



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 13 – THE PRACTICE OF EMPLOYMENT LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the November 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

5 candidates or fewer completed this exam. For this reason, Chief Examiner comments on overall and question-specific performance has not been included as the data is too limited for meaningful trend analysis.



SUGGESTED POINTS FOR RESPONSE**NOVEMBER 2023****LEVEL 3 UNIT 13 – THE PRACTICE OF EMPLOYMENT LAW**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none">• Is an employee• Not in excluded category of employment• Has the required 2 years continuous employment• He has been dismissed by the employer• Is within the 3 month time limit• Is eligible to make a claim	5
1(b)	<ul style="list-style-type: none">• Believes has been dishonest - money was missing from the till• Potentially fair reason to dismiss – conduct• Employer should adhere to BHS v Burchell• Employer has a genuine belief in guilt• based on reasonable grounds/financial difficulties• following an investigation• However has not fully investigated• should have adhered to the ACAS Code• Employee should have had an opportunity to explain himself• The decision to dismiss may not fall within the range of reasonable responses• under Iceland Frozen Foods v Jones• as has a previous good record	8
1(c)	<ul style="list-style-type: none">• Re-instatement - must be offered his job back• Re-engagement - must be offered a similar job• Compensation - Financial award• Basic award/Compensatory award	4
1(d)	ET1 Form	1
Question 1 Total: 18 marks		



Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> • Via a 'no win, no fee' arrangement. • Either be a Conditional Fee Agreement • or a Damages Based Agreement. • Both of these are contingency fee-based arrangements. • BTE Insurance • May have Legal Expenses Insurance • Included under home contents, motor or bank account insurance. 	4
2(b)(i)	<ul style="list-style-type: none"> • s.139 Employment Rights Act 1996 (ERA 1996) • Business closure, where the employer has ceased or intends to cease to carry on the business with which the employee was employed. • Workplace closure, where the employer has ceased or intends to cease to carry on that business in the place where the employee was employed. • There is a reduced requirement for employees, where the requirements of the business for the employee to carry out work of a particular kind have ceased or diminished 	3
2(b)(ii)	Workplace closure	1
2(c)	<ul style="list-style-type: none"> • The Basic Award for redundancy • Calculated based on age, for redundancy each complete years' work • carried out between the ages of 22 – 40 • Barbara Valentine is aged 32 • She has worked for Just Hair for 6 years • Barbara Valentine's weekly pay is £592.00 per week • the statutory cap is fixed at £643. • Barbara Valentine will therefore be paid 6 x £592.00 • = £3,552 	6
2(d)	<ul style="list-style-type: none"> • Starting point will be the employee's current contract • Will depend if there is a mobility clause • The clause require employees to work at more than one location. • Must be enforced reasonably. • In the present case likely to be enforceable as not an unreasonable distance to expect individual employees to travel. • United Bank Ltd v Akhtar (1989) 	6
Question 2 Total: 20 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> • S.6 Equality Act 2010 - disability • If a person has a physical or mental impairment and • the impairment has a substantial and long term adverse effect on their ability to carry out day to day activities 	4
3(b)	<ul style="list-style-type: none"> • Direct discrimination • s.13 Equality Act 2010 • A person (A) discriminates against another (B) if, • because of a protected characteristic, • (here disability) • A treats B less favourably than A treats or would treat others. • The comments made by Walter Smyth indicate that he thought Leo Cross would not be able to do the job 	6
3(c)	<ul style="list-style-type: none"> • Rule 53 Tribunal Rules of Procedure 2013 • conduct a preliminary consideration of the claim with the parties • and make a case management order (including an order relating to the conduct of the final hearing); • determine any preliminary issue; • consider whether a claim or response, or any part, should be struck out under rule 37; • make a deposit order under rule 39; • explore the possibility of settlement or alternative dispute resolution (including judicial mediation). 	4
3(d)	<ul style="list-style-type: none"> • A tribunal can order compensation. • There is no statutory limit on the amount a tribunal can award • However there are guidelines (Vento) on which amounts are based <p>No marks for make a recommendation and/or make a declaration as to the rights of the parties as not relevant to the scenario</p>	3
Question 3 Total: 17 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<ul style="list-style-type: none"> • S.11 ERA 1996 • Where an employer does not give a worker a statement as required by section 1 • the worker may require a reference to be made to an employment tribunal • to determine what particulars ought to have been included 	4
4(b)	<ul style="list-style-type: none"> • There is a limit of, on average, 48 hours in any seven day period • Calculated by using a reference period of 17 weeks • It would appear that as Jane started work 6 months ago this is a breach • Unless the employee has opted out • Entitled to a rest break of 20 minutes when working more than six hours • Here she is working 20 hours without a break. 	5
4(c)	<ul style="list-style-type: none"> • The Paternity and Adoption Leave Regulations 2002 (as amended) • provide that an employee who is the adoptive parent of a child placed for adoption is entitled to 52 weeks adoption leave. • Consists of 26 weeks Ordinary Adoption Leave (OAL) and 26 weeks Additional Adoption Leave (AAL). • The adoption leave will start no later than 14 days before the date on which the child is placed for adoption. • The employee has the right to return to the same job at the end of the adoption leave. • Statutory Adoption Pay will also be available if the adopter has been continuously employed for at least 26 weeks and the employee earns at least the lower limit for National Insurance contributions. • The employee is also entitled to time off to attend adoption meetings. 	6
Question 4 Total:15 marks		