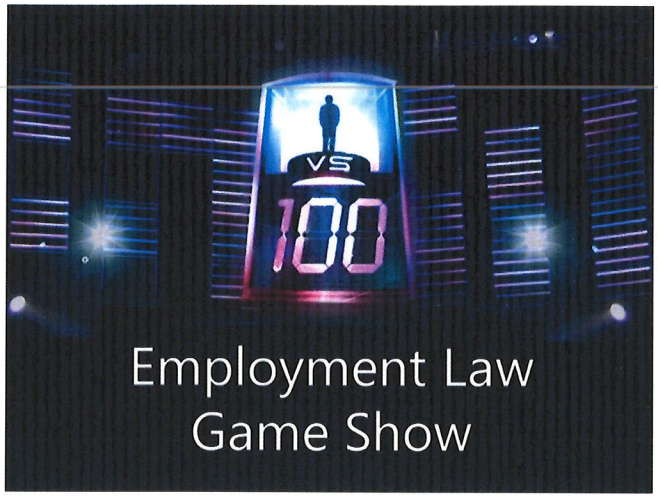
# THEODORE ROOSEVELT
# AMERICAN INN OF COURT




## ONE VS. 100

## EMPLOYMENT/LABOR LAW GAME SHOW SPECIAL

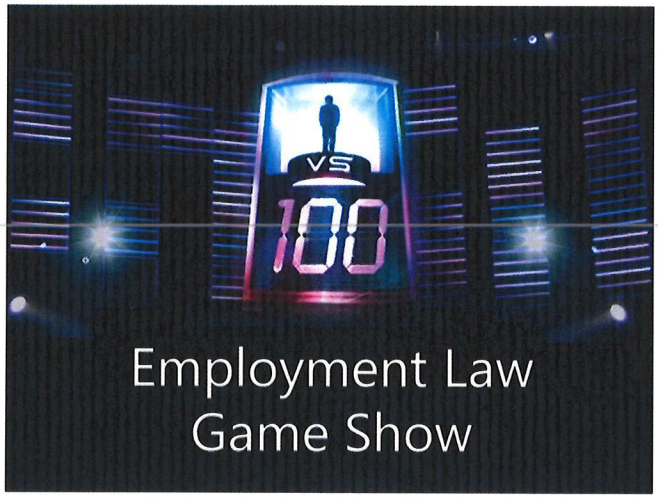
**April 25, 2018 @ 5:30 p.m.**

**Location:**
**Nassau County Bar Association**

**PRESENTED BY:**

**Hon. Leonard B. Austin**
**Paul F. Millus, Esq.**
**Lois Carter Schlissel, Esq.**
**Gregory S. Lisi, Esq.**
**Sarika Kapoor, Esq.**

# THEODORE ROOSEVELT
# AMERICAN INN OF COURT




**April 25, 2018 @ 5:30 p.m.**

## ONE VS. 100 WIN A MILLION DOLLARS!!!*

## EMPLOYMENT/LABOR LAW GAME SHOW SPECIAL

## TIMED AGENDA

| | | |
|---|---|---|
| 1. | Restrictive Covenants and Employee Duty of Loyalty | 20 minutes |
| 2. | Family Medical Leave Act – Paid Family Leave | 20 minutes |
| 3. | Title VII and N.Y. Human Rights Law | 20 minutes |
| 4. | Address Employment Law Issues | 20 minutes |
| 5. | Questions – Comments | 20 minutes |

*Please be advised that you will not win a million dollars. Indeed, you will not win anything except the admiration of your peers if you answer the questions correctly.


# Employment Law Game Show

# Choose Your Contestant


VS
100
You are about to face a “mob” of opponents in a winner takes all quiz challenge. Wrong answers from the mob eliminate them from the game, driving up the cash prize for you. To stay in the game, you must answer questions and get every one right. If you manage to beat the mob, you get the $1 million prize. After each question you can walk away with your score or risk it all to beat The Mob. Are you ready to take on The Mob?
PLAY NOW

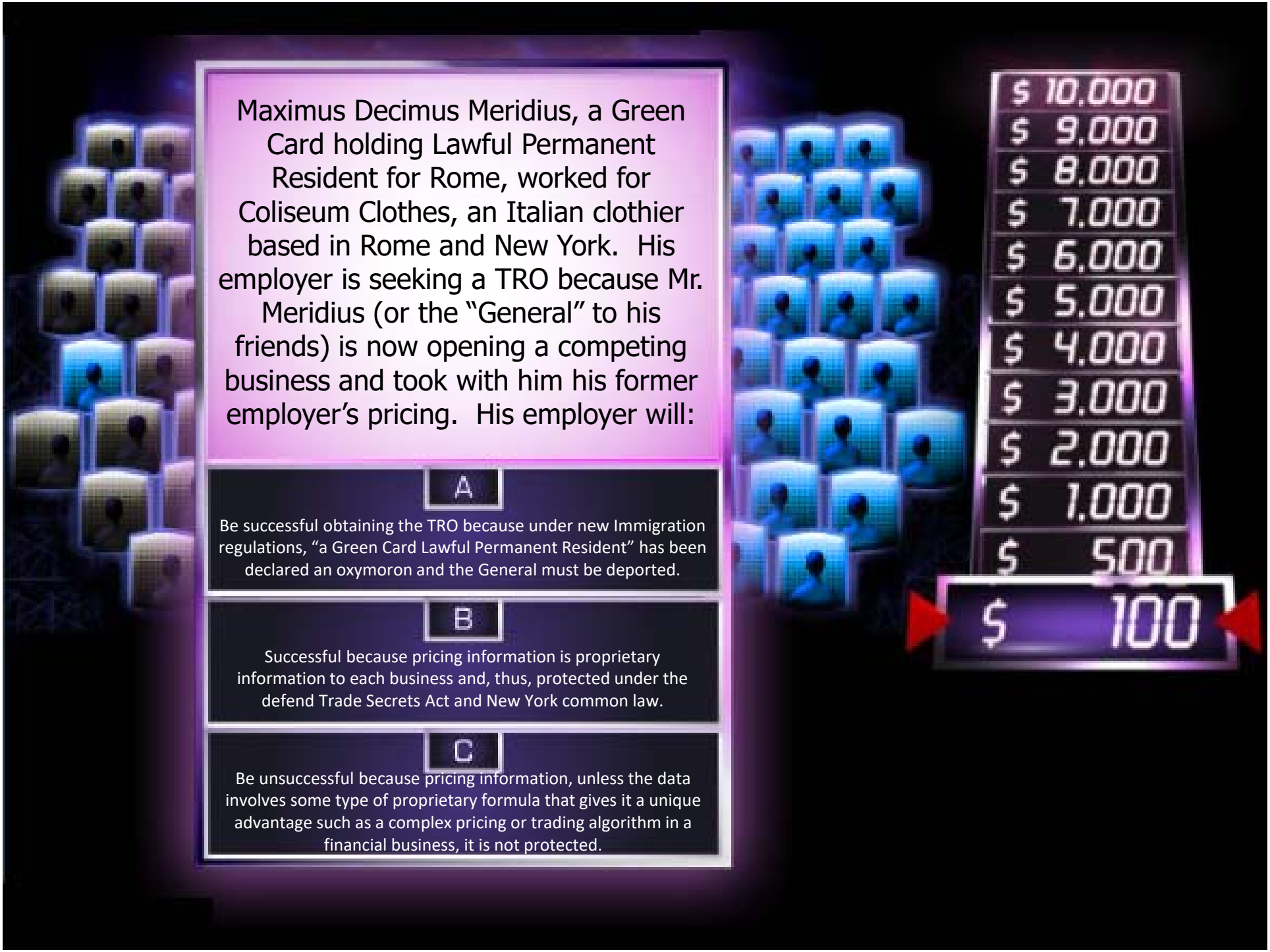

You have two lifelines:

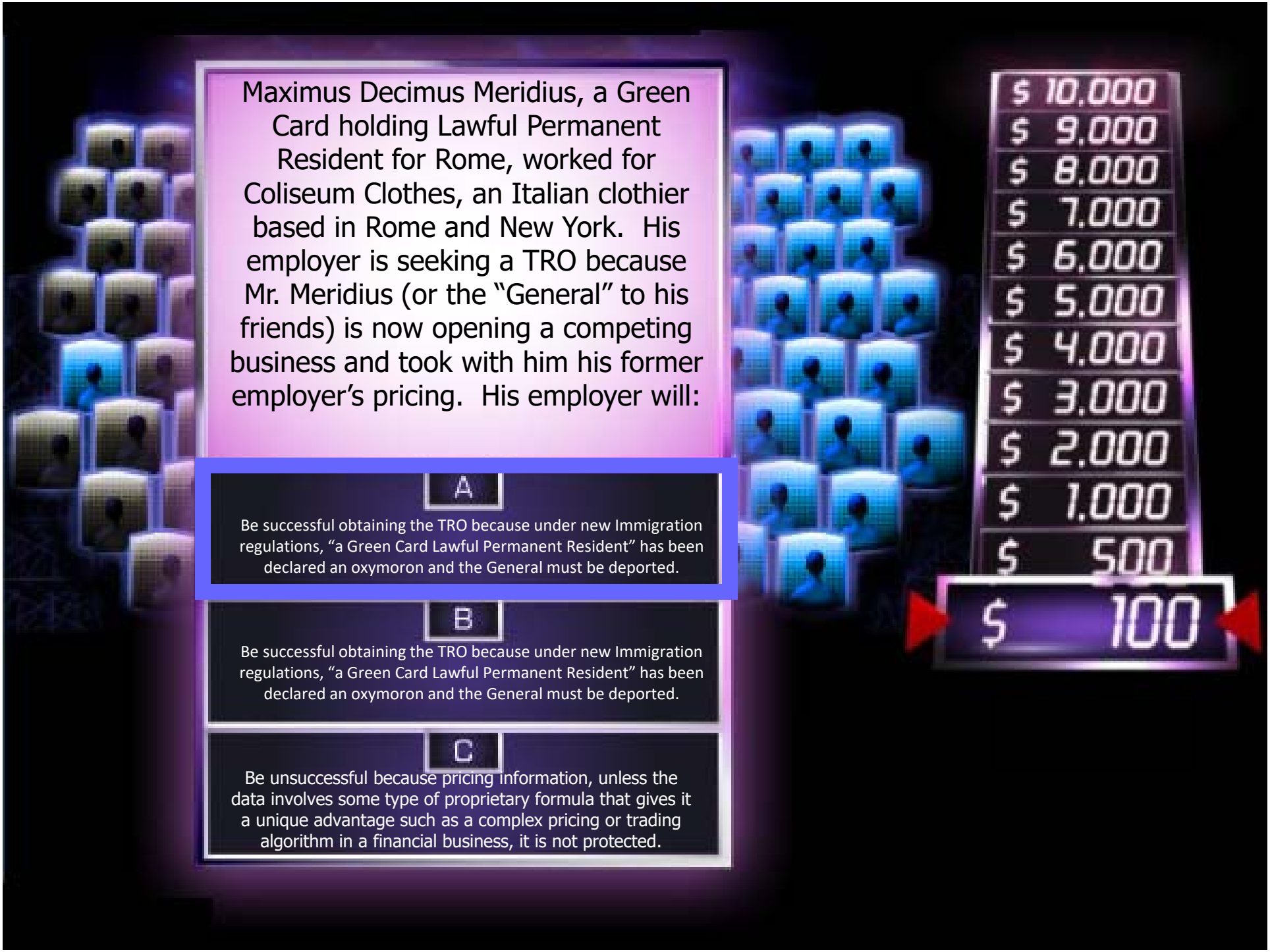
Poll the mob- the player selects one of the three answers. The number of "mob" players who chose that answer is revealed. The contestant can stay with that answer or choose another answer .

Trust the Mob – Contestant asks the Mob for their answers and  he/she is committed to choosing the most popular answer.

PLAY NOW


VS
100


Maximus Decimus Meridius, a Green Card holding Lawful Permanent Resident for Rome, worked for Coliseum Clothes, an Italian clothier based in Rome and New York. His employer is seeking a TRO because Mr. Meridius (or the "General" to his friends) is now opening a competing business and took with him his former employer's pricing. His employer will:
A
Be successful obtaining the TRO because under new Immigration regulations, "a Green Card Lawful Permanent Resident" has been declared an oxymoron and the General must be deported.
B
Successful because pricing information is proprietary information to each business and, thus, protected under the defend Trade Secrets Act and New York common law.
C
Be unsuccessful because pricing information, unless the data involves some type of proprietary formula that gives it a unique advantage such as a complex pricing or trading algorithm in a financial business, it is not protected.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Maximus Decimus Meridius, a Green Card holding Lawful Permanent Resident for Rome, worked for Coliseum Clothes, an Italian clothier based in Rome and New York. His employer is seeking a TRO because Mr. Meridius (or the "General" to his friends) is now opening a competing business and took with him his former employer's pricing. His employer will:
A
Be successful obtaining the TRO because under new Immigration regulations, "a Green Card Lawful Permanent Resident" has been declared an oxymoron and the General must be deported.
B
Be successful obtaining the TRO because under new Immigration regulations, "a Green Card Lawful Permanent Resident" has been declared an oxymoron and the General must be deported.
C
Be unsuccessful because pricing information, unless the data involves some type of proprietary formula that gives it a unique advantage such as a complex pricing or trading algorithm in a financial business, it is not protected.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

*Free Country Ltd. v. Drennen, 235 F. Supp. 3d 559 (S.D.N.Y. 2016)*

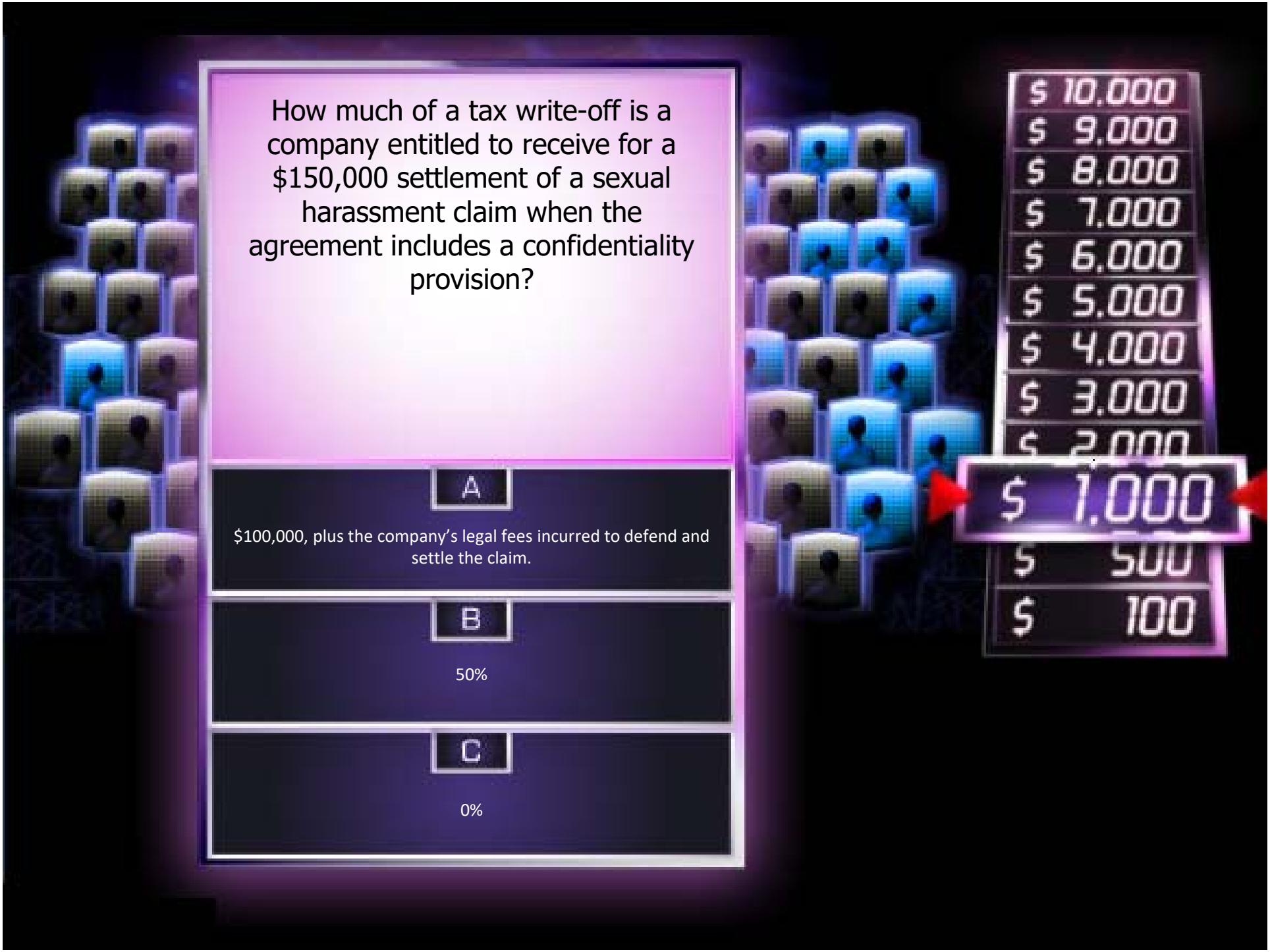
- The requirements for showing a misappropriation of a trade secret are similar under state and federal law. Under New York law, a party must demonstrate: (1) that it possessed a trade secret, and (2) that the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means. N. Atl. Instruments, Inc. v. Haber, 188 F.3d 38, 43-44 (2d Cir. 1999). Similarly, under the DTSA, a party must show "an unconsented disclosure or use of a trade secret by one who (i) used improper means to acquire the secret, or, (ii) at the time of disclosure, knew or had reason to know that the trade secret was acquired through improper means, under circumstances giving rise to a duty to maintain the secrecy of the trade secret, or derived from or through a person who owed such a duty.
- Data relating to pricing can constitute a trade secret under some circumstances. In re Dana Corp., 574 F.3d 129, 152 (2d Cir. 2009). However, this is generally where a company uses some type of proprietary formula that gives it a unique advantage, such as a complex pricing or trading algorithm in a financial business. See Saks Inc. v. Attachmate Corp., No. 14 CIV. 4902 CM, 2015 WL 1841136, at *18 (S.D.N.Y. Apr. 17, 2015); Johnson Controls, Inc. v. A.P.T. Critical Sys., Inc., 323 F.Supp.2d 525, 537-38 (S.D.N.Y. 2004). On the other hand, information relating to Free Country's underlying mechanics, such as the prices of materials and costs of manufacturing, are not trade secrets because "any seller's publicly-available prices signal to competitors some information about the underlying mechanics of the seller's pricing structure.

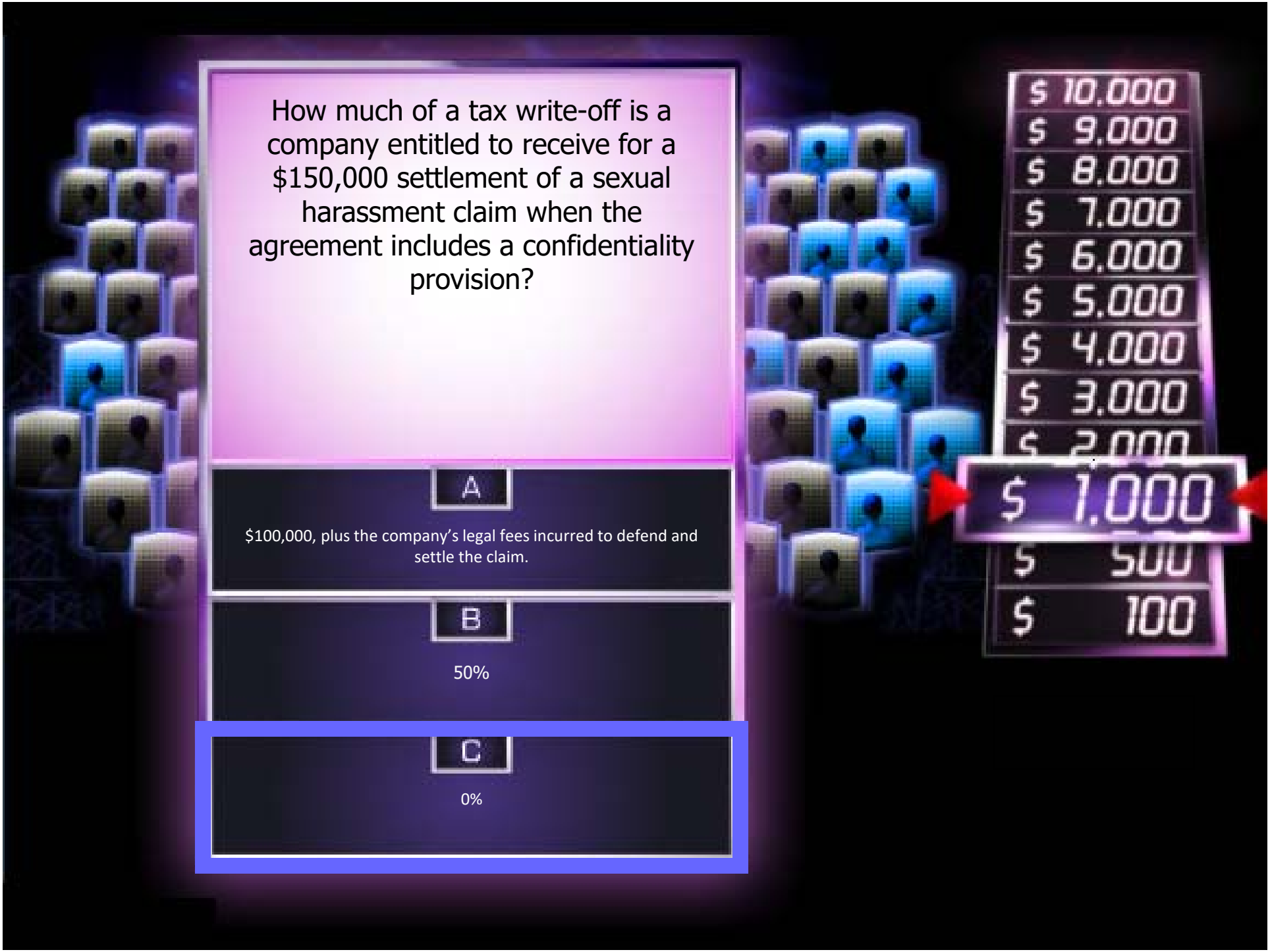

Which of the following constitutes a purpose for which New York Paid Family Leave can be taken by an employee?
A
To care for a beloved family pet who is suffering from serious illness.
B
To recover from the employee's own injury in an automobile accident.
C
To drive the employee's mother-in-law to her doctor after hip replacement.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 500
$ 100

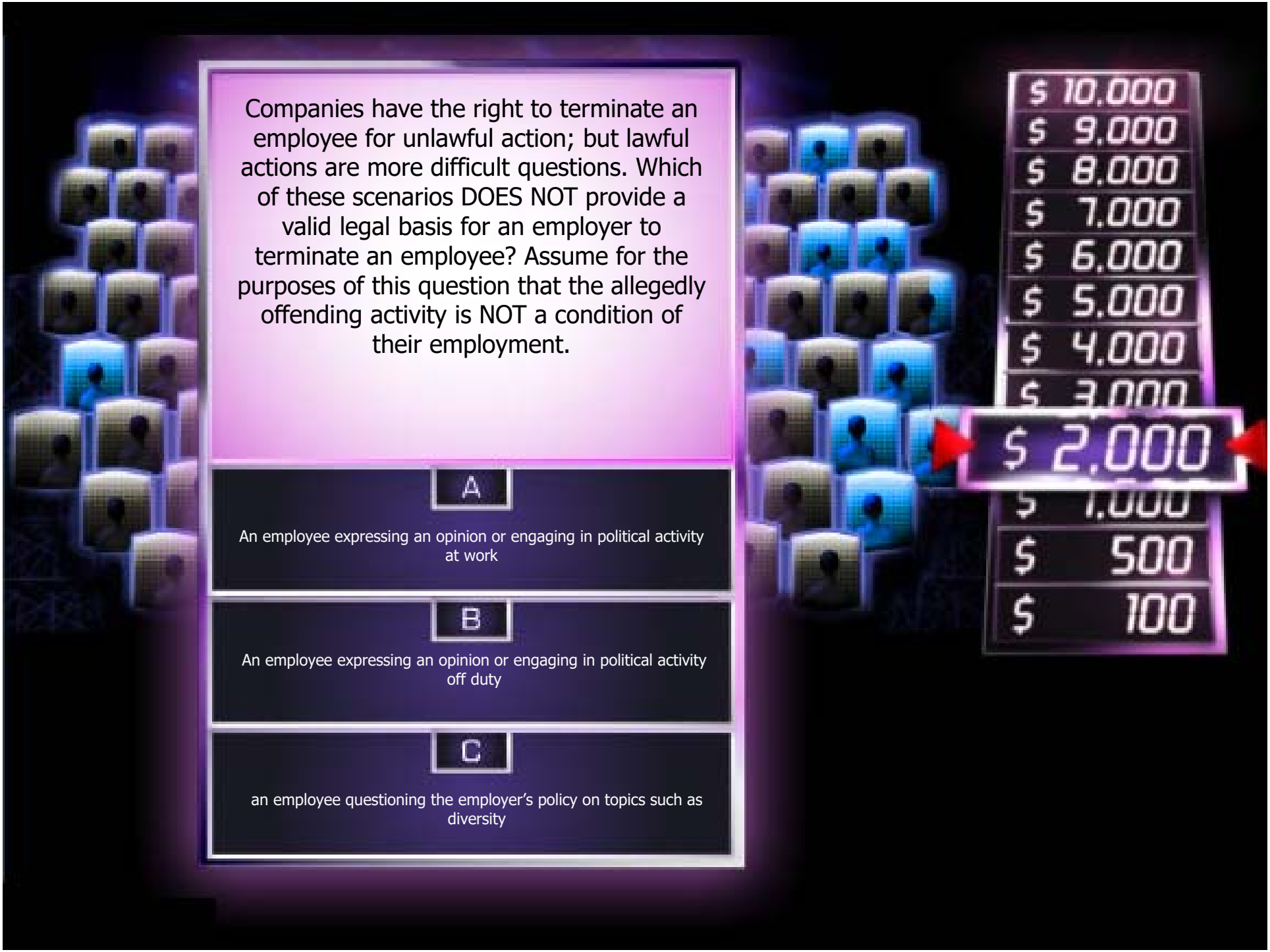

Which of the following constitutes a purpose for which New York Paid Family Leave can be taken by an employee?
A
To care for a beloved family pet who is suffering from serious illness.
B
To recover from the employee's own injury in an automobile accident.
C
To drive the employee's mother-in-law to her doctor after hip replacement.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 500
$ 100

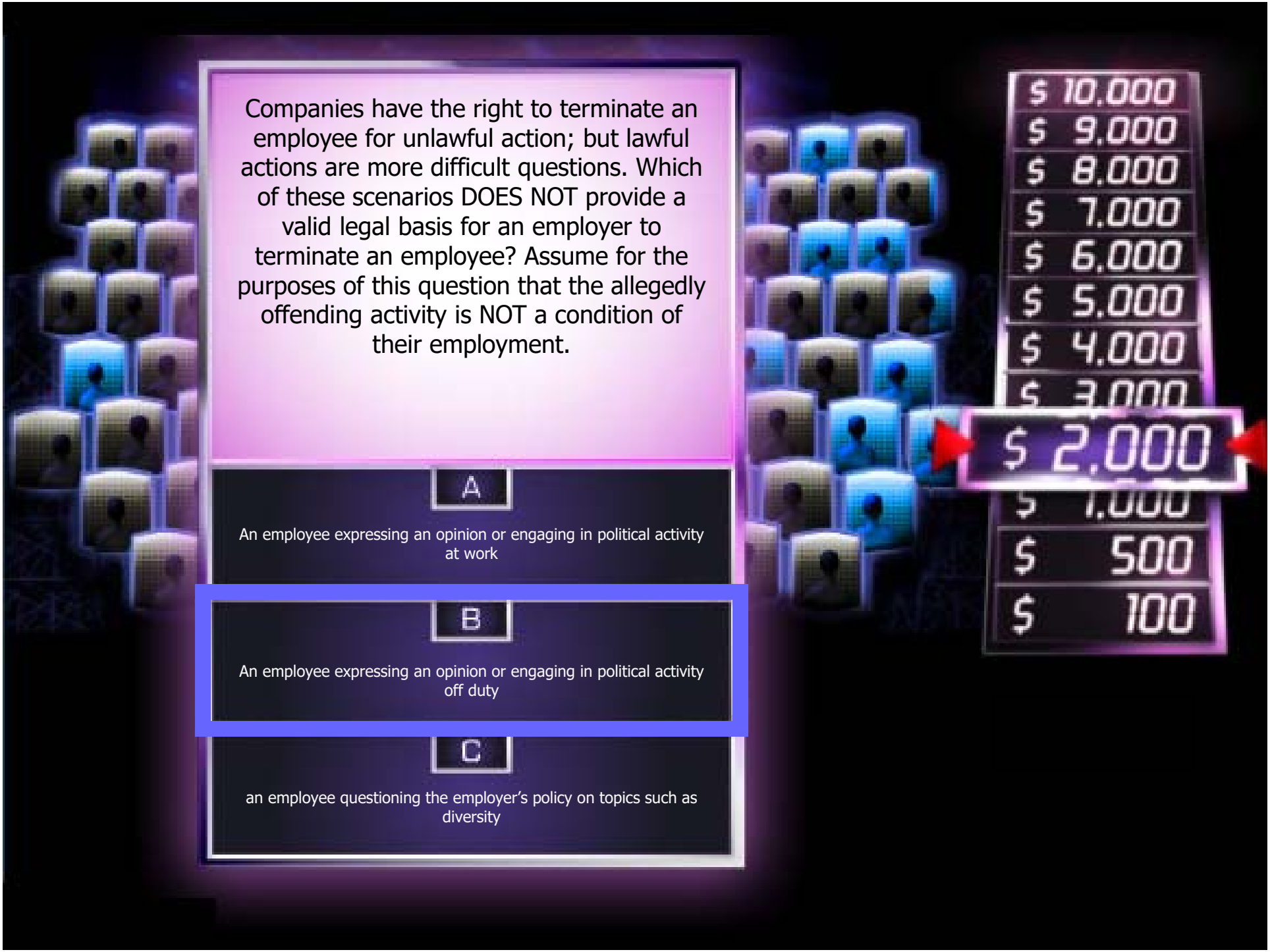
The Paid Family Leave Act does permit leave for the purpose of caring for a parent-in-law who has a serious illness or health condition. Workers' Compensation Law, §201(19).

B is incorrect because the Paid Family Leave Act does not provide leave benefits for an employee's own illness or health condition. Workers' Compensation Law, §201(15). (The Family Medical Leave Act does provide UNPAID leave for an employee to recover from his or her own illness or injury. (29 U.S.C. §2601(b)(2); 29 U.S.C. §2612(a)(1)(D)).)


How much of a tax write-off is a company entitled to receive for a $150,000 settlement of a sexual harassment claim when the agreement includes a confidentiality provision?
A
$100,000, plus the company's legal fees incurred to defend and settle the claim.
B
50%
C
0%
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 1,000
$ 100


How much of a tax write-off is a company entitled to receive for a $150,000 settlement of a sexual harassment claim when the agreement includes a confidentiality provision?
A
$100,000, plus the company's legal fees incurred to defend and settle the claim.
B
50%
C
0%
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 1,000
$ 100


Companies have the right to terminate an employee for unlawful action; but lawful actions are more difficult questions. Which of these scenarios DOES NOT provide a valid legal basis for an employer to terminate an employee? Assume for the purposes of this question that the allegedly offending activity is NOT a condition of their employment.
A
An employee expressing an opinion or engaging in political activity at work
B
An employee expressing an opinion or engaging in political activity off duty
C
an employee questioning the employer's policy on topics such as diversity
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 2,000
$ 500
$ 100


Companies have the right to terminate an employee for unlawful action; but lawful actions are more difficult questions. Which of these scenarios DOES NOT provide a valid legal basis for an employer to terminate an employee? Assume for the purposes of this question that the allegedly offending activity is NOT a condition of their employment.
A
An employee expressing an opinion or engaging in political activity at work
B
An employee expressing an opinion or engaging in political activity off duty
C
an employee questioning the employer's policy on topics such as diversity
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 2,000
$ 500
$ 100

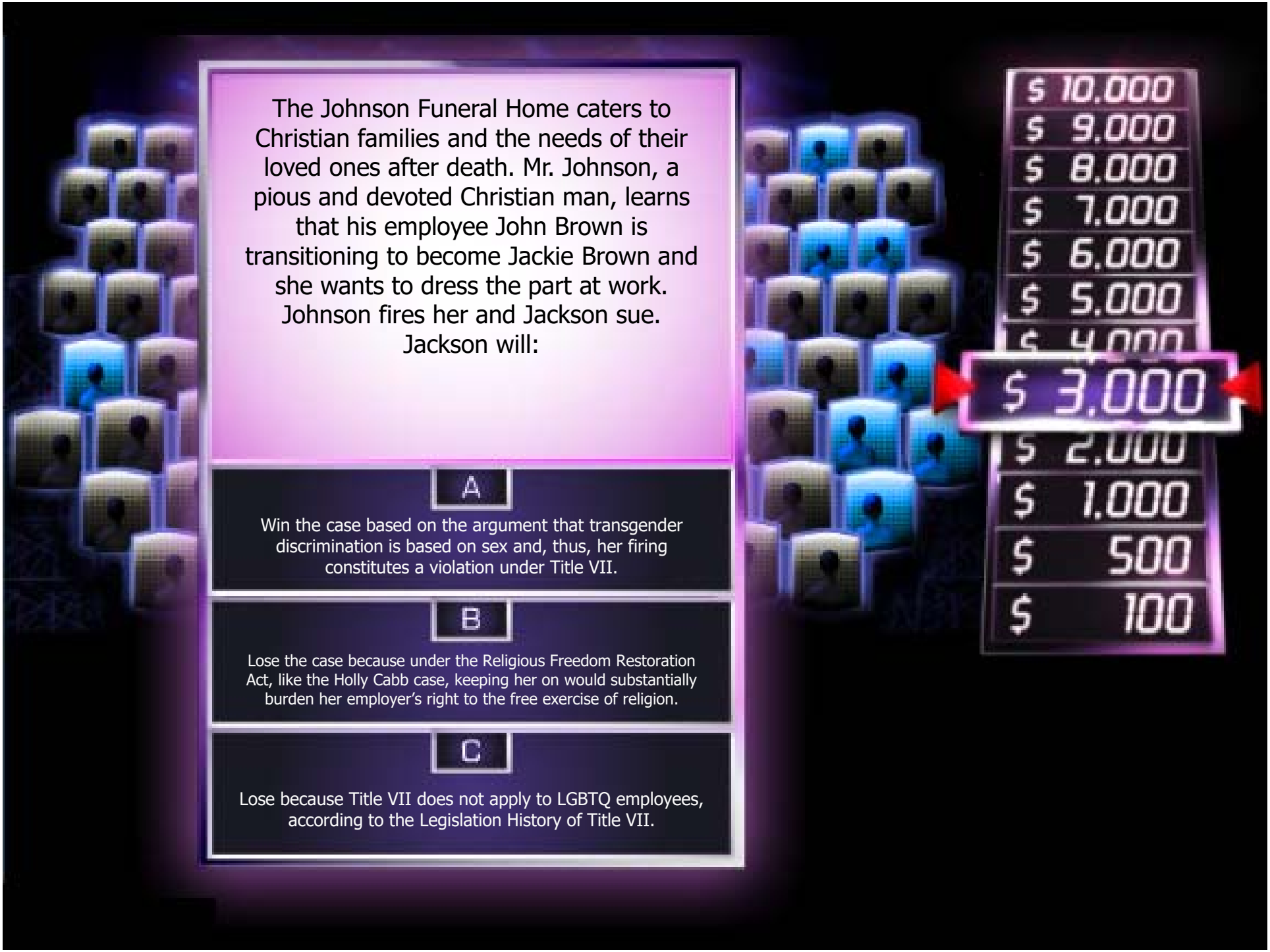
Generally, employers are not permitted to fire employees for expressing strong opinions on political or social issues – particularly when they are done on their personal time and off duty.

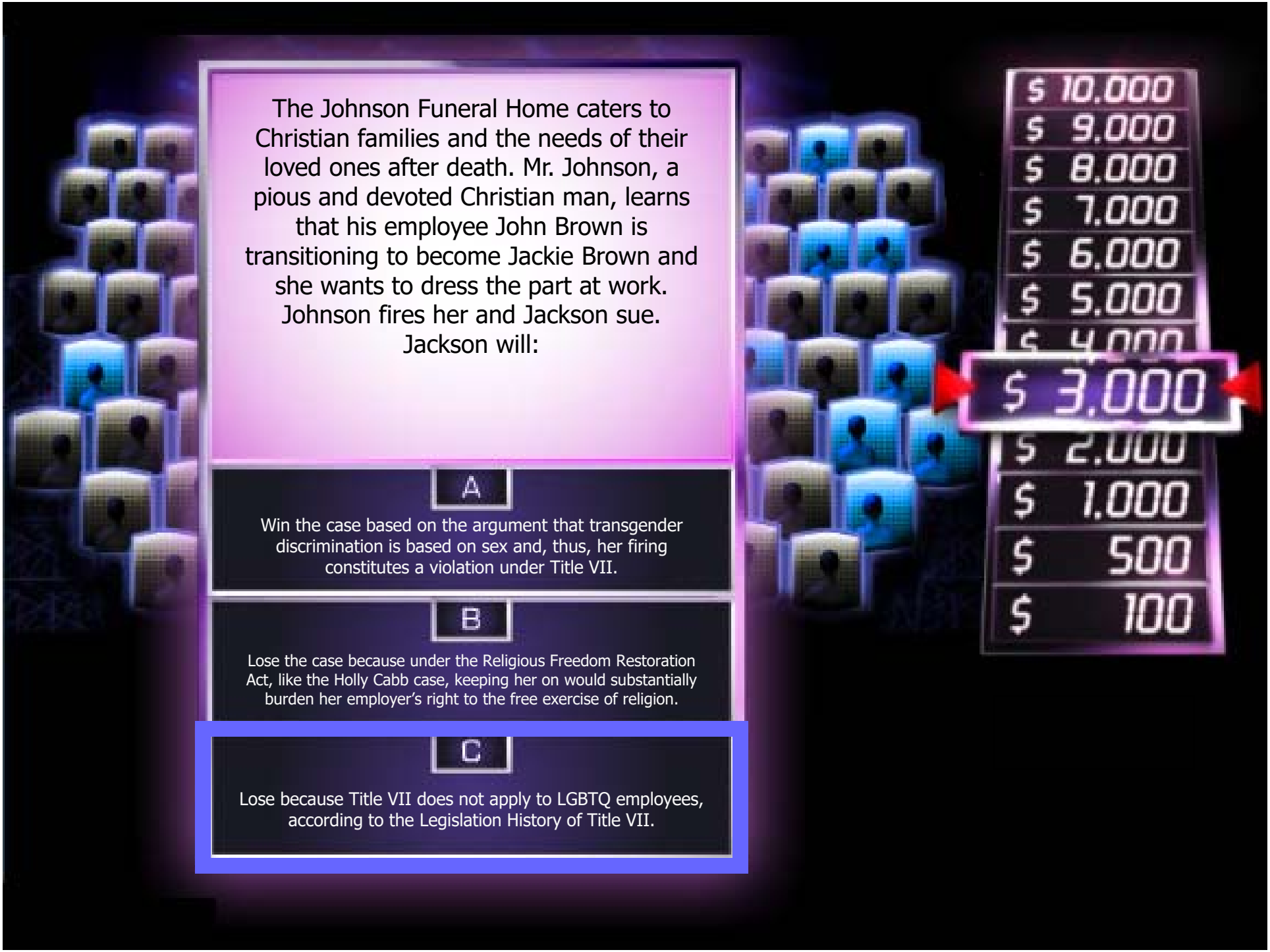
In October 2017, a Virginia based government contractor fired a marketing executive after a photo of her flipping off a Donald Trump motorcade went viral on social media. Juli Briskman was fired from the government contracting firm Akima LLC in October 2017. Citing Akima's social media policy, the company fired Briskman after she let them know she was the person in the image. The company pointed to its employment rule that says employee activity considered "discriminatory, obscene, malicious or threatening content" can lead to reprimand, up to termination.

While companies are generally given wide latitude to reprimand employees for speech, the company's termination of Briskman implicates discrimination and free speech laws under federal and local statutes.

In this case Briskman was engaged in a protected activity that was lawful, done off duty, and that had nothing to do with her employment. Furthermore in her case she was also an employee of a government contractor.

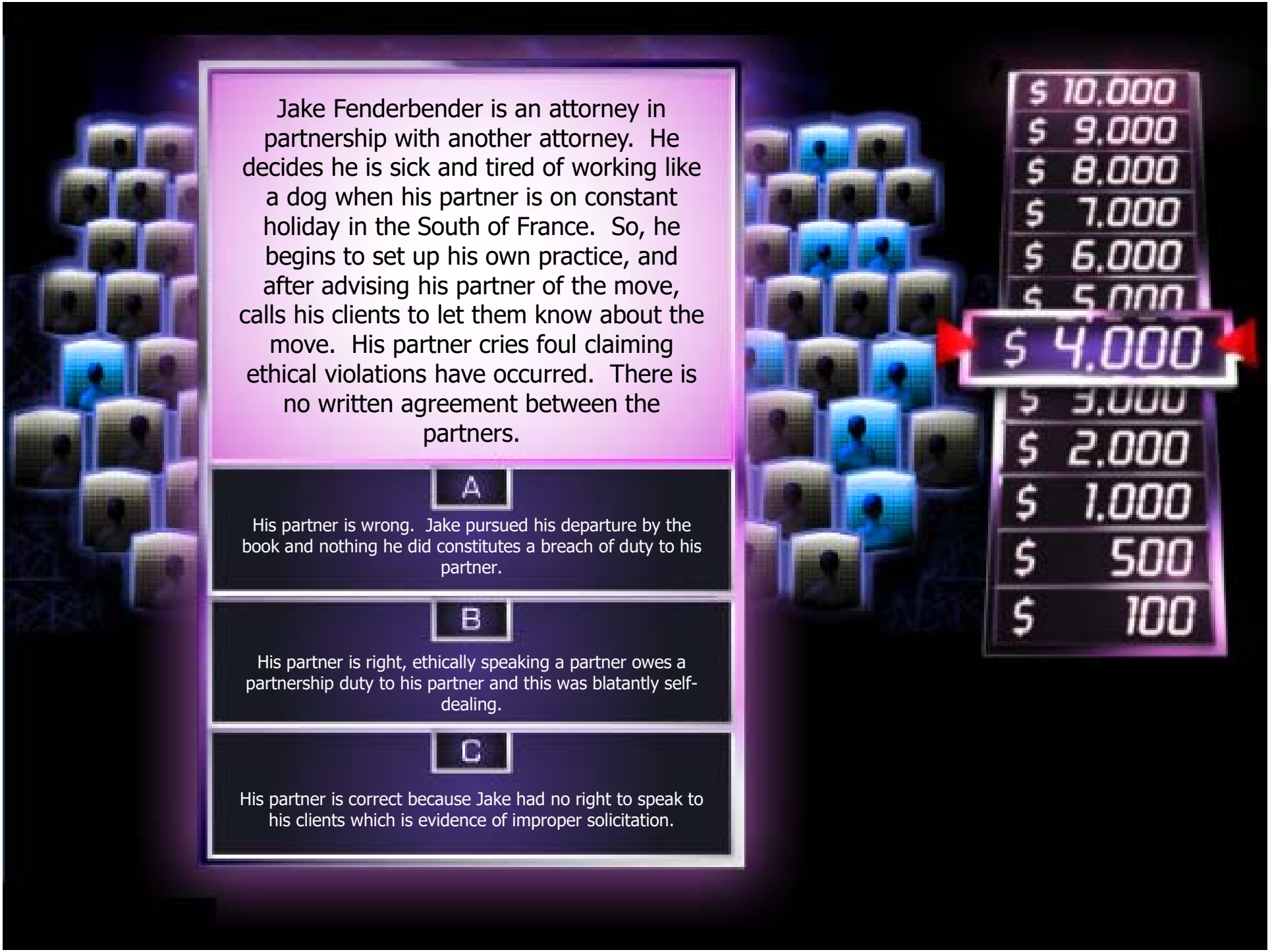
Accordingly, an employee expressing an opinion or engaging in political activity off duty does not provide a valid legal basis for an employer to terminate an employee.

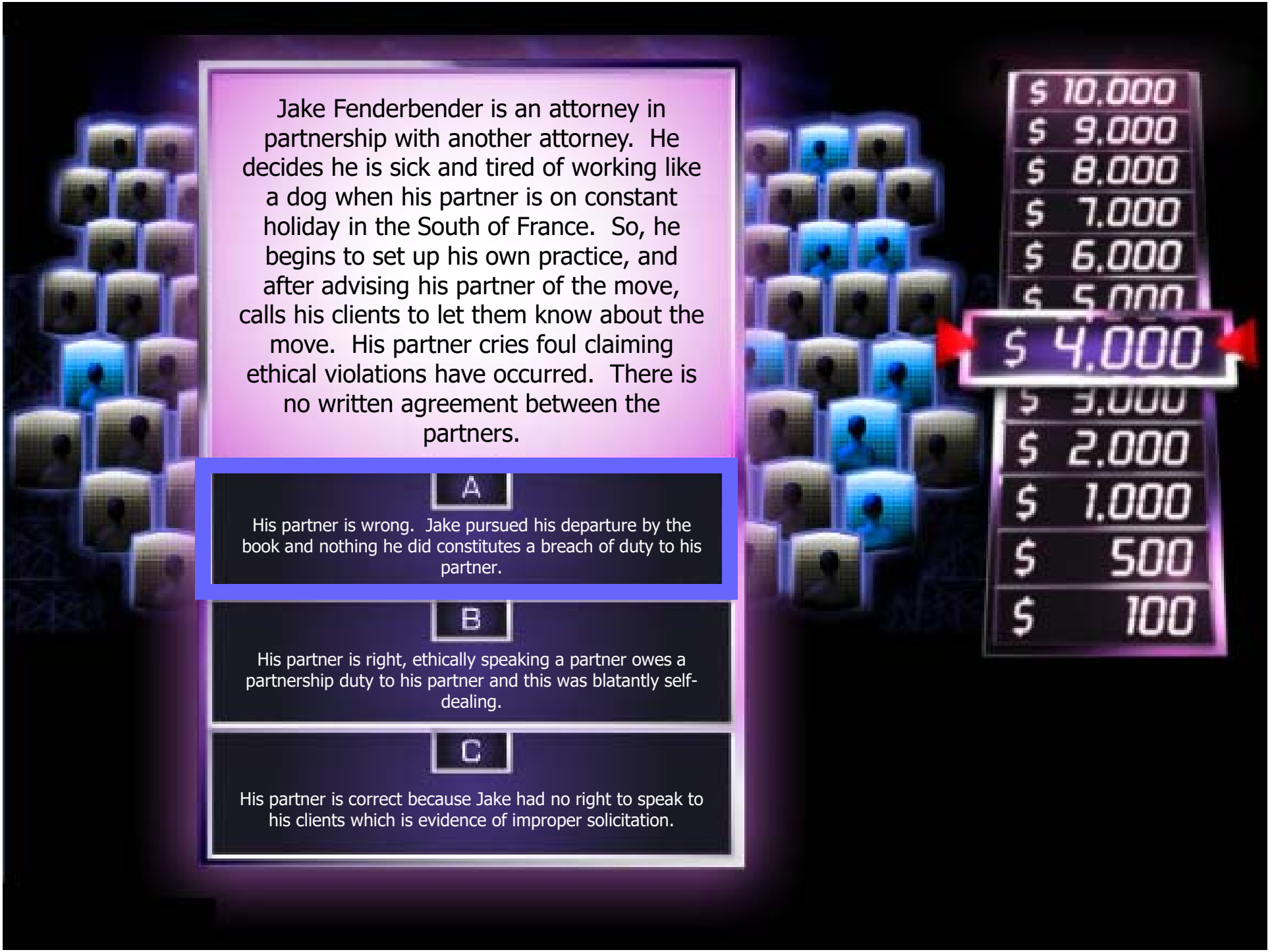

The Johnson Funeral Home caters to Christian families and the needs of their loved ones after death. Mr. Johnson, a pious and devoted Christian man, learns that his employee John Brown is transitioning to become Jackie Brown and she wants to dress the part at work. Johnson fires her and Jackson sue. Jackson will:
A
Win the case based on the argument that transgender discrimination is based on sex and, thus, her firing constitutes a violation under Title VII.
B
Lose the case because under the Religious Freedom Restoration Act, like the Holly Cabb case, keeping her on would substantially burden her employer's right to the free exercise of religion.
C
Lose because Title VII does not apply to LGBTQ employees, according to the Legislation History of Title VII.
$ 10.000
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 3.000
$ 1.000
$ 500
$ 100


The Johnson Funeral Home caters to Christian families and the needs of their loved ones after death. Mr. Johnson, a pious and devoted Christian man, learns that his employee John Brown is transitioning to become Jackie Brown and she wants to dress the part at work. Johnson fires her and Jackson sue. Jackson will:
A
Win the case based on the argument that transgender discrimination is based on sex and, thus, her firing constitutes a violation under Title VII.
B
Lose the case because under the Religious Freedom Restoration Act, like the Holly Cabb case, keeping her on would substantially burden her employer's right to the free exercise of religion.
C
Lose because Title VII does not apply to LGBTQ employees, according to the Legislation History of Title VII.
$ 10.000
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 3.000
$ 1.000
$ 500
$ 100

*Equal Employment Opportunity Commission v. R.G. &. G.R. Harris Funeral Homes, Inc. --- F.3d ---2018 WL 1177669 (6th Cr. 2017)*

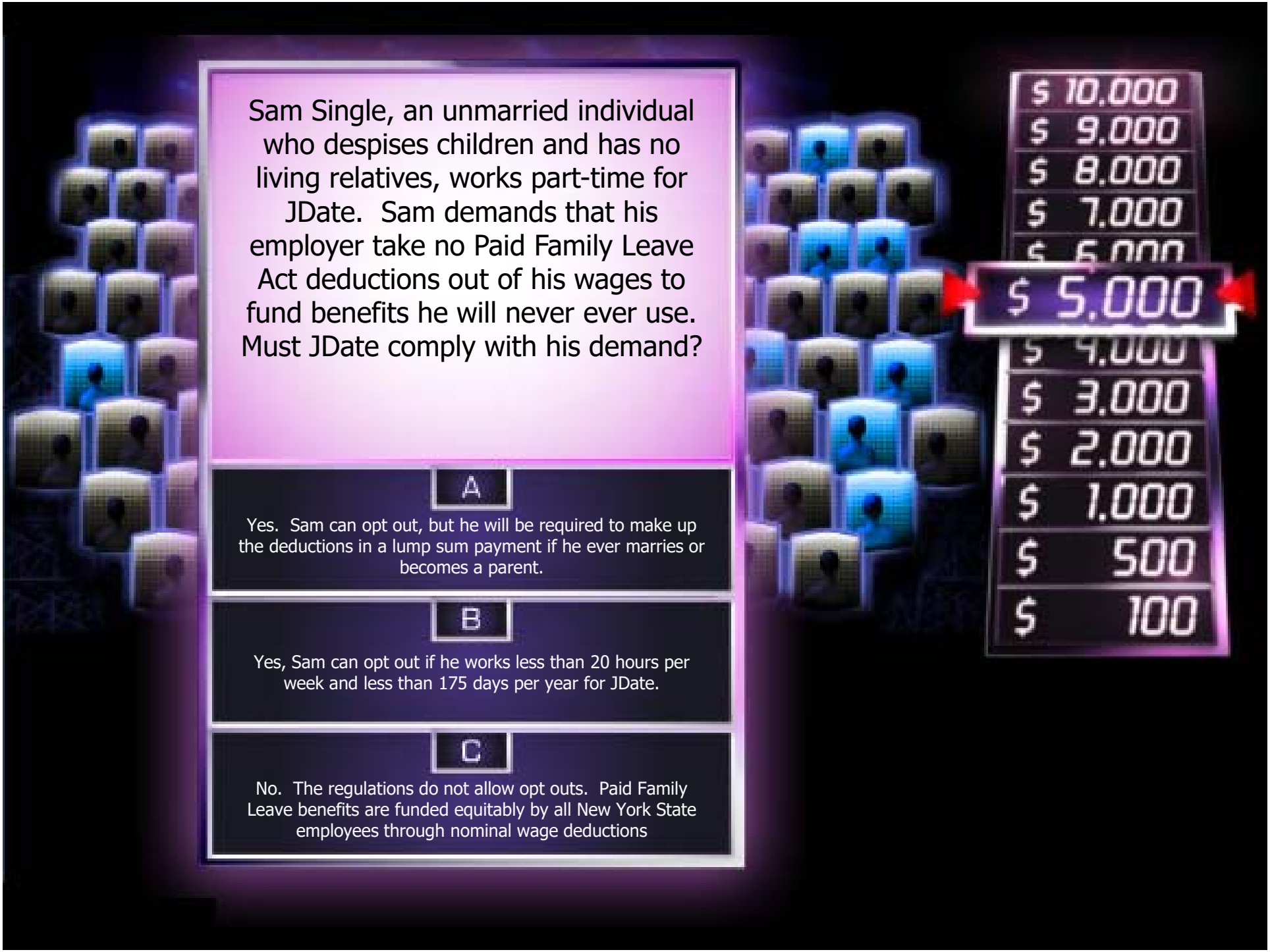
- The district court correctly determined that Stephens was fired because of her failure to conform to sex stereotypes, in violation of Title VII.
- Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989) – that a female employee who faced an adverse employment decision because she failed to "walk ... femininely, talk ... femininely, dress ... femininely, wear make-up, have her hair styled, [or] wear jewelry," could properly state a claim for sex discrimination under Title VII – even though she was not discriminated against for being a woman per se, but instead for failing to be womanly enough.
- To assert a viable defense under RFRA, a religious claimant must demonstrate that the government action at issue "would (1) substantially burden (2) a sincere (3) religious exercise"
- A religious claimant cannot rely on customers' presumed biases to establish a substantial burden under RFRA.
- Simply permitting Stephens to wear attire that reflects a conception of gender that is at odds with Rost's religious beliefs is not a substantial burden under RFRA.

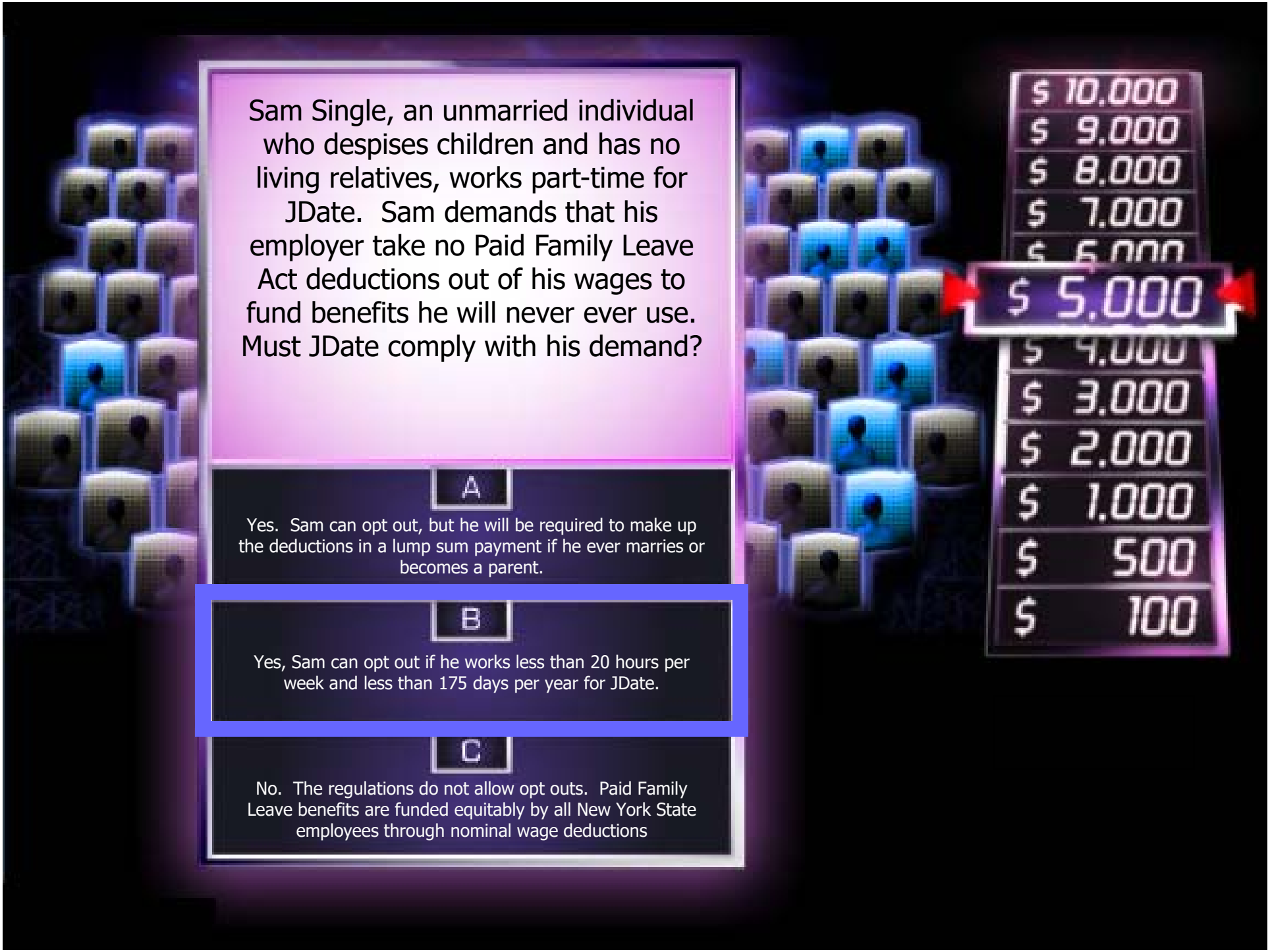

Jake Fenderbender is an attorney in partnership with another attorney. He decides he is sick and tired of working like a dog when his partner is on constant holiday in the South of France. So, he begins to set up his own practice, and after advising his partner of the move, calls his clients to let them know about the move. His partner cries foul claiming ethical violations have occurred. There is no written agreement between the partners.
A
His partner is wrong. Jake pursued his departure by the book and nothing he did constitutes a breach of duty to his partner.
B
His partner is right, ethically speaking a partner owes a partnership duty to his partner and this was blatantly self-dealing.
C
His partner is correct because Jake had no right to speak to his clients which is evidence of improper solicitation.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 4,000
$ 2,000
$ 1,000
$ 500
$ 100


Jake Fenderbender is an attorney in partnership with another attorney. He decides he is sick and tired of working like a dog when his partner is on constant holiday in the South of France. So, he begins to set up his own practice, and after advising his partner of the move, calls his clients to let them know about the move. His partner cries foul claiming ethical violations have occurred. There is no written agreement between the partners.
A
His partner is wrong. Jake pursued his departure by the book and nothing he did constitutes a breach of duty to his partner.
B
His partner is right, ethically speaking a partner owes a partnership duty to his partner and this was blatantly self-dealing.
C
His partner is correct because Jake had no right to speak to his clients which is evidence of improper solicitation.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 4,000
$ 2,000
$ 1,000
$ 500
$ 100

*Graubard Mollen Dannett & Horowitz v. Moskovitz, 586 N.Y.2d 112, 629 N.Y.S.2d 1009 (1995)*

- Where an attorney is dissatisfied with his or her existing association, taking steps to locate alternative space and affiliations would not violate partner's fiduciary duties.
- Ideally, departing partners actions to inform firm clients with whom they have a prior professional relationship about their impending withdrawal and new practice, and to remind client of its freedom to retain counsel of its choice, would take place only after notice to the firm of the partner's plans to leave.
- Secretly attempting to lure firm clients, even those the partner has brought into the firm and personally represented, to the new association, lying to partners about their rights with respect to the choice of counsel, lying to clients about plans to leave, and abandoning the firm on short notice, taking clients and files, would not be consistent with partner's fiduciary duties.
- Preresignation surreptitious solicitation of firm clients for partner's personal gain, is actionable; such conduct exceeds what is necessary to protect important value of client freedom of choice in legal representation, but thoroughly undermines another value; the loyalty owed partners.


Sam Single, an unmarried individual who despises children and has no living relatives, works part-time for JDate. Sam demands that his employer take no Paid Family Leave Act deductions out of his wages to fund benefits he will never ever use. Must JDate comply with his demand?
A
Yes. Sam can opt out, but he will be required to make up the deductions in a lump sum payment if he ever marries or becomes a parent.
B
Yes, Sam can opt out if he works less than 20 hours per week and less than 175 days per year for JDate.
C
No. The regulations do not allow opt outs. Paid Family Leave benefits are funded equitably by all New York State employees through nominal wage deductions
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 5,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Sam Single, an unmarried individual who despises children and has no living relatives, works part-time for JDate. Sam demands that his employer take no Paid Family Leave Act deductions out of his wages to fund benefits he will never ever use. Must JDate comply with his demand?
A
Yes. Sam can opt out, but he will be required to make up the deductions in a lump sum payment if he ever marries or becomes a parent.
B
Yes, Sam can opt out if he works less than 20 hours per week and less than 175 days per year for JDate.
C
No. The regulations do not allow opt outs. Paid Family Leave benefits are funded equitably by all New York State employees through nominal wage deductions
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 5,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

An employee can opt out if he or she works less than 20 hours per week and less than 175 days per year.

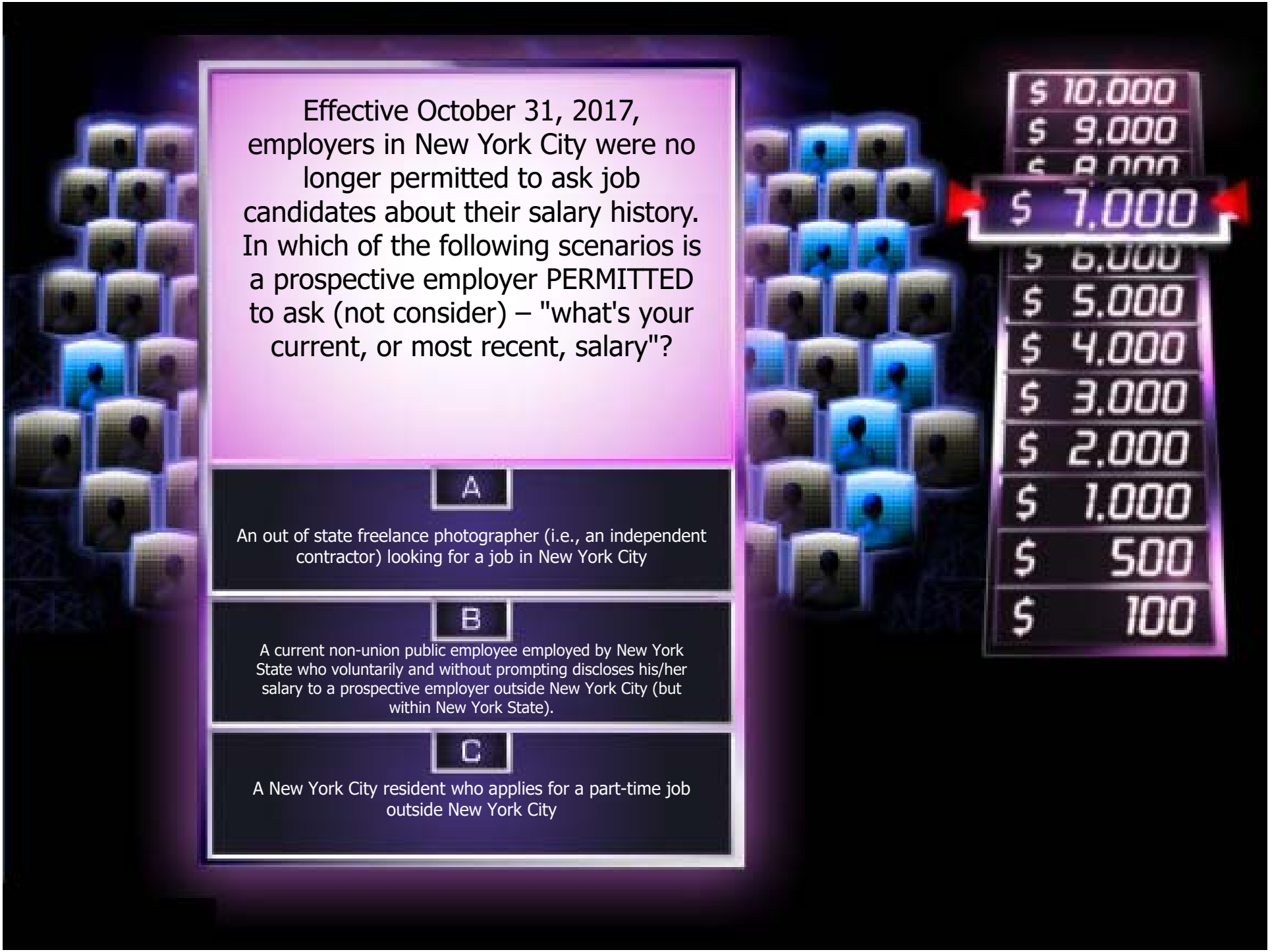
An employee also can opt out if he or she works more than 20 hours per week but not 26 consecutive weeks per year.

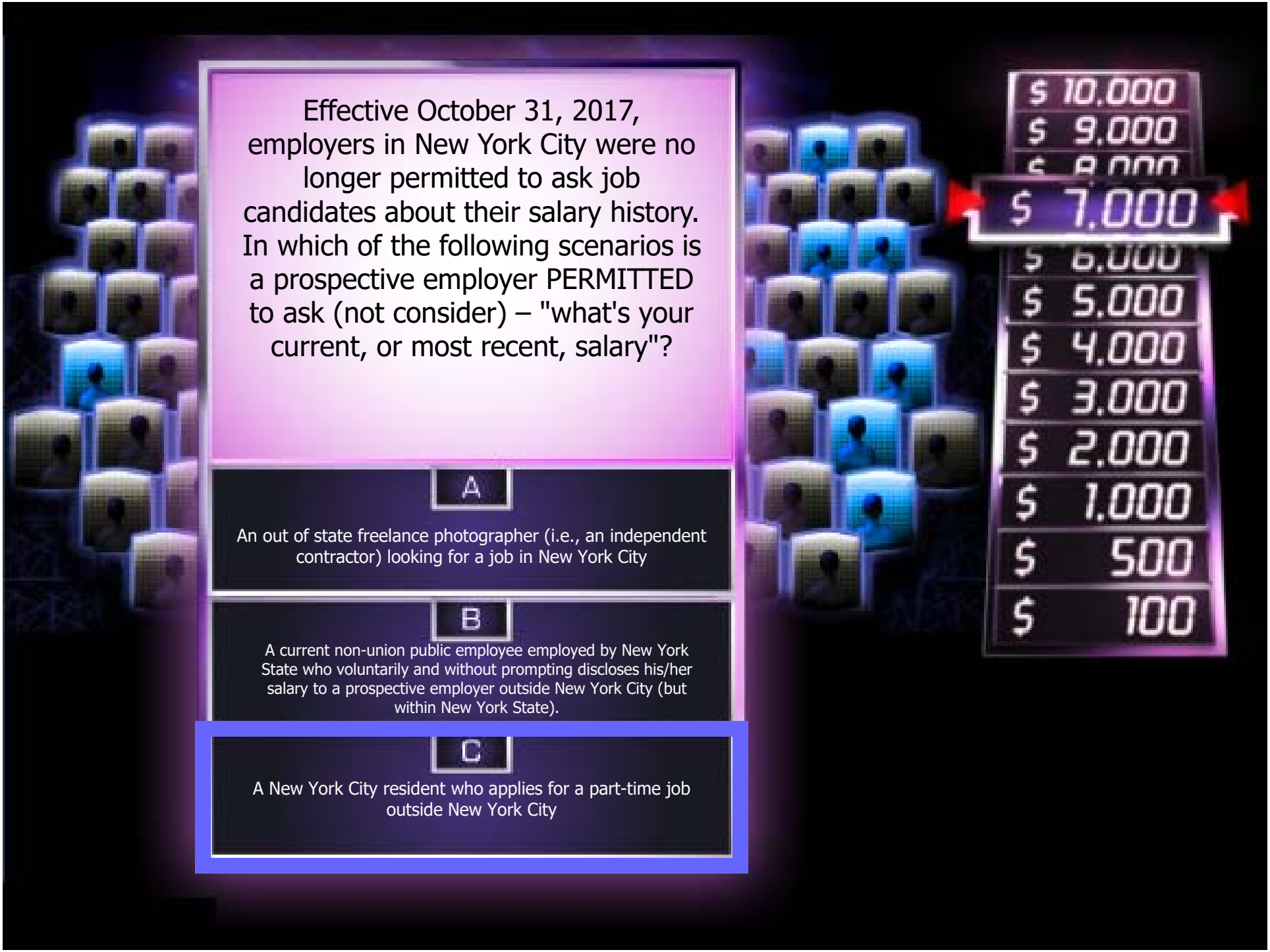
12 CRR-NY 380-2.6.


Will Big Bank Corp. be able to successfully move to dismiss a complaint alleging a hostile work environment, discrimination based on sex, and retaliation under Title VII, the New York State Human Rights Law, and the New York City Human Rights law stemming for allegations that occurred between September 2014-June 2015?
A
The New York State Human Rights Law and New York City Human Rights Law claims are timely, but the Title VII claim is out of the applicable statute of limitations and will be dismissed.
B
All claims are untimely and will be filed on statute of limitations grounds.
C
The Title VII and New York State Human Rights Law claims are untimely, but the New York City Human Rights Law is timely.
$ 10,000
$ 9,000
$ 8,000
$ 6,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Will Big Bank Corp. be able to successfully move to dismiss a complaint alleging a hostile work environment, discrimination based on sex, and retaliation under Title VII, the New York State Human Rights Law, and the New York City Human Rights law stemming for allegations that occurred between September 2014-June 2015?
A
The New York State Human Rights Law and New York City Human Rights Law claims are timely, but the Title VII claim is out of the applicable statute of limitations and will be dismissed.
B
All claims are untimely and will be filed on statute of limitations grounds.
C
The Title VII and New York State Human Rights Law claims are untimely, but the New York City Human Rights Law is timely.
$ 10,000
$ 9,000
$ 8,000
$ 6,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

- For Title VII timely filing of a charge with the EEOC is a precondition to an employment discrimination action under Title VII. National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002) (citing 42 U.S.C. § 2000e-5(e)(l)). "In New York, the statute of limitations for filing a charge with the EEOC is 300 days." Odom v. Doar, 497 F. App'x 88, 89 (2d Cir. 2012).
- For the New York State Executive Law, look to CPLR §214(2), which provides: “The following actions must be commenced within three years: (2) an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215.”
- For the New York City Human Rights Law, N.Y.C. Admin. Code §8-402(b) provides that “[a] civil action commenced under this section must be commenced within three years after the alleged discriminatory practice occurred.”


Effective October 31, 2017, employers in New York City were no longer permitted to ask job candidates about their salary history. In which of the following scenarios is a prospective employer PERMITTED to ask (not consider) – "what's your current, or most recent, salary"?
A
An out of state freelance photographer (i.e., an independent contractor) looking for a job in New York City
B
A current non-union public employee employed by New York State who voluntarily and without prompting discloses his/her salary to a prospective employer outside New York City (but within New York State).
C
A New York City resident who applies for a part-time job outside New York City
$ 10,000
$ 9,000
$ 7,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Effective October 31, 2017, employers in New York City were no longer permitted to ask job candidates about their salary history. In which of the following scenarios is a prospective employer PERMITTED to ask (not consider) – "what's your current, or most recent, salary"?
A
An out of state freelance photographer (i.e., an independent contractor) looking for a job in New York City
B
A current non-union public employee employed by New York State who voluntarily and without prompting discloses his/her salary to a prospective employer outside New York City (but within New York State).
C
A New York City resident who applies for a part-time job outside New York City
$ 10,000
$ 9,000
$ 7,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

On October 31, 2017, it became an unlawful discriminatory practice under the New York City Human Rights Law (NYCHRL) for an employer in New York City to inquire about the salary history of a job applicant during the hiring process.

This includes asking direct questions to the applicant, the applicant's current or former employer(s) and performing any search of publicly available records for the purpose of obtaining information about the applicant's prior salary.

The law also prohibits employers from relying on the pay history of an applicant in determining salary, benefits or other compensation.

The law covers all employers in New York City, regardless of size, and applies to applicants for new employment in NYC, regardless of whether the position is full-time, part-time or an internship.

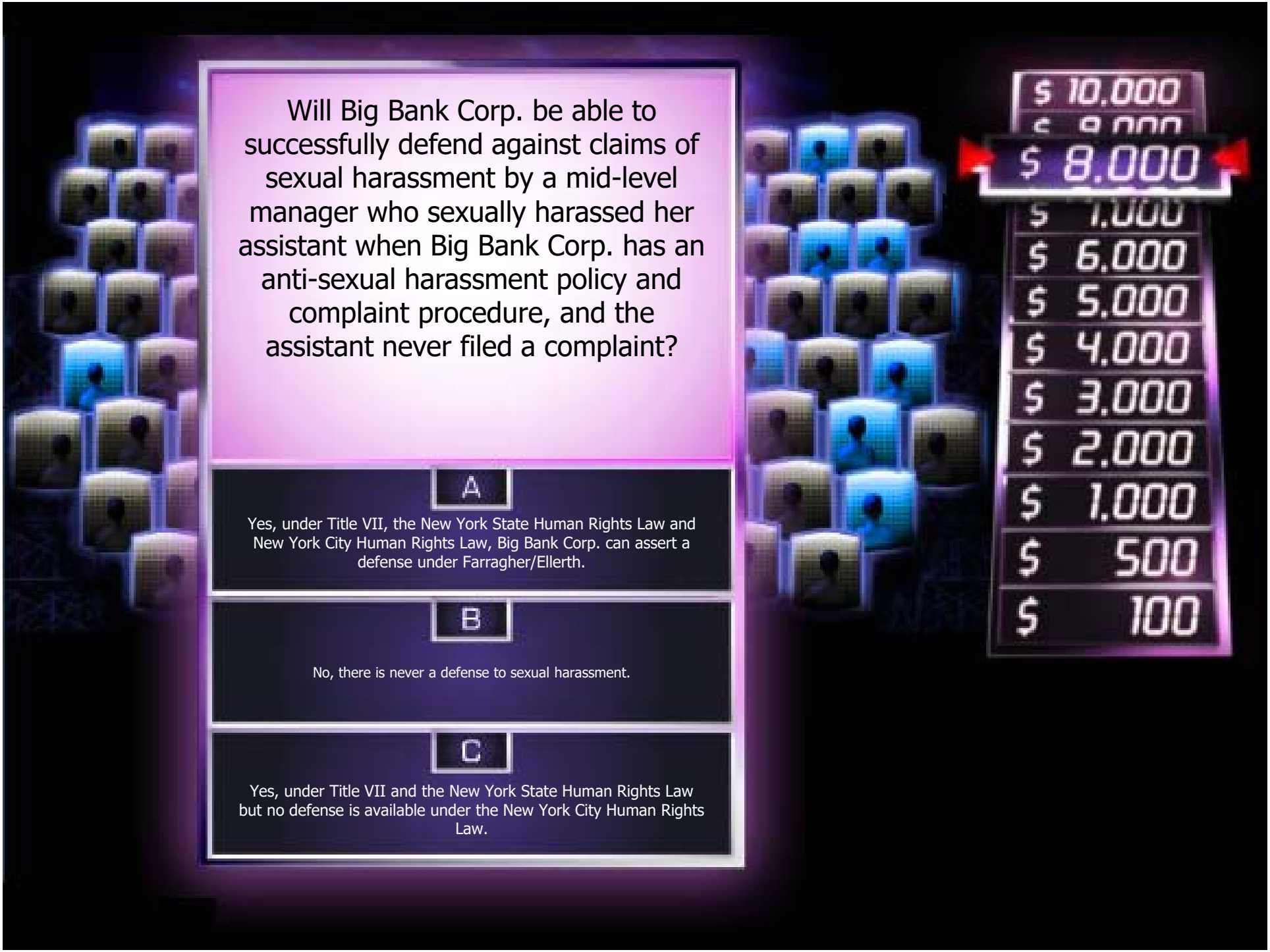
The wage history of NYC's 1.3 million freelancers is also off-limits; independent contractors who do not have their own employees are protected under the law.

However, the law permits employers to inquire about salary expectations, including any unvested equity or deferred compensation that an applicant stands to lose if the applicant resigns from their current employer.

The law also permits employers to ask about any competing offers by other potential employers that the applicant is considering because they are not considered "current or prior wages."

In addition, this law does not apply to internal transfers or promotions with the current employer. In that case, the employer is permitted to ask the employee his/her current or most recent salary (they will know it anyway). The law also does not cover public employees whose salaries are determined by collective-bargaining agreements.

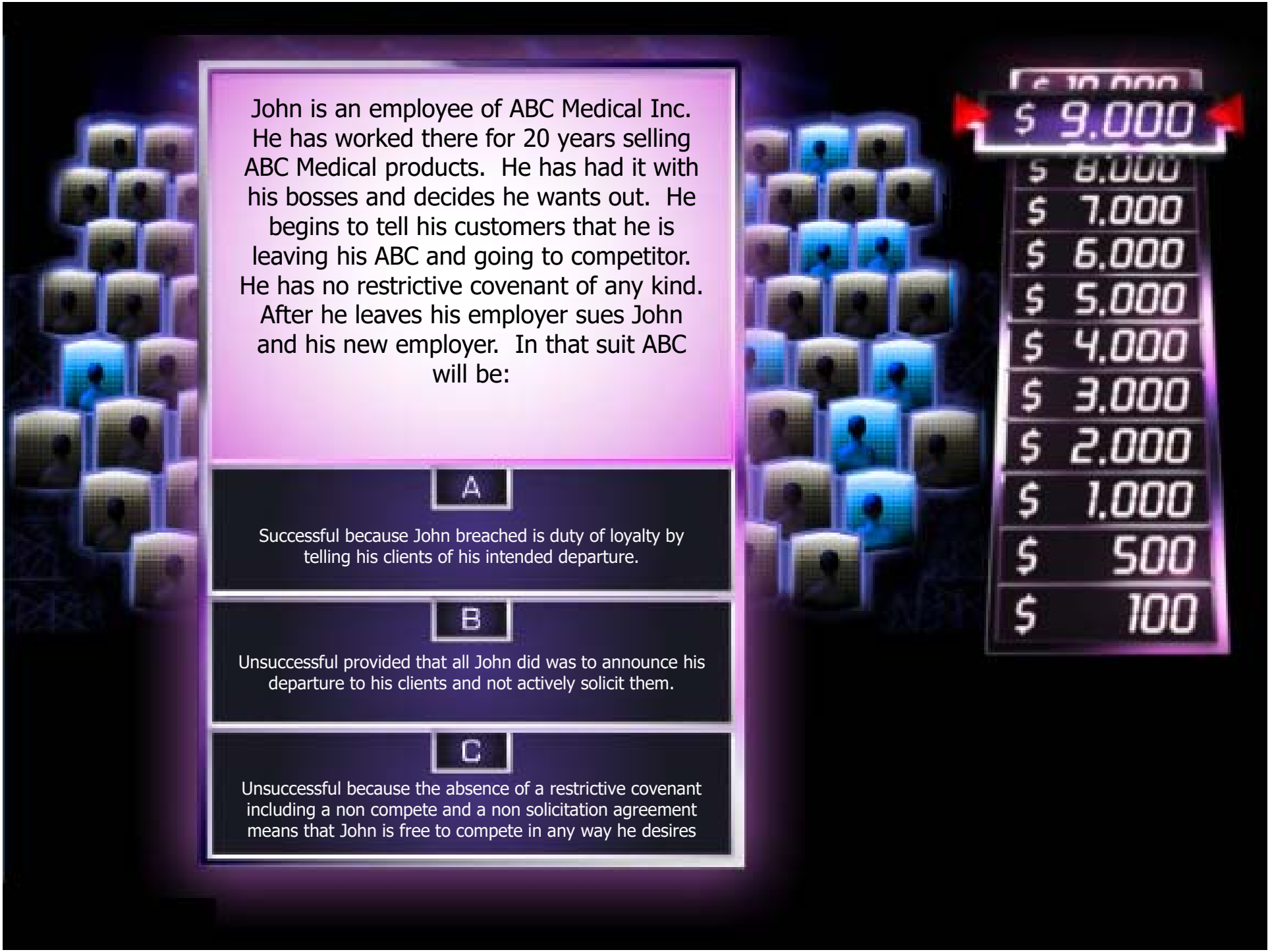
Further, if a job applicant voluntarily and without prompting discloses his or her salary history to a prospective employer, it is not unlawful for the employer to consider the salary history in determining compensation. In that case, the employer is then permitted to take actions to verify the applicant's voluntarily disclosed salary history.

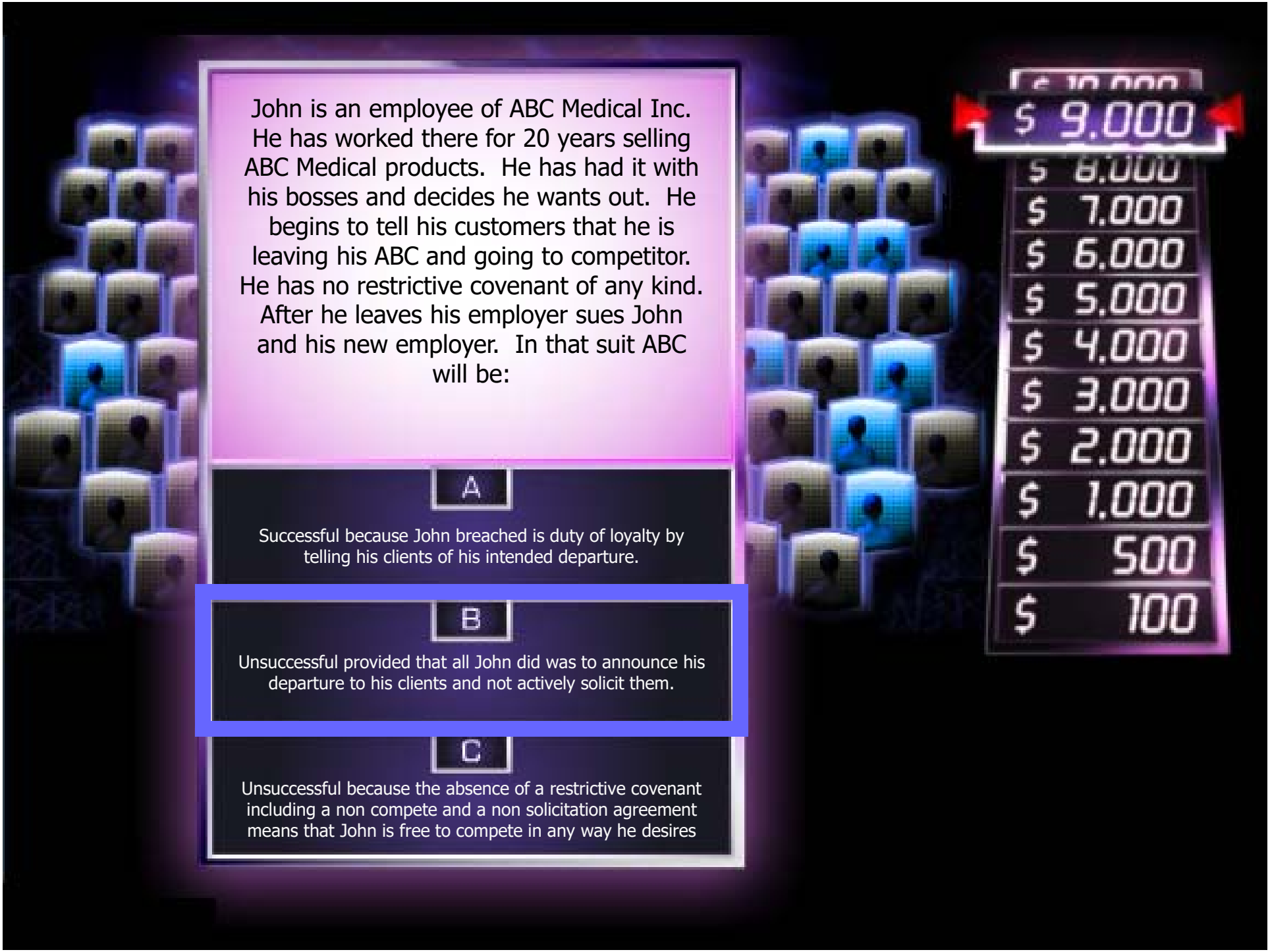

Will Big Bank Corp. be able to successfully defend against claims of sexual harassment by a mid-level manager who sexually harassed her assistant when Big Bank Corp. has an anti-sexual harassment policy and complaint procedure, and the assistant never filed a complaint?
A
Yes, under Title VII, the New York State Human Rights Law and New York City Human Rights Law, Big Bank Corp. can assert a defense under Farragher/Ellerth.
B
No, there is never a defense to sexual harassment.
C
Yes, under Title VII and the New York State Human Rights Law but no defense is available under the New York City Human Rights Law.
$ 10,000
$ 8,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Will Big Bank Corp. be able to successfully defend against claims of sexual harassment by a mid-level manager who sexually harassed her assistant when Big Bank Corp. has an anti-sexual harassment policy and complaint procedure, and the assistant never filed a complaint?
A
Yes, under Title VII, the New York State Human Rights Law and New York City Human Rights Law, Big Bank Corp. can assert a defense under Farragher/Ellerth.
B
No, there is never a defense to sexual harassment.
C
Yes, under Title VII and the New York State Human Rights Law but no defense is available under the New York City Human Rights Law.
$ 10,000
$ 8,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

## *Reference: Zakrzewska v. New Sch.*, 14 N.Y.3d 469, 481, 928 N.E.2d 1035 (2010).

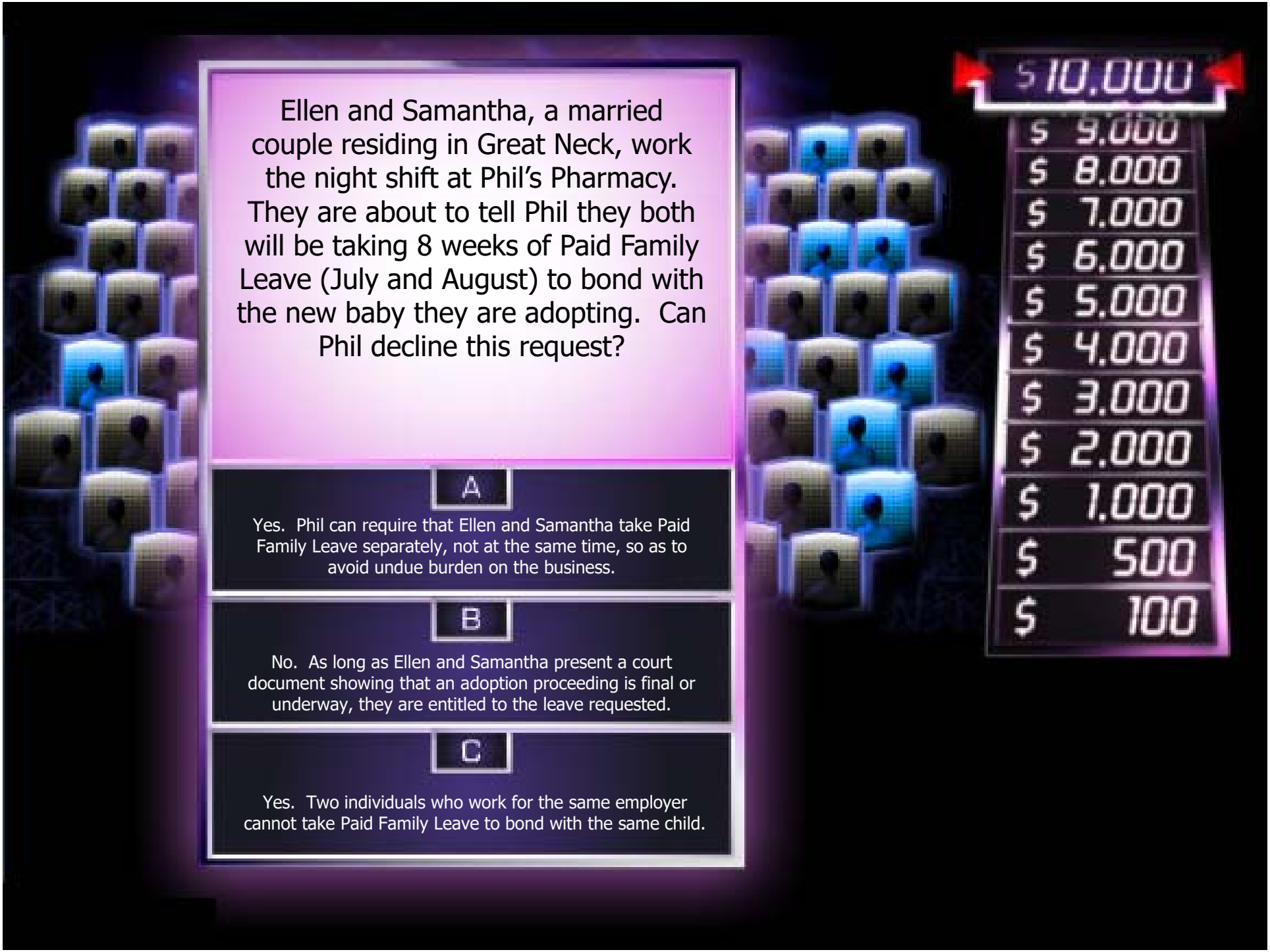
In a certified question from the Second Circuit, the Court of Appeals advised that under the New York City Human Rights Law §8-107(13), employers are not entitled to assert the Faragher/Ellerth defense in claims for sexual harassment.

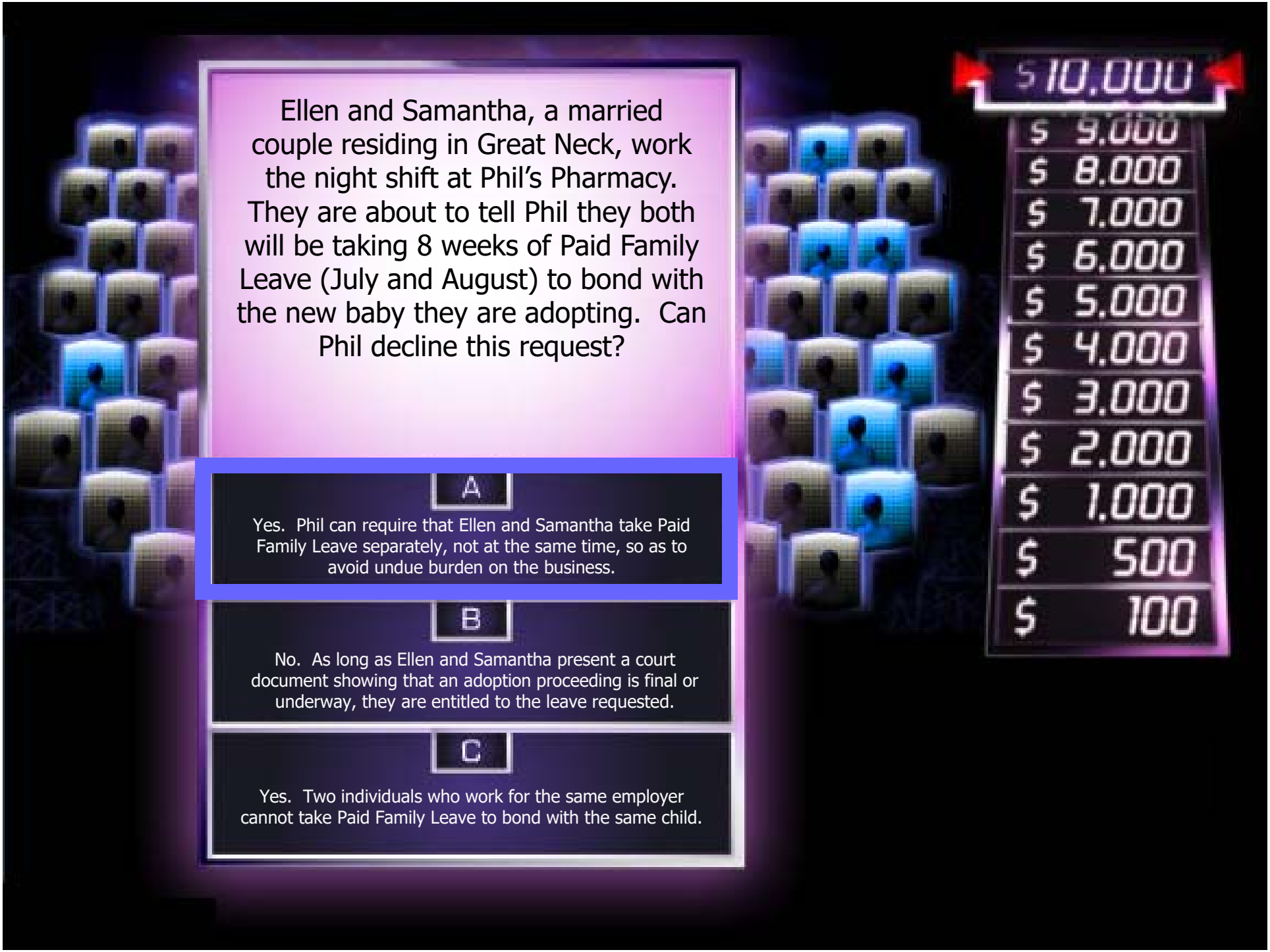

John is an employee of ABC Medical Inc. He has worked there for 20 years selling ABC Medical products. He has had it with his bosses and decides he wants out. He begins to tell his customers that he is leaving his ABC and going to competitor. He has no restrictive covenant of any kind. After he leaves his employer sues John and his new employer. In that suit ABC will be:
A
Successful because John breached is duty of loyalty by telling his clients of his intended departure.
B
Unsuccessful provided that all John did was to announce his departure to his clients and not actively solicit them.
C
Unsuccessful because the absence of a restrictive covenant including a non compete and a non solicitation agreement means that John is free to compete in any way he desires
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 4.000
$ 3.000
$ 2.000
$ 1.000
$ 500
$ 100


John is an employee of ABC Medical Inc. He has worked there for 20 years selling ABC Medical products. He has had it with his bosses and decides he wants out. He begins to tell his customers that he is leaving his ABC and going to competitor. He has no restrictive covenant of any kind. After he leaves his employer sues John and his new employer. In that suit ABC will be:
A
Successful because John breached is duty of loyalty by telling his clients of his intended departure.
B
Unsuccessful provided that all John did was to announce his departure to his clients and not actively solicit them.
C
Unsuccessful because the absence of a restrictive covenant including a non compete and a non solicitation agreement means that John is free to compete in any way he desires
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 4.000
$ 3.000
$ 2.000
$ 1.000
$ 500
$ 100

# AN EMPLOYEE'S DUTY OF LOYALTY

- An agent is obligated under New York law to be loyal to his employer and is "prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties.
- This duty is not dependent upon an express contractual relationship, but exists even where the employment relationship is at-will.
- When an employee uses an employer's proprietary or confidential information when establishing a competing business, the employee breaches his or her fiduciary duty to the employer.
- A person acting in a fiduciary capacity is forbidden from obtaining an improper advantage at the principal's expense.
- In addition, even in the absence of trade secret protection, employees are not permitted to copy their employer's client list, and such acts have been deemed to be an "egregious breach of trust and confidence."


Ellen and Samantha, a married couple residing in Great Neck, work the night shift at Phil's Pharmacy. They are about to tell Phil they both will be taking 8 weeks of Paid Family Leave (July and August) to bond with the new baby they are adopting. Can Phil decline this request?
A
Yes. Phil can require that Ellen and Samantha take Paid Family Leave separately, not at the same time, so as to avoid undue burden on the business.
B
No. As long as Ellen and Samantha present a court document showing that an adoption proceeding is final or underway, they are entitled to the leave requested.
C
Yes. Two individuals who work for the same employer cannot take Paid Family Leave to bond with the same child.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Ellen and Samantha, a married couple residing in Great Neck, work the night shift at Phil's Pharmacy. They are about to tell Phil they both will be taking 8 weeks of Paid Family Leave (July and August) to bond with the new baby they are adopting. Can Phil decline this request?
A
Yes. Phil can require that Ellen and Samantha take Paid Family Leave separately, not at the same time, so as to avoid undue burden on the business.
B
No. As long as Ellen and Samantha present a court document showing that an adoption proceeding is final or underway, they are entitled to the leave requested.
C
Yes. Two individuals who work for the same employer cannot take Paid Family Leave to bond with the same child.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

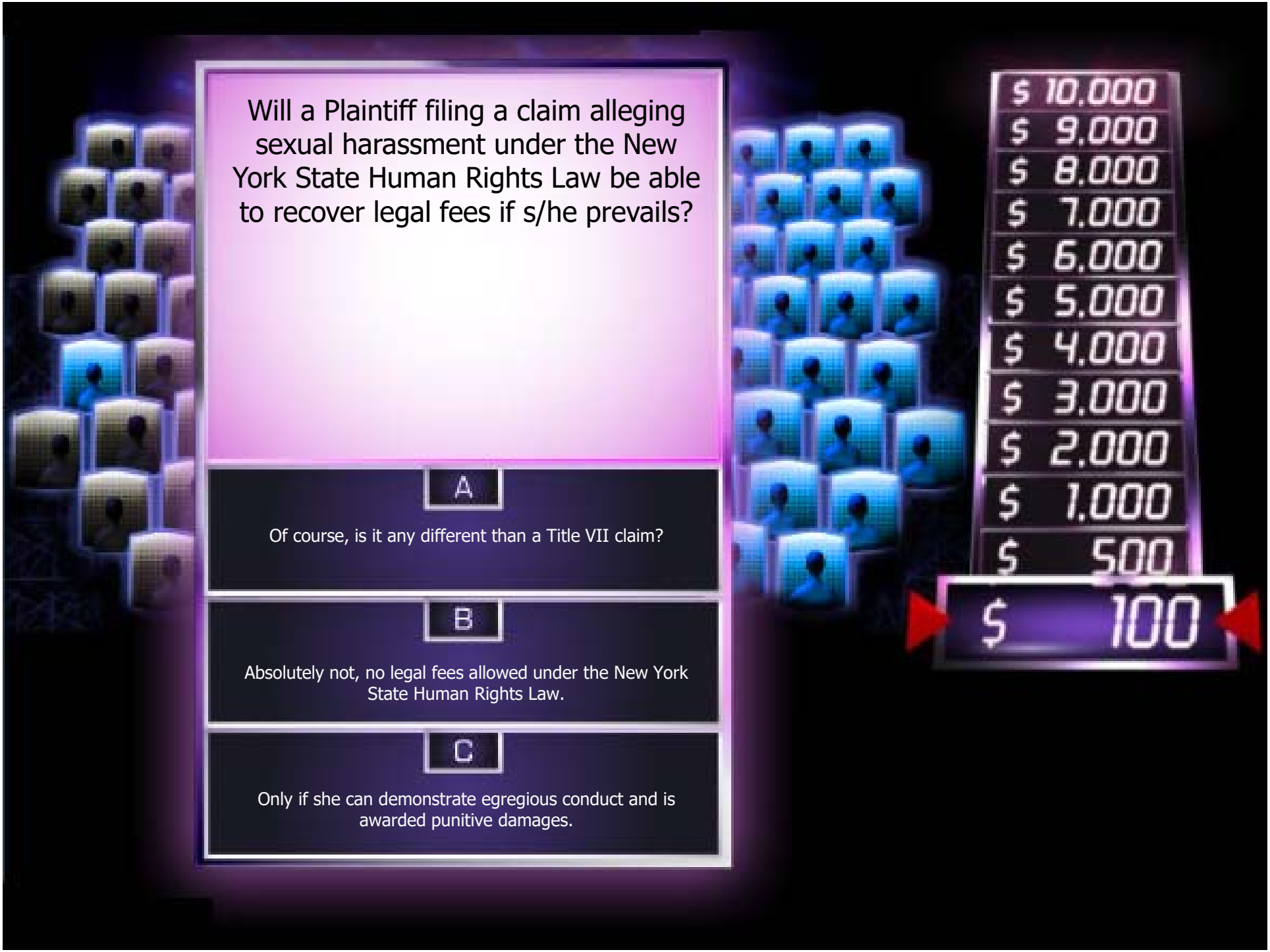
An employer can require two parents to take Paid Family Leave to bond with their child separately and not at the same time. Workers' Compensation Law, §206(5).

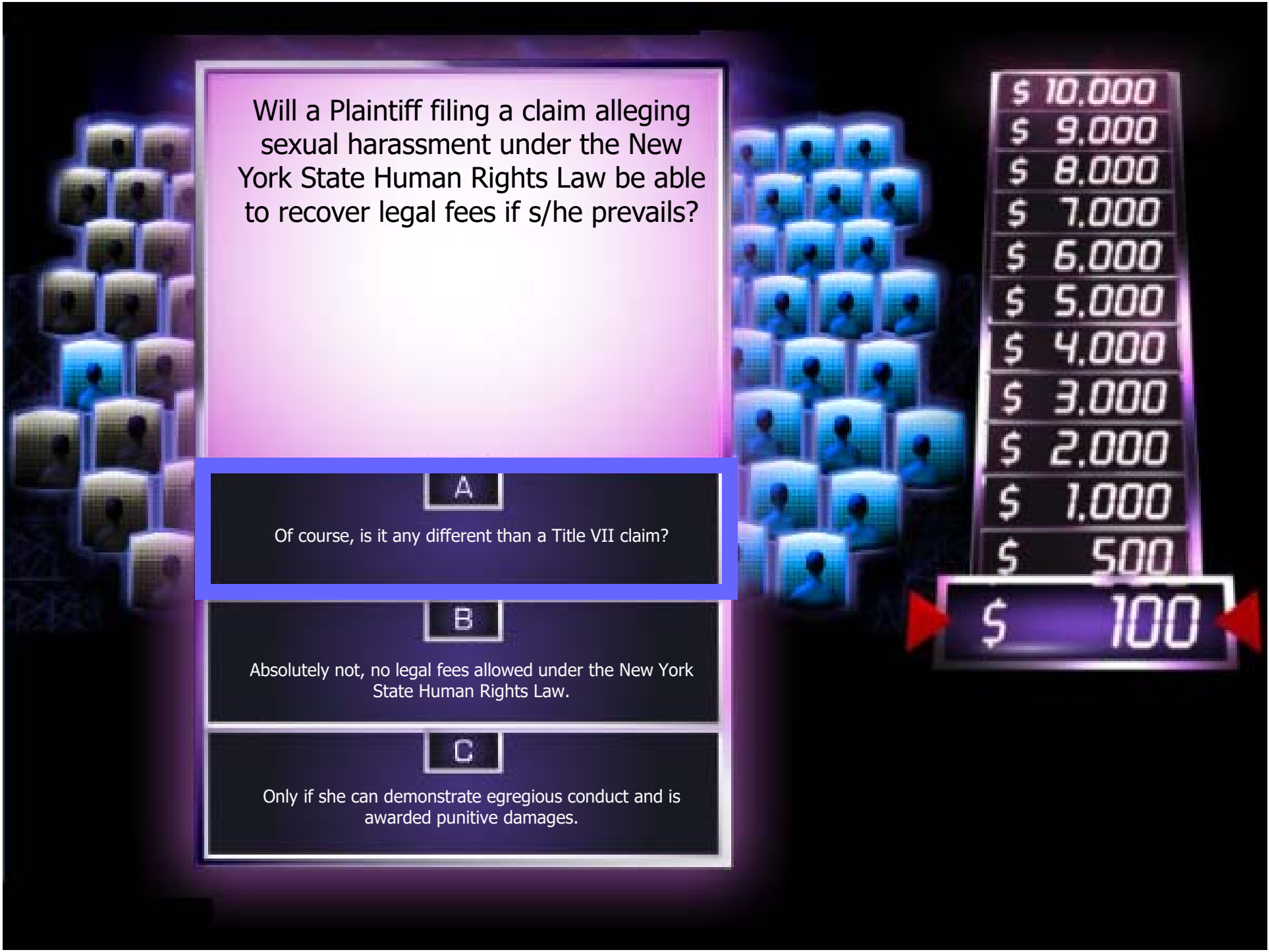
Also, as stated in answer B, it is correct that a court document is needed to support a request for Paid Family Leave in connection with the adoption of a child. 12 CRR-NY 380-4.4(c).


VS
100


# Employment Law Game Show

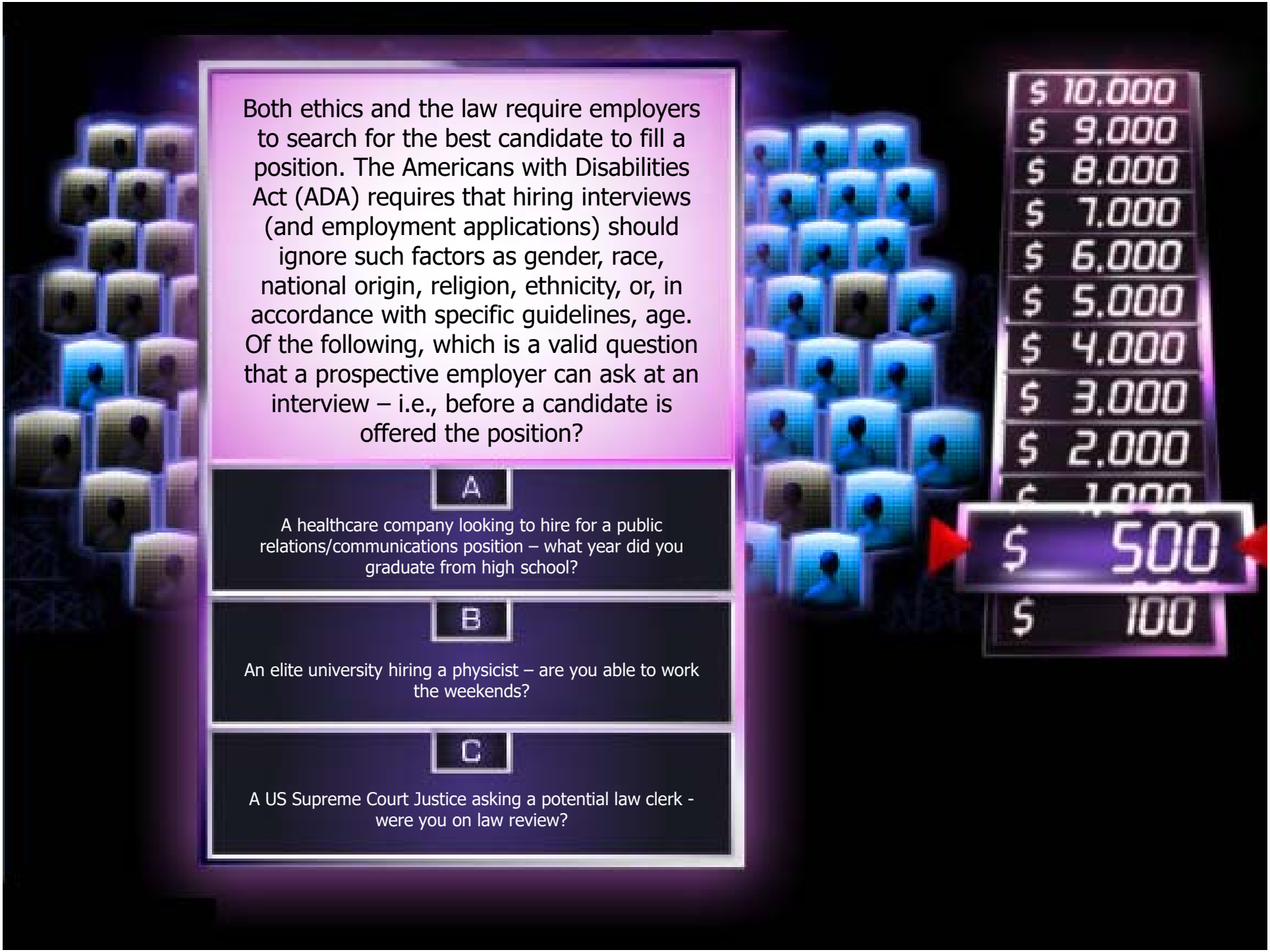

VS
100

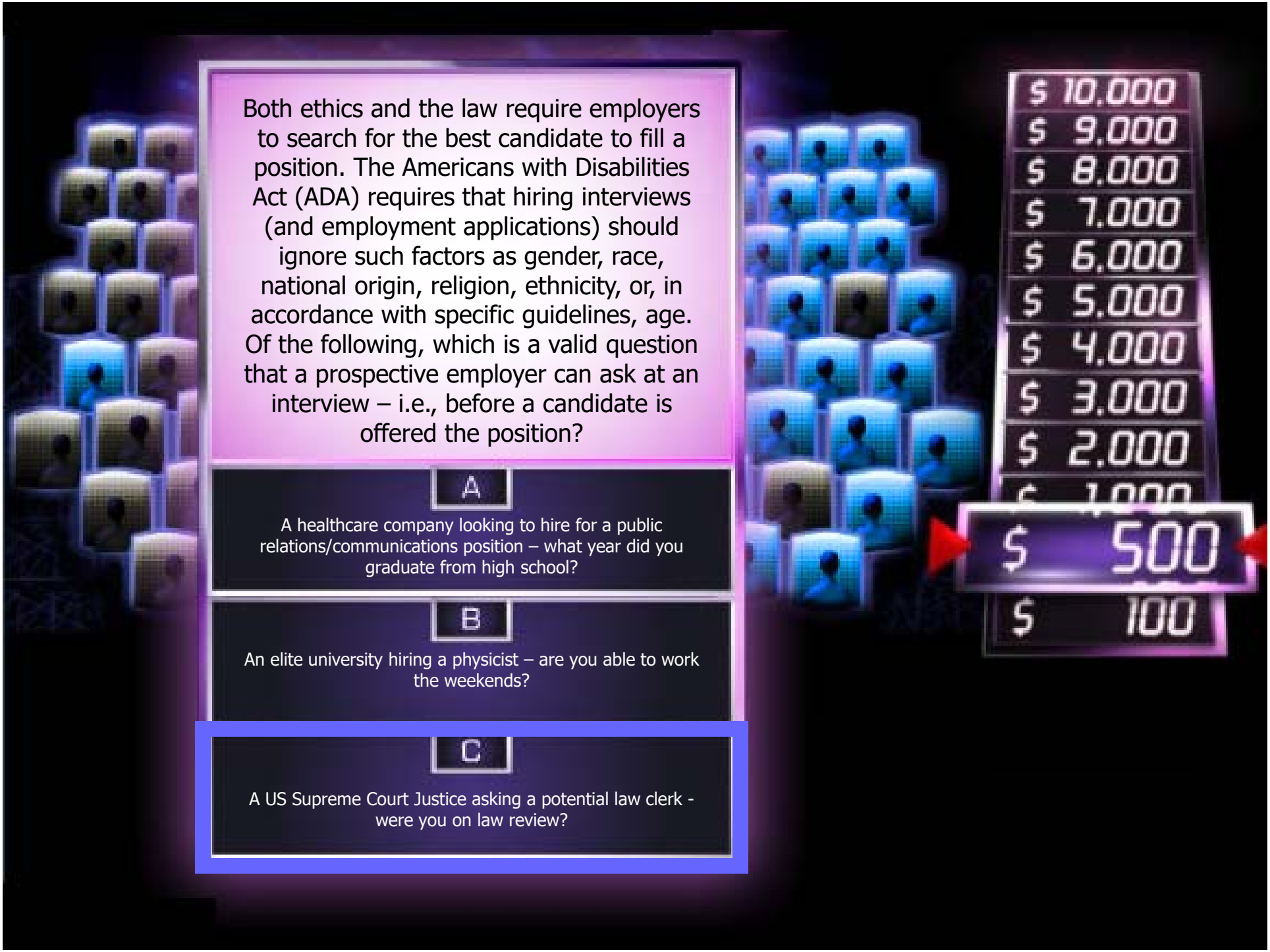

Will a Plaintiff filing a claim alleging sexual harassment under the New York State Human Rights Law be able to recover legal fees if s/he prevails?
A
Of course, is it any different than a Title VII claim?
B
Absolutely not, no legal fees allowed under the New York State Human Rights Law.
C
Only if she can demonstrate egregious conduct and is awarded punitive damages.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Will a Plaintiff filing a claim alleging sexual harassment under the New York State Human Rights Law be able to recover legal fees if s/he prevails?
A
Of course, is it any different than a Title VII claim?
B
Absolutely not, no legal fees allowed under the New York State Human Rights Law.
C
Only if she can demonstrate egregious conduct and is awarded punitive damages.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

# *Reference*: N.Y. Exec. L. §297(10):

- with respect to a claim of employment or credit discrimination where sex is a basis of such discrimination, in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees attributable to such claim to any prevailing party.


Both ethics and the law require employers to search for the best candidate to fill a position. The Americans with Disabilities Act (ADA) requires that hiring interviews (and employment applications) should ignore such factors as gender, race, national origin, religion, ethnicity, or, in accordance with specific guidelines, age. Of the following, which is a valid question that a prospective employer can ask at an interview – i.e., before a candidate is offered the position?
A
A healthcare company looking to hire for a public relations/communications position – what year did you graduate from high school?
B
An elite university hiring a physicist – are you able to work the weekends?
C
A US Supreme Court Justice asking a potential law clerk - were you on law review?
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 500
$ 100


Both ethics and the law require employers to search for the best candidate to fill a position. The Americans with Disabilities Act (ADA) requires that hiring interviews (and employment applications) should ignore such factors as gender, race, national origin, religion, ethnicity, or, in accordance with specific guidelines, age. Of the following, which is a valid question that a prospective employer can ask at an interview – i.e., before a candidate is offered the position?
A
A healthcare company looking to hire for a public relations/communications position – what year did you graduate from high school?
B
An elite university hiring a physicist – are you able to work the weekends?
C
A US Supreme Court Justice asking a potential law clerk - were you on law review?
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 500
$ 100

Both federal and state laws strictly prohibit employers from purposefully discriminating against an individual on the basis of his or her protected class and from engaging in practices that disproportionately limit employment opportunities that are not related to job requirements or business needs.

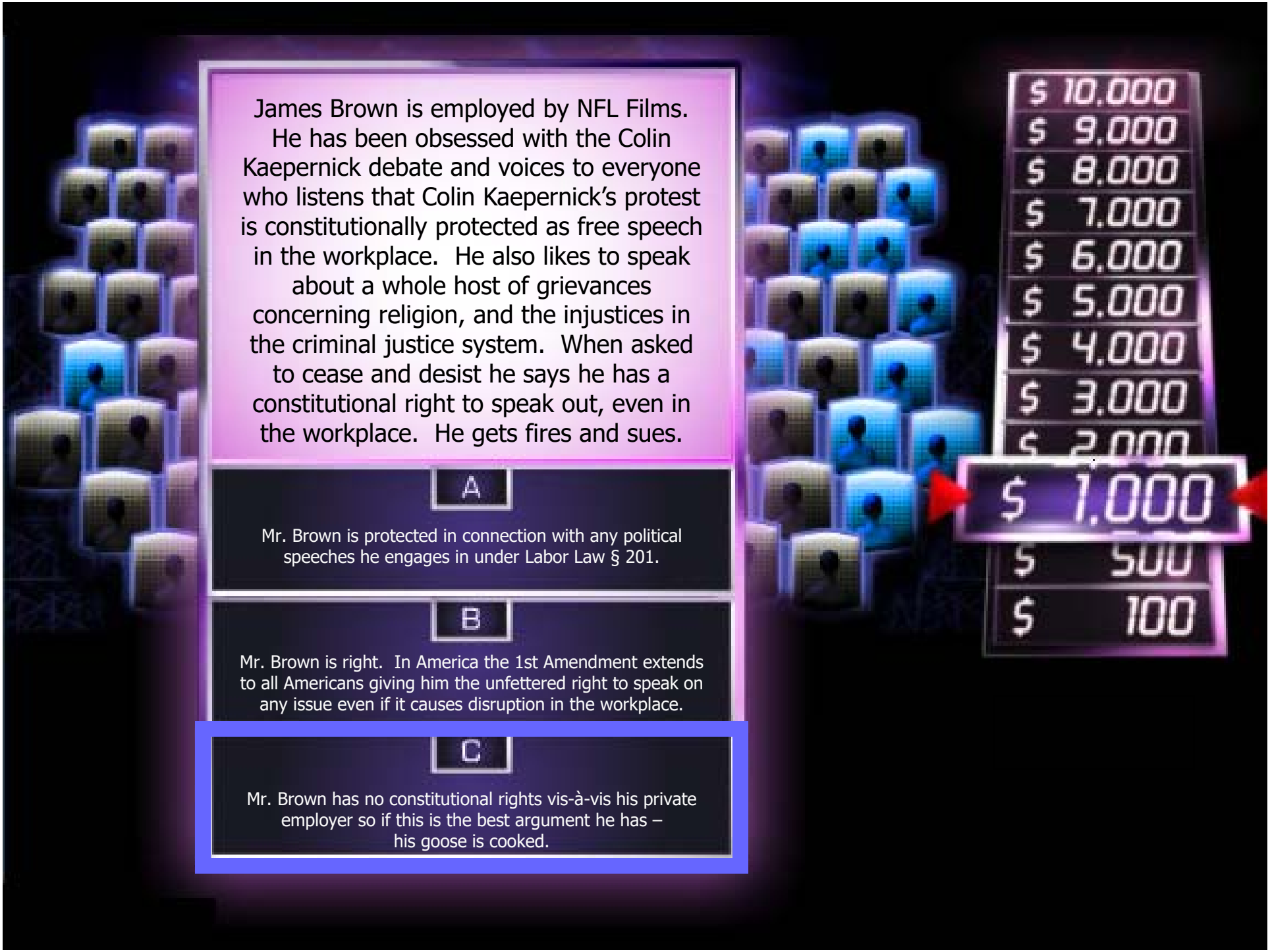
To remain compliant with applicable laws, an employer's hiring procedures must be job-related – ensuring that all questions are related to an applicant's ability to perform the essential job functions – and consistent with business necessity.

Choice A is tricky but generally speaking it is an invalid hiring question. This is because an employer can determine a person's age based on the year that he or she graduated from high school.

Choice B is also incorrect. Asking whether an individual is able to work the weekends is invalid. This is because any question with regards to an applicant's religious beliefs, denomination, or any question to indicate religious customs or holidays observed is illegal. In this case, asking an individual whether they're able to work the weekend goes to the issue of whether they're able to work on the Sabbath. This is not allowed. However, after an individual is hired, it is perfectly legal for an employer to inquire about any religious accommodations that may be necessary for the newly hired employee.

The correct answer is choice C. A US Supreme Court Justice asking a potential law clerk whether he or she was on law review is a valid question. This is because being on law review is a qualification that is essential and necessary to perform the job and is essential to the employer's business.


James Brown is employed by NFL Films. He has been obsessed with the Colin Kaepernick debate and voices to everyone who listens that Colin Kaepernick's protest is constitutionally protected as free speech in the workplace. He also likes to speak about a whole host of grievances concerning religion, and the injustices in the criminal justice system. When asked to cease and desist he says he has a constitutional right to speak out, even in the workplace. He gets fires and sues.
A
Mr. Brown is protected in connection with any political speeches he engages in under Labor Law § 201.
B
Mr. Brown is right. In America the 1st Amendment extends to all Americans giving him the unfettered right to speak on any issue even if it causes disruption in the workplace.
C
Mr. Brown has no constitutional rights vis-à-vis his private employer so if this is the best argument he has – his goose is cooked.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 1,000
$ 500
$ 100


James Brown is employed by NFL Films. He has been obsessed with the Colin Kaepernick debate and voices to everyone who listens that Colin Kaepernick's protest is constitutionally protected as free speech in the workplace. He also likes to speak about a whole host of grievances concerning religion, and the injustices in the criminal justice system. When asked to cease and desist he says he has a constitutional right to speak out, even in the workplace. He gets fires and sues.
A
Mr. Brown is protected in connection with any political speeches he engages in under Labor Law § 201.
B
Mr. Brown is right. In America the 1st Amendment extends to all Americans giving him the unfettered right to speak on any issue even if it causes disruption in the workplace.
C
Mr. Brown has no constitutional rights vis-à-vis his private employer so if this is the best argument he has – his goose is cooked.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 1,000
$ 500
$ 100

# Hudgens v. N. L. R. B. 424 U.S. 50, 796 S.Ct. 1029 (1976)

- Constitutional guarantee of free speech is a guarantee only against abridgment by the government, federal or state; thus, while statutory or common law may in some situations extend protection or provide redress against a private corporation or person who seeks to abridge the free expression of others, no such protection or redress is provided by the Constitution itself.

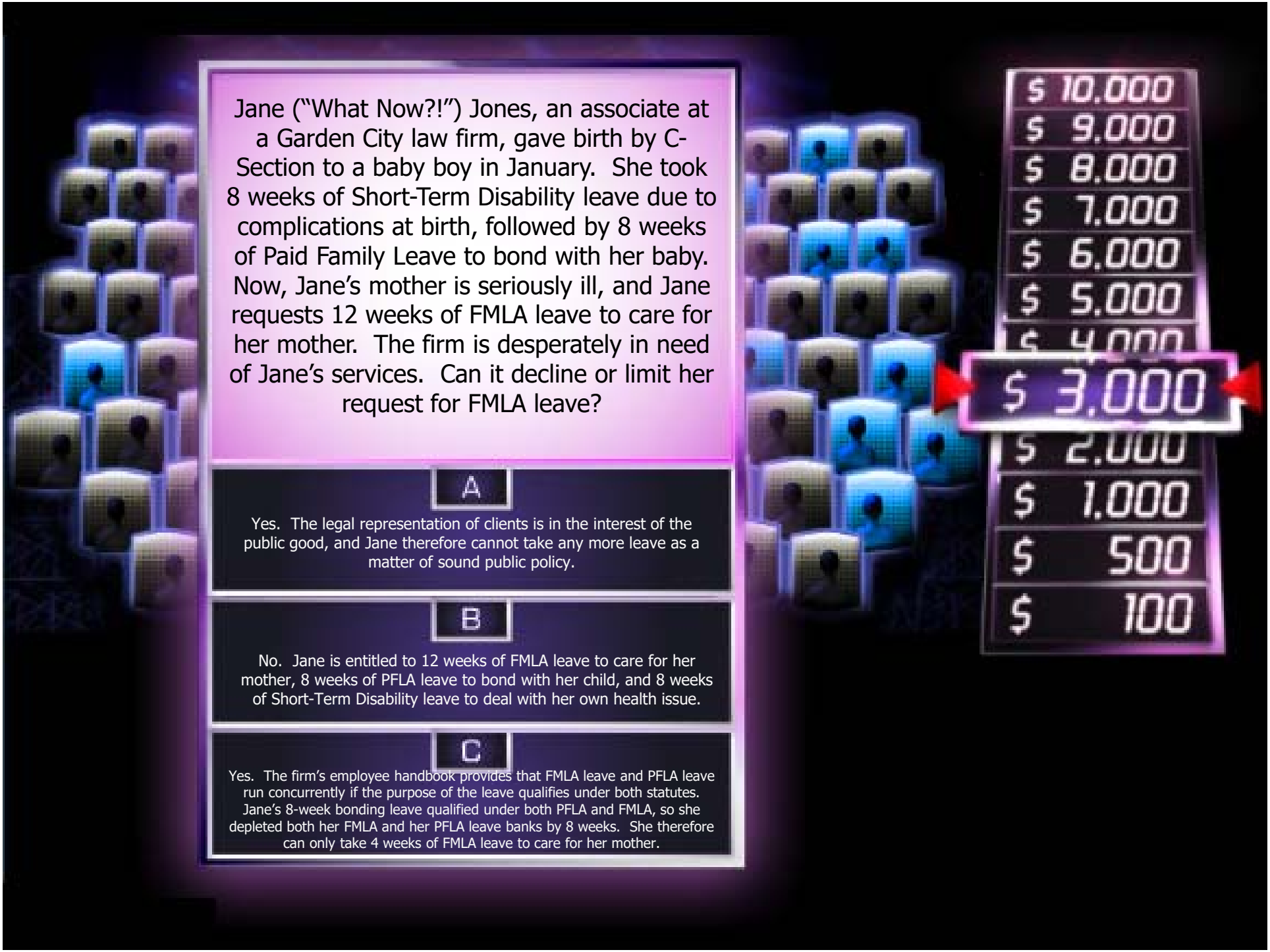
- McKinney's Labor Law § 201-d Unless otherwise provided by law, it shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion or terms, conditions or privileges of employment because of: - an individual's political activities outside of working hours, off of the employer's premises and without use of the employer's equipment or other property,

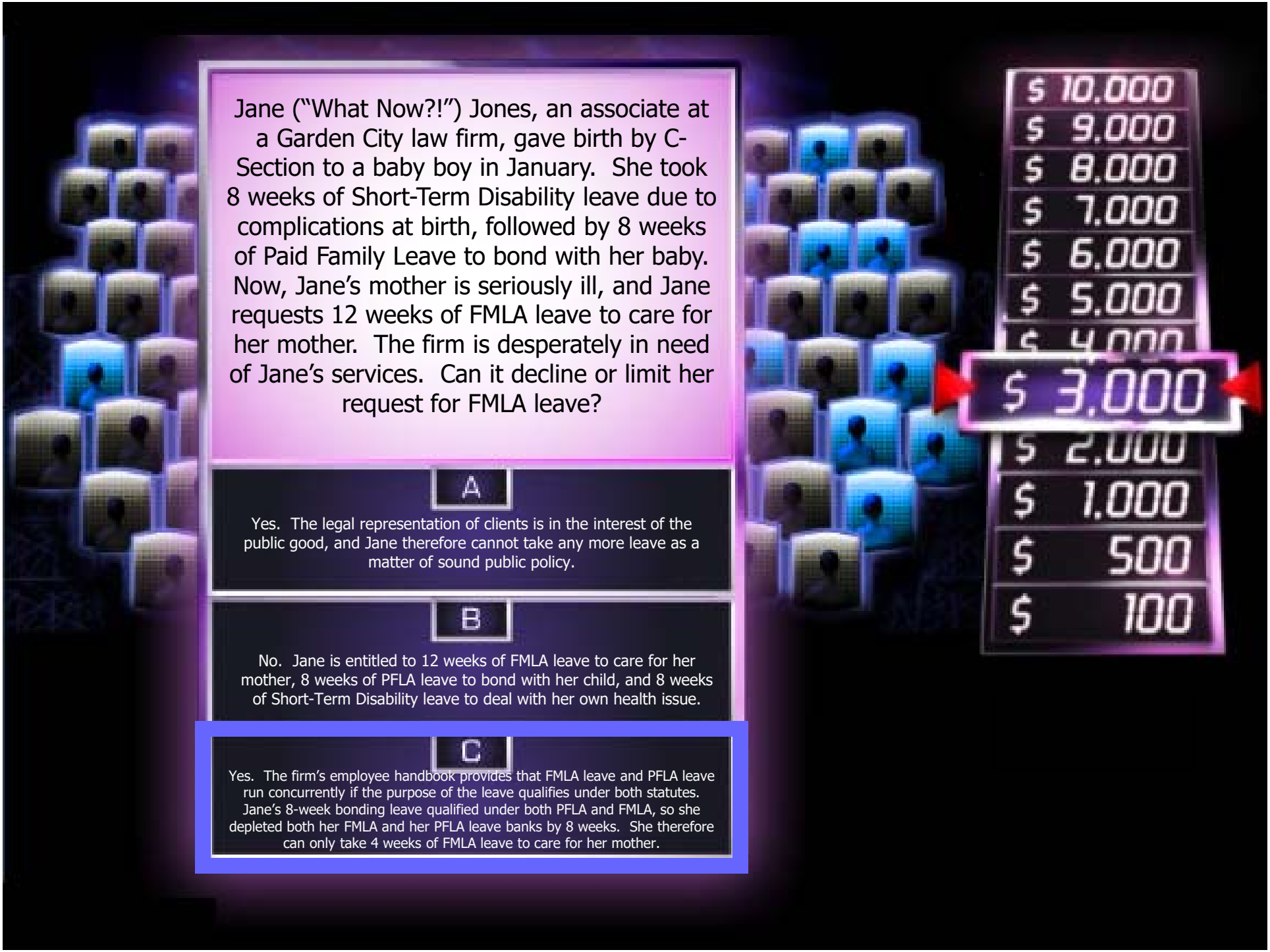

Mario is a hairstylist and colorist extraordinaire. He works for Le Juene a NYC Hair Salon. One day he leaves vowing to never return and takes with him a catalog listing every customer he has, their styling preferences and the formula used to get their color just right. He is sued for stealing his employer's trade secrets. His employer will be:
A
Unsuccessful because you can't take someone serious who claims a hairstyle and color of one's hair is a trade secret.
B
Successful if the Le Juene can demonstrate that its customers were not readily ascertainable, and were cultivated with great effort and the expenditure of considerable time and money
C
Unsuccessful if Mario can show that irrespective of the catalogue he took he committed the styles and color formula's to memory as they were not all that complicated.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 2,000
$ 500
$ 100


Mario is a hairstylist and colorist extraordinaire. He works for Le Juene a NYC Hair Salon. One day he leaves vowing to never return and takes with him a catalog listing every customer he has, their styling preferences and the formula used to get their color just right. He is sued for stealing his employer's trade secrets. His employer will be:
A
Unsuccessful because you can't take someone serious who claims a hairstyle and color of one's hair is a trade secret.
B
Successful if the Le Juene can demonstrate that its customers were not readily ascertainable, and were cultivated with great effort and the expenditure of considerable time and money
C
Unsuccessful if Mario can show that irrespective of the catalogue he took he committed the styles and color formula's to memory as they were not all that complicated.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 2,000
$ 500
$ 100

A trade secret is ‘any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it..

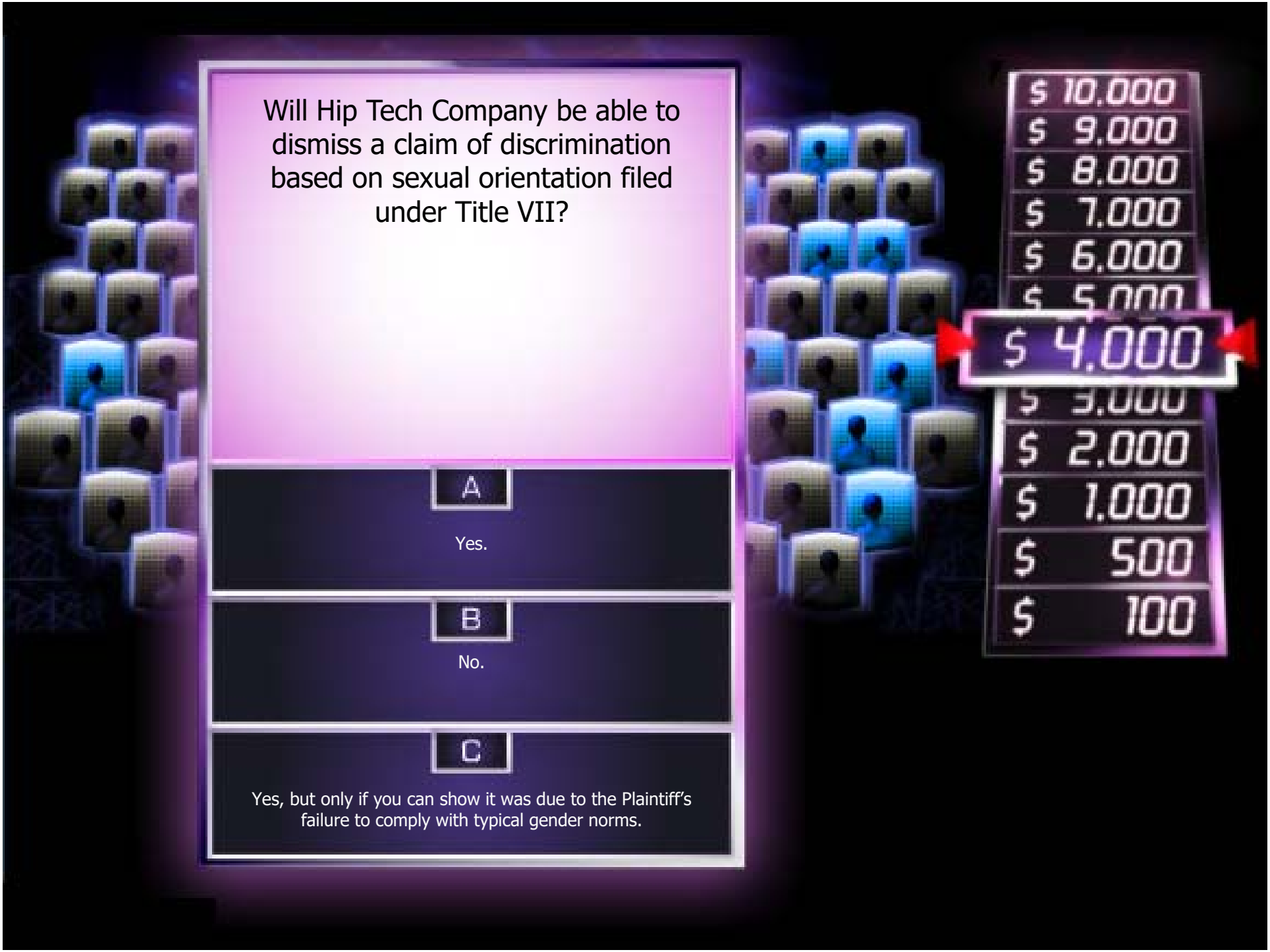
factors in determining whether information rises to the level of a trade secret, including: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

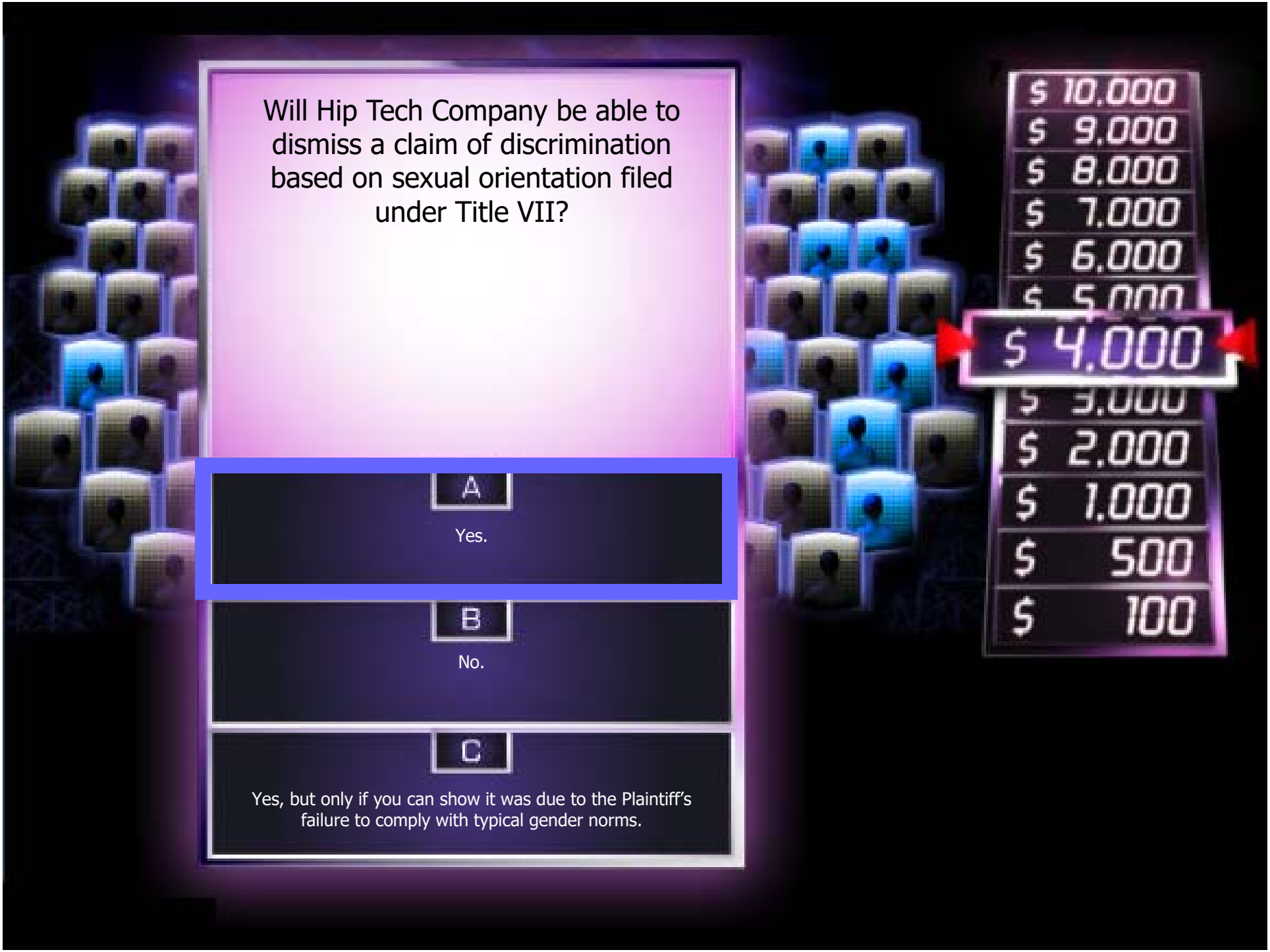

Jane ("What Now?!") Jones, an associate at a Garden City law firm, gave birth by C-Section to a baby boy in January. She took 8 weeks of Short-Term Disability leave due to complications at birth, followed by 8 weeks of Paid Family Leave to bond with her baby. Now, Jane's mother is seriously ill, and Jane requests 12 weeks of FMLA leave to care for her mother. The firm is desperately in need of Jane's services. Can it decline or limit her request for FMLA leave?
A
Yes. The legal representation of clients is in the interest of the public good, and Jane therefore cannot take any more leave as a matter of sound public policy.
B
No. Jane is entitled to 12 weeks of FMLA leave to care for her mother, 8 weeks of PFLA leave to bond with her child, and 8 weeks of Short-Term Disability leave to deal with her own health issue.
C
Yes. The firm's employee handbook provides that FMLA leave and PFLA leave run concurrently if the purpose of the leave qualifies under both statutes. Jane's 8-week bonding leave qualified under both PFLA and FMLA, so she depleted both her FMLA and her PFLA leave banks by 8 weeks. She therefore can only take 4 weeks of FMLA leave to care for her mother.
$ 10.000
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 3.000
$ 1.000
$ 500
$ 100


Jane ("What Now?!") Jones, an associate at a Garden City law firm, gave birth by C-Section to a baby boy in January. She took 8 weeks of Short-Term Disability leave due to complications at birth, followed by 8 weeks of Paid Family Leave to bond with her baby. Now, Jane's mother is seriously ill, and Jane requests 12 weeks of FMLA leave to care for her mother. The firm is desperately in need of Jane's services. Can it decline or limit her request for FMLA leave?
A
Yes. The legal representation of clients is in the interest of the public good, and Jane therefore cannot take any more leave as a matter of sound public policy.
B
No. Jane is entitled to 12 weeks of FMLA leave to care for her mother, 8 weeks of PFLA leave to bond with her child, and 8 weeks of Short-Term Disability leave to deal with her own health issue.
C
Yes. The firm's employee handbook provides that FMLA leave and PFLA leave run concurrently if the purpose of the leave qualifies under both statutes. Jane's 8-week bonding leave qualified under both PFLA and FMLA, so she depleted both her FMLA and her PFLA leave banks by 8 weeks. She therefore can only take 4 weeks of FMLA leave to care for her mother.
$ 10.000
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 3.000
$ 1.000
$ 500
$ 100

An employer can require that FMLA leave and PFLA leave run concurrently where the purpose of the leave qualifies under both statutes. Here, Jane's bonding leave qualified under both FMLA and PFLA. So, when she took 8 weeks of bonding leave she depleted her 12-week FMLA leave bank by 8 weeks, leaving only 4 weeks of FMLA leave available to care for her mother.

However, if the employer had no written policy requiring concurrent depletion of leave under both statutes, then the leave periods would not run concurrently, and Jane could take 12 weeks of FMLA leave in addition to 8 weeks of Paid Family Leave. 12 CRR-NY 380-2.5(g).


Will Hip Tech Company be able to dismiss a claim of discrimination based on sexual orientation filed under Title VII?
A
Yes.
B
No.
C
Yes, but only if you can show it was due to the Plaintiff's failure to comply with typical gender norms.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 4,000
$ 2,000
$ 1,000
$ 500
$ 100


Will Hip Tech Company be able to dismiss a claim of discrimination based on sexual orientation filed under Title VII?
A
Yes.
B
No.
C
Yes, but only if you can show it was due to the Plaintiff's failure to comply with typical gender norms.
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 4,000
$ 2,000
$ 1,000
$ 500
$ 100

*Reference: Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 112 (2d Cir. 2018), where in an *en banc* decision the Second Circuit held:

- "We now conclude that sexual orientation discrimination is motivated, at least in part, by sex and is thus a subset of sex discrimination."


An employer in New York is TOLD that an applicant purportedly posted on social media that he or she was terminated from their prior employment after coming to work with a gun. Let's clarify – an employer WITHOUT taking any affirmative action or initiative – is told this information by a colleague, friend or other staff member about the negative information posted on the Internet or social media site about a prospective applicant. Given this information, what is the employer PERMITTED to do?
A
Personally check the social media background of the job applicant
B
Conduct an appropriate level of investigation based on the reported information and circumstances
C
Reject the job applicant immediately at that point
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 5,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

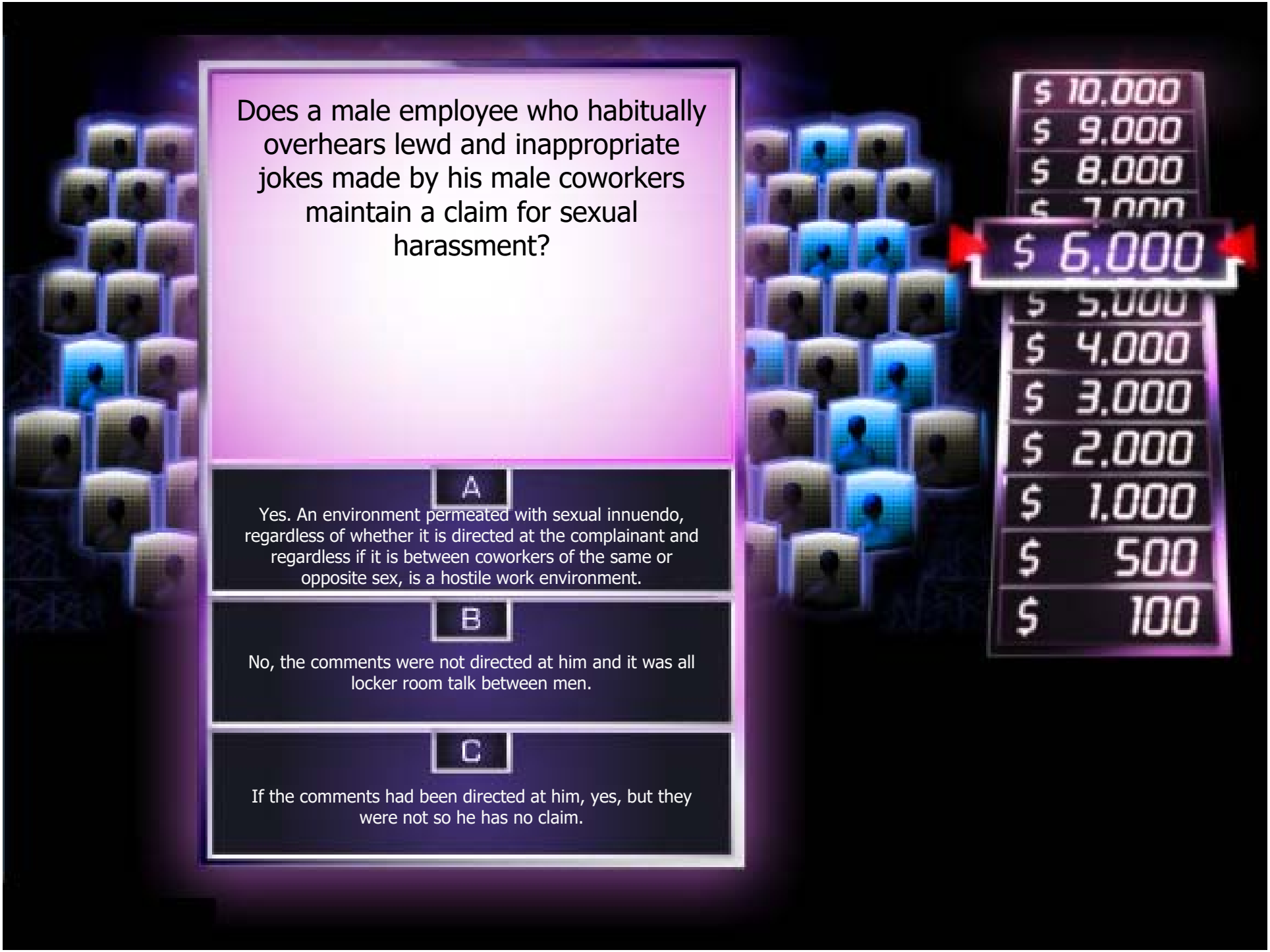

An employer in New York is TOLD that an applicant purportedly posted on social media that he or she was terminated from their prior employment after coming to work with a gun. Let's clarify – an employer WITHOUT taking any affirmative action or initiative – is told this information by a colleague, friend or other staff member about the negative information posted on the Internet or social media site about a prospective applicant. Given this information, what is the employer PERMITTED to do?
A
Personally check the social media background of the job applicant
B
Conduct an appropriate level of investigation based on the reported information and circumstances
C
Reject the job applicant immediately at that point
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 5,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

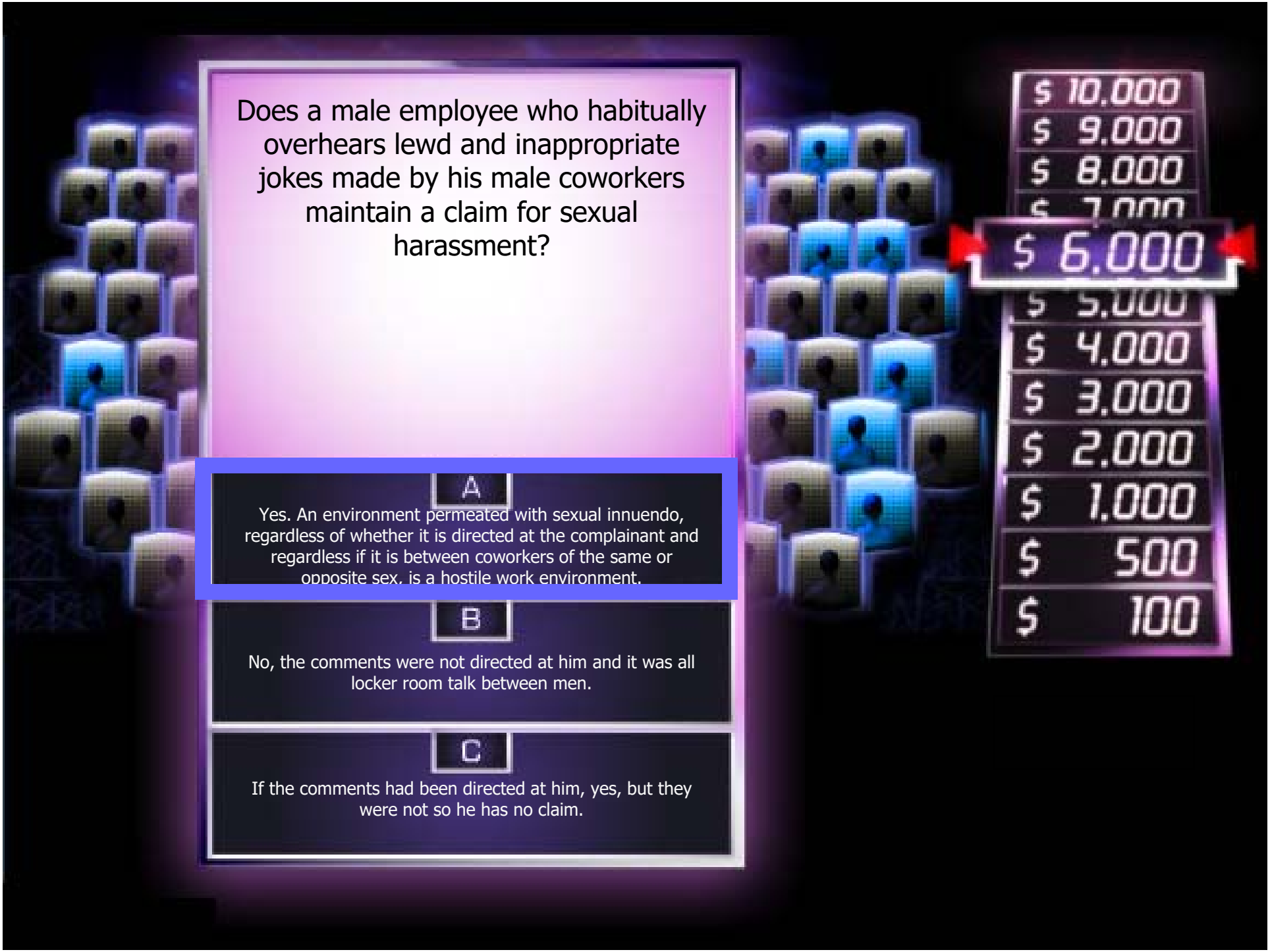
Employers have a right to consider the best interest of their businesses as well as the best interest and safety of the customers that they serve. The Federal Occupational Safety and Health Act (OSHA) requires employers to keep their workplaces free from "recognized hazards." See 29 USC section 651 et seq.

In New York, an employer may also be liable to a person injured by an employee who the employer knew, or should have known, had a propensity to engage in the conduct which caused the injury (Bouchard v New York Archdiocese, 719F. Supp.2D255 [SDNY 2010]). A cause of action for negligent hiring or retention may also be established if the employer had knowledge of facts that would lead a reasonably prudent person to investigate that prospective employee (Richardson v City of New York, 2006 WL 3771115 [SDNY December 21, 2006]).

However– except for certain positions where the employee deals with the public or vulnerable populations such as teachers and healthcare professionals – in New York the law does not require an employer to implement any specific background checks – including conducting a criminal background check.

In our hypothetical, when the information conveyed to the employer is more than just unflattering, but may reveal a propensity on the part of the applicant to cause harm or injury in the workplace, an employer may not be able to turn a blind eye. Indeed, the employer should consider conducting an appropriate level of investigation based on the reported information and circumstances. Choice B.


Does a male employee who habitually overhears lewd and inappropriate jokes made by his male coworkers maintain a claim for sexual harassment?
A
Yes. An environment permeated with sexual innuendo, regardless of whether it is directed at the complainant and regardless if it is between coworkers of the same or opposite sex, is a hostile work environment.
B
No, the comments were not directed at him and it was all locker room talk between men.
C
If the comments had been directed at him, yes, but they were not so he has no claim.
$ 10,000
$ 9,000
$ 8,000
$ 6,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Does a male employee who habitually overhears lewd and inappropriate jokes made by his male coworkers maintain a claim for sexual harassment?
A
Yes. An environment permeated with sexual innuendo, regardless of whether it is directed at the complainant and regardless if it is between coworkers of the same or opposite sex, is a hostile work environment.
B
No, the comments were not directed at him and it was all locker room talk between men.
C
If the comments had been directed at him, yes, but they were not so he has no claim.
$ 10,000
$ 9,000
$ 8,000
$ 6,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

# *Reference: Gregory v. Daly*, 243 F.3d 687, 691–92 (2d Cir. 2001), as amended (Apr. 20, 2001).

Finding that a claim for a hostile work environment:

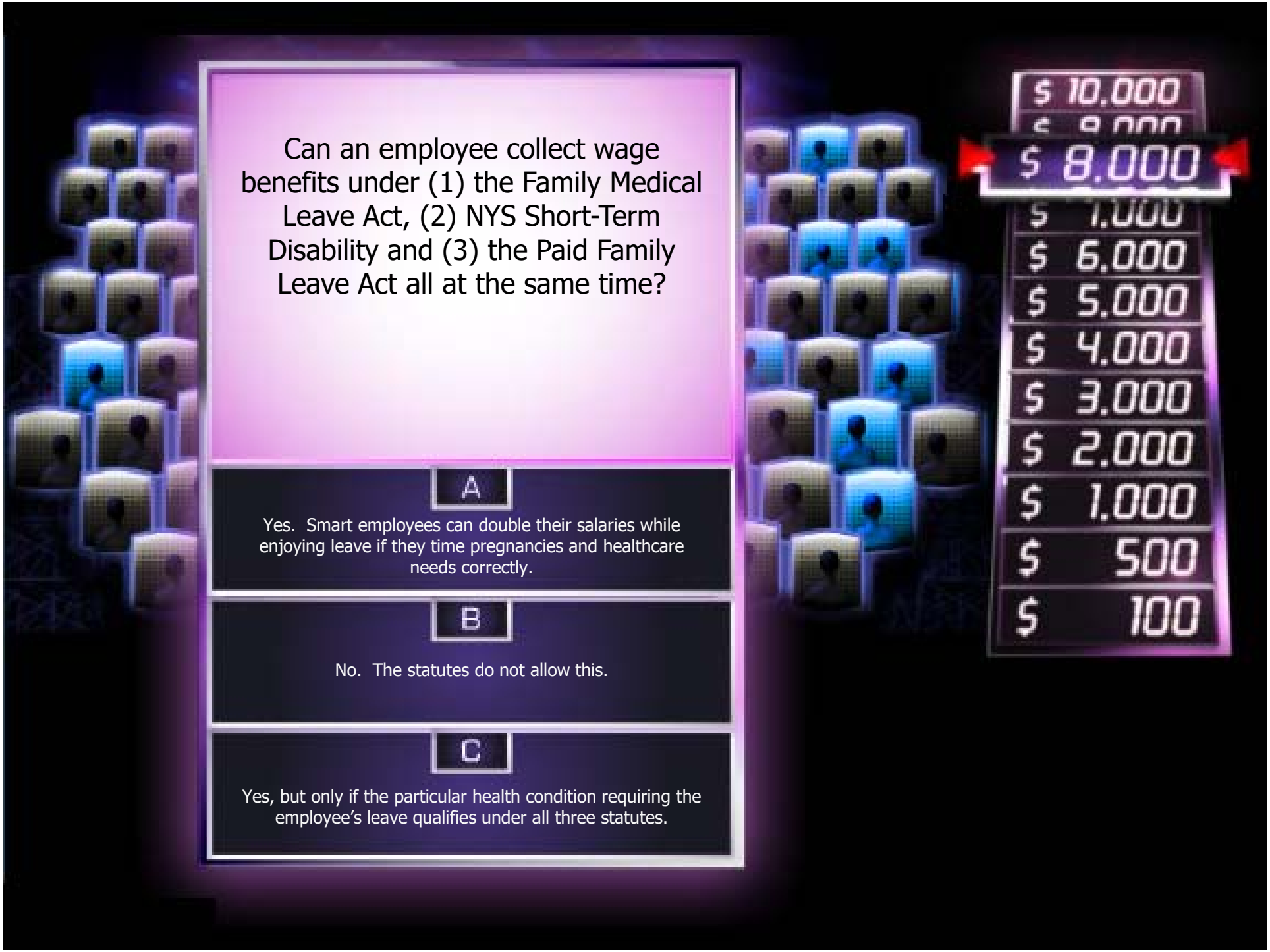
- are cognizable under Title VII, even when they are not the result of "tangible employment actions," if they arise from conduct (1) that is "objectively" severe or pervasive—that is, if it creates "an environment that a reasonable person would find hostile or abusive" [the "objective" requirement], *Harris*, 510 U.S. at 21, 114 S.Ct. 367, (2) that the plaintiff "subjectively perceive[s]" as hostile or abusive [the "subjective" requirement], *id.*, and (3) that creates such an environment because of plaintiff's sex (or other characteristic protected by Title VII) [the "prohibited causal factor" requirement].

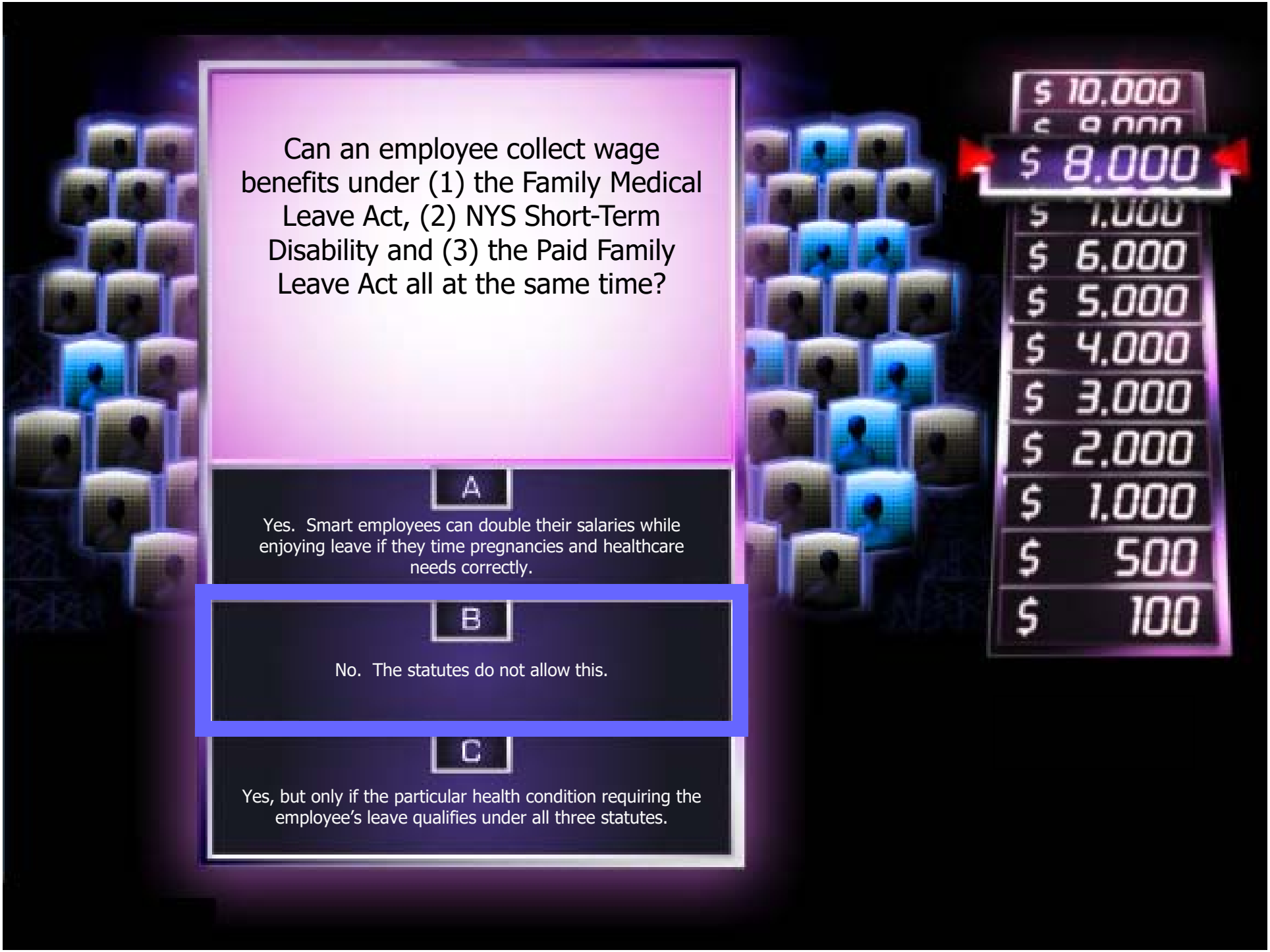

Remember Mr. James Brown? After James Brown loses his case, he applies for a work service job with the Town of Oyster Bay. He follows the Singh case and regularly posts on Facebook about corruption in the government. He is fired so he sues again.
A
This time he will win because a public employee has an unfettered right to speak about anything.
B
This time he will lose again because a public employee should never bite the hand that feeds him.
C
This time he may win provided he demonstrates that he is speaking about a matter of public concern and the interest of the state as an employer is promoting efficiency of public service it performs through its employees.
$ 10,000
$ 9,000
$ 7,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


Remember Mr. James Brown? After James Brown loses his case, he applies for a work service job with the Town of Oyster Bay. He follows the Singh case and regularly posts on Facebook about corruption in the government. He is fired so he sues again.
A
This time he will win because a public employee has an unfettered right to speak about anything.
B
This time he will lose again because a public employee should never bite the hand that feeds him.
C
This time he may win provided he demonstrates that he is speaking about a matter of public concern and the interest of the state as an employer is promoting efficiency of public service it performs through its employees.
$ 10,000
$ 9,000
$ 7,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

# Pickering v. Board of Ed. 391 U.S. 563 (1968)

- Government employees may not constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with operation of public schools in which they work.
- The Pickering test involves a two-part inquiry,
- the first part being “whether the speech which led to an employee's discipline relates to a matter of public concern
- Next is the balancing test where the Court must weigh the employee's First Amendment rights against the public employer's interest “ ‘in promoting the efficiency of the public services it performs through its employees' ”
- In performing the balancing, the employee's speech “will not be considered in a vacuum; the manner, time, and place of the employee's expression are relevant,” as is the extent that the speech “interferes with the regular operation” of the public employer's enterprise . To satisfy the second step of Pickering, the public employer bears the burden of showing that the discipline arising out of the employee's protected activity was justified


Can an employee collect wage benefits under (1) the Family Medical Leave Act, (2) NYS Short-Term Disability and (3) the Paid Family Leave Act all at the same time?
A
Yes. Smart employees can double their salaries while enjoying leave if they time pregnancies and healthcare needs correctly.
B
No. The statutes do not allow this.
C
Yes, but only if the particular health condition requiring the employee's leave qualifies under all three statutes.
$ 10,000
$ 8,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

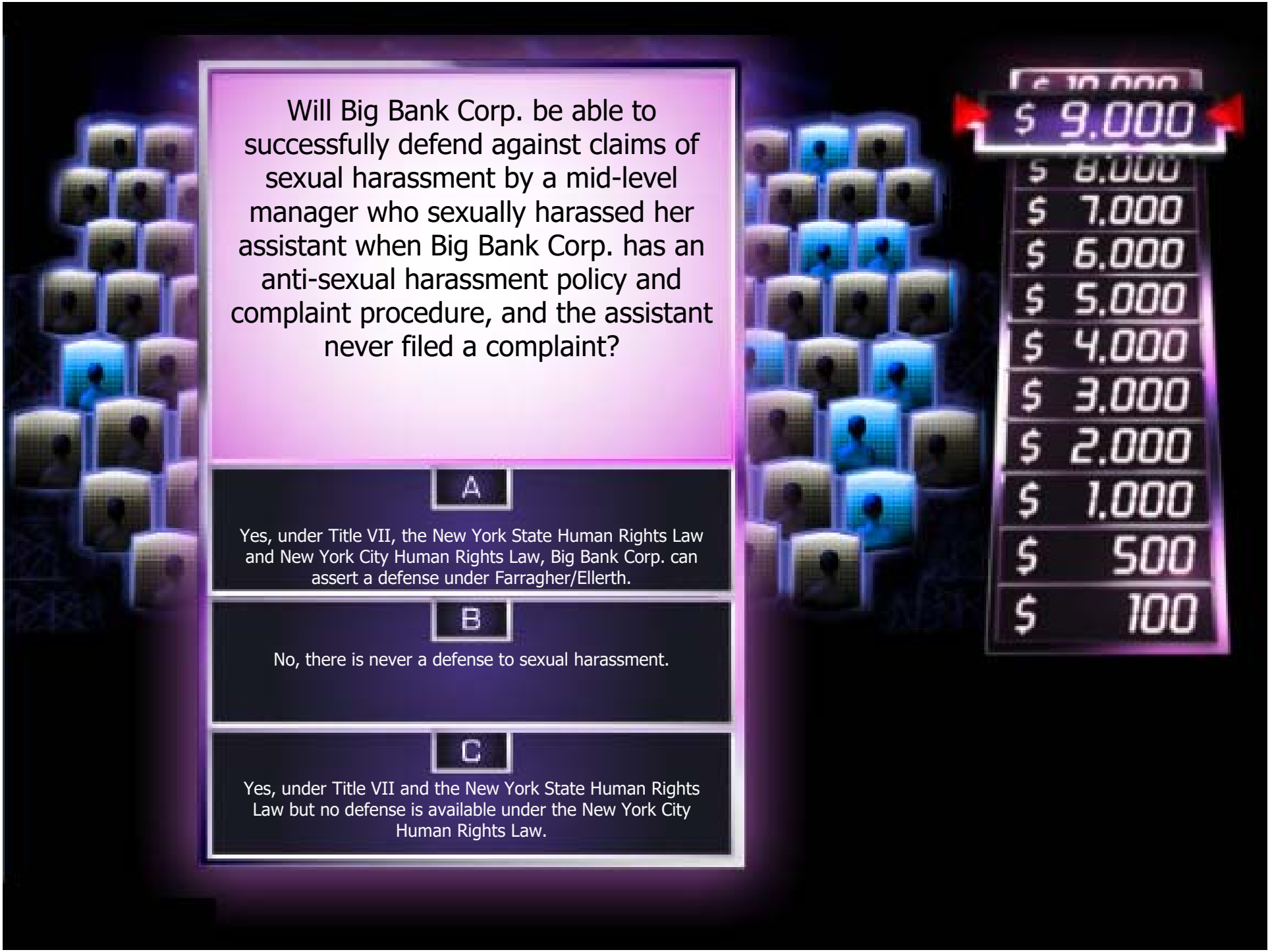

Can an employee collect wage benefits under (1) the Family Medical Leave Act, (2) NYS Short-Term Disability and (3) the Paid Family Leave Act all at the same time?
A
Yes. Smart employees can double their salaries while enjoying leave if they time pregnancies and healthcare needs correctly.
B
No. The statutes do not allow this.
C
Yes, but only if the particular health condition requiring the employee's leave qualifies under all three statutes.
$ 10,000
$ 8,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

There are no wage benefits under the Family Medical Leave Act.

Short-Term Disability and Paid Family Leave Act benefits do not run concurrently. Moreover, the combined maximum of Short Term Disability leave and Paid Family Leave that can be taken in one 12-month period is 26 weeks. 12 NYCRR 358-3.1; N.Y. Workers' Compensation Law §205(2)(a).

Also, the three statutes cover different conditions and purposes. For example, Paid Family Leave does not cover an employee's own health condition, but Short-Term Disability does.

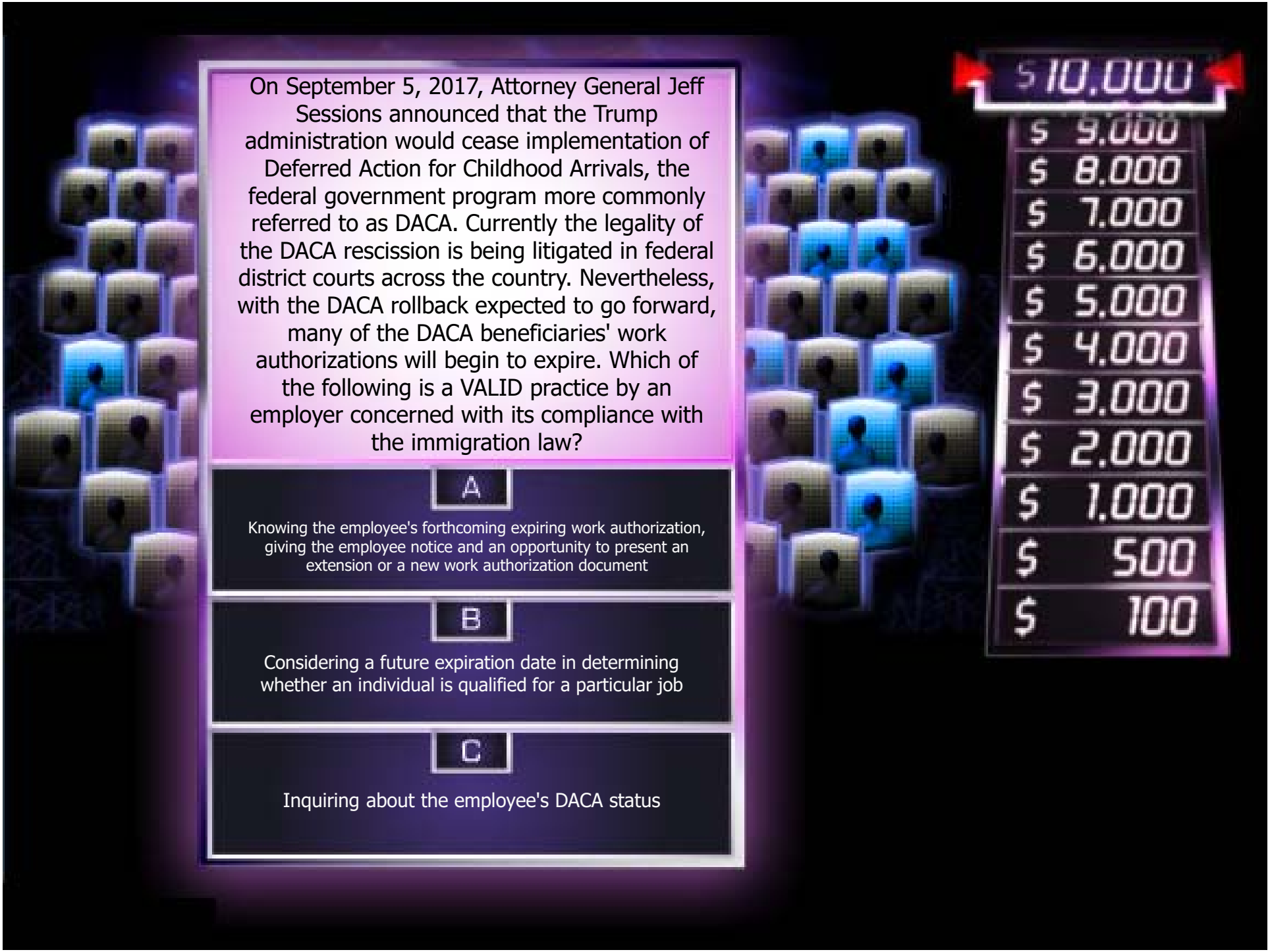
But both FMLA and PFLA cover bonding with a new baby, and in that circumstance the leave can run concurrently under both statutes. NY Workers' Compensation Law §§203-a, 203-b, 203-c, 205.5, 206.4.

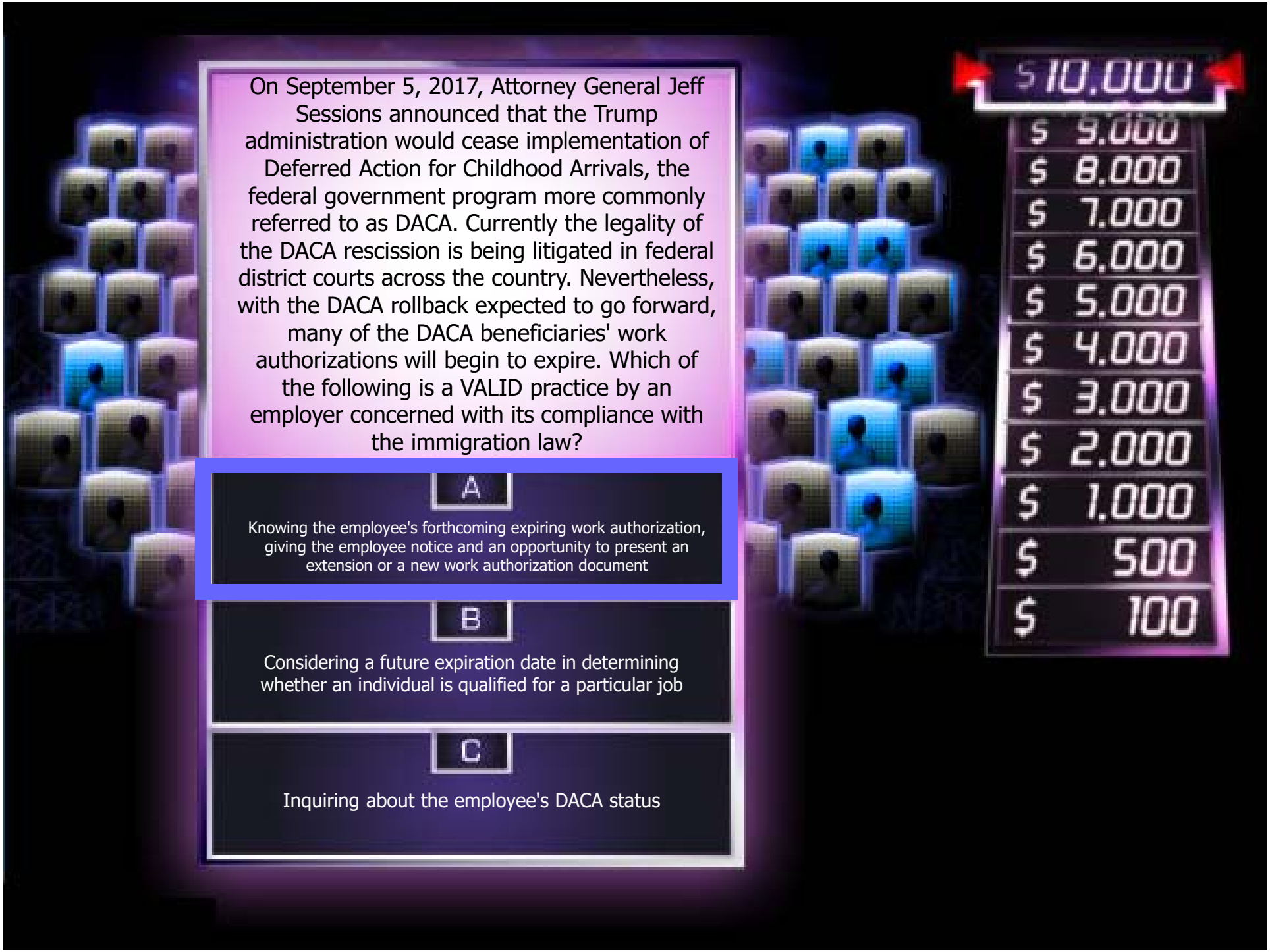

Will Big Bank Corp. be able to successfully defend against claims of sexual harassment by a mid-level manager who sexually harassed her assistant when Big Bank Corp. has an anti-sexual harassment policy and complaint procedure, and the assistant never filed a complaint?
A
Yes, under Title VII, the New York State Human Rights Law and New York City Human Rights Law, Big Bank Corp. can assert a defense under Farragher/Ellerth.
B
No, there is never a defense to sexual harassment.
C
Yes, under Title VII and the New York State Human Rights Law but no defense is available under the New York City Human Rights Law.
$ 9.000
$ 7.000
$ 6.000
$ 5.000
$ 4.000
$ 3.000
$ 2.000
$ 1.000
$ 500
$ 100


Will Big Bank Corp. be able to successfully defend against claims of sexual harassment by a mid-level manager who sexually harassed her assistant when Big Bank Corp. has an anti-sexual harassment policy and complaint procedure, and the assistant never filed a complaint?
A
Yes, under Title VII, the New York State Human Rights Law and New York City Human Rights Law, Big Bank Corp. can assert a defense under Farragher/Ellerth.
B
No, there is never a defense to sexual harassment.
C
Yes, under Title VII and the New York State Human Rights Law but no defense is available under the New York City Human Rights Law.
$ 9.000
$ 8.000
$ 7.000
$ 6.000
$ 5.000
$ 4.000
$ 3.000
$ 2.000
$ 1.000
$ 500
$ 100

# *Reference: Zakrzewska v. New Sch.*, 14 N.Y.3d 469, 481, 928 N.E.2d 1035 (2010).

- In a certified question from the Second Circuit, the Court of Appeals advised that under the New York City Human Rights Law §8-107(13), employers are not entitled to assert the Faragher/Ellerth defense in claims for sexual harassment.


On September 5, 2017, Attorney General Jeff Sessions announced that the Trump administration would cease implementation of Deferred Action for Childhood Arrivals, the federal government program more commonly referred to as DACA. Currently the legality of the DACA rescission is being litigated in federal district courts across the country. Nevertheless, with the DACA rollback expected to go forward, many of the DACA beneficiaries' work authorizations will begin to expire. Which of the following is a VALID practice by an employer concerned with its compliance with the immigration law?
A
Knowing the employee's forthcoming expiring work authorization, giving the employee notice and an opportunity to present an extension or a new work authorization document
B
Considering a future expiration date in determining whether an individual is qualified for a particular job
C
Inquiring about the employee's DACA status
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100


On September 5, 2017, Attorney General Jeff Sessions announced that the Trump administration would cease implementation of Deferred Action for Childhood Arrivals, the federal government program more commonly referred to as DACA. Currently the legality of the DACA rescission is being litigated in federal district courts across the country. Nevertheless, with the DACA rollback expected to go forward, many of the DACA beneficiaries' work authorizations will begin to expire. Which of the following is a VALID practice by an employer concerned with its compliance with the immigration law?
A
Knowing the employee's forthcoming expiring work authorization, giving the employee notice and an opportunity to present an extension or a new work authorization document
B
Considering a future expiration date in determining whether an individual is qualified for a particular job
C
Inquiring about the employee's DACA status
$ 10,000
$ 9,000
$ 8,000
$ 7,000
$ 6,000
$ 5,000
$ 4,000
$ 3,000
$ 2,000
$ 1,000
$ 500
$ 100

Congratulations on your winnings!


VS
100

**JUSTICE LEONARD B. AUSTIN** is a graduate of Georgetown University in 1974 and Hofstra University School of Law in 1977. Justice Austin engaged in the private practice of law until his election to the Supreme Court Bench in the Tenth Judicial District in 1998. He was reelected in 2012.

In his private practice, Justice Austin focused primarily on complex commercial litigation, matrimonial and family matters, personal injury and real estate matters. In 1980-81, he served as counsel to the Speaker of the New York State Assembly. In that capacity, he was assigned as counsel to the Agriculture and Commerce and Industry Committees.

Upon his election to the Bench, Justice Austin was assigned to a Dedicated Matrimonial Part in Suffolk County (1999) and a Matrimonial and Commercial Part in Nassau County (2000). In October 2000, and continuing until his elevation to the Appellate Division, Justice Austin presided in a Commercial Part. He was selected to serve as the Chairman of the Commercial Division Rules Committee and authored the Uniform Commercial Division Rules (22 NYCRR 202.70). Since 2014, he has been a member of the Chief Judge's Commercial Division Advisory Council.

In March 2009, Justice Austin was appointed to the Appellate Division for the Second Judicial Department by Governor David Paterson.

Justice Austin is currently a member of the Pattern Jury Instructions Committee. He has served on the Office of Court Administration's Matrimonial Practice and Commercial Division Curriculum Committees. He is a member of the New York State, Florida, Nassau County, Suffolk County, and New York State Women's Bar Associations. In addition, he was the President of the American College of Business Court Judges, the Presiding Member of the Judicial Section of the New York State Bar Association and the President of the Theodore Roosevelt American Inn of Court.

Over the years, Justice Austin has authored several articles dealing with Consumer Class Actions, Equitable Distribution and New York City's Forfeiture Law. He is a frequent lecturer in the fields of appellate, commercial and matrimonial law and practice. Since 2002, he has been an Adjunct Professor of Law at the Maurice A. Deane School of Law at Hofstra University.