = \$118,600$ . Social Security (12.4%) on \$118,600 = \$14,706. Medicare (2.9%) on \$175,465 = \$5,088. No surtax because \$175,465 is below \$200,000. Total: approximately \$19,794.

**47. A** — The IRS reclassifies \$50,000 ( $\$160,000 - \$110,000$ ) from distributions to salary. FICA at 15.3%:  $\$50,000 \times 0.153 = \$7,650$ , plus penalties and interest. The IRS targets S-Corps with disproportionate salary-to-distribution ratios, particularly single-shareholder companies where the owner performs significant services.

**48. C** — Corporate tax on \$275,000 distributed:  $21\% \times \$275,000 = \$57,750$ . Dividend tax:  $15\% \times \$275,000 = \$41,250$ . Total: \$99,000. Effective rate: 36%. This double taxation illustrates the C-Corporation disadvantage — the same earnings taxed at both the entity and shareholder levels.

**49. D** — W-2 wages of \$40,000 reduce the SS wage base:  $\$168,600 - \$40,000 = \$128,600$ . Social Security (12.4%) on \$128,600 = \$15,946. Medicare (2.9%) on \$360,165 = \$10,445. Additional surtax (0.9%) on \$160,165 ( $\$360,165 - \$200,000$ ) = \$1,441. Total: approximately \$27,832.

**50. B** — The IRS reclassifies \$30,000 ( $\$155,000 - \$125,000$ ) from distributions to salary. FICA at 15.3%:  $\$30,000 \times 0.153 = \$4,590$ , plus penalties and interest. LLCs with S-Corp elections receive the same IRS scrutiny as standard S-Corps regarding reasonable compensation requirements.