

**LEVEL 3 - UNIT 6 – EMPLOYMENT LAW  
SUGGESTED ANSWERS – JANUARY 2018**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

**SECTION A**

1. Credit is given for relevant and correctly named Acts, such as the Employment Rights Act 1996 or Equality Act 2010.
2. Workers are people who work under either a contract of employment or any other contract under which the individual undertakes to work for the other party, except where the other party is a client of a business carried on by the individual. S.230(3) Employment Rights Act.
3. The officious bystander test implies terms into a contract on the ground that, if something is so obvious then it need not be stated e.g. if both parties would say: 'oh of course'; Shirlaw v Southern Foundries Ltd (1939).
4. Collective agreements are those made between an employer, or an employers' association, and a trade union, that directly affect the employee's terms and conditions of employment. Terms and conditions are reached through collective bargaining.
5. Examples of specific exclusions that do not meet the definition of disability set out in the Equality Act 2010 could include:
  - tattoos;
  - pyromania;
  - kleptomania;
  - smoking.
6. Three ways in which a contract can be terminated by agreement could be the ending of a fixed term contract, by mutual consent or resignation.
7. In relation to summary dismissal, repudiation is where the employee has committed a fundamental breach that goes to the root of the contract e.g.

acting dishonestly. A single incident is unlikely to justify summary dismissal, unless it is gross dishonesty or a serious crime, e.g. Pepper v Webb 1969.

8. An automatically unfair reason for dismissal could be where a person has asserted a right not to be discriminated against. It could also be where a person has taken, or attempted to take, leave for family reasons, or where a person working a zero hours contract has been dismissed for working for another employee (exclusivity clause).
9. Three situations which allow an employer to make deductions are:
  - by Statute:- Under the Employment Rights Act 1996 an employer can make deductions for Income Tax and National Insurance;
  - when the contract specifies they may or they have the express consent of the employee;
  - when an employee has taken part in a strike or other industrial action.
10. One example in which the implied duty of good faith/fidelity protects an employer's business could be the duty to account for all profits e.g. Boston Deep Sea Fishing & Ice Company v Ansell (1888), or the duty to respect trade secrets and customers e.g. Faccenda Chicken Ltd v Fowler (1986).
11. Victimisation is defined as when a person is subjected to detriment because they have enforced, or attempted to enforce, their own, or someone else's, right to be protected from discrimination (s.27 Equality Act 2010).

## **SECTION B**

### **Scenario 1 Questions**

1. Dismissal occurs under s.95(1) Employment Rights Act (ERA) 1996, where the contract has been terminated by the employer, or a fixed term contract has expired and is not renewed, or by constructive dismissal.
2. (a) In order to claim unfair dismissal, Andrew would need to establish that he meets all the requirements. He must establish that he is an employee and not a member of an excluded category. Andrew works mainly overseas, which is an excluded category, however, he has a sufficiently strong connection with the UK and he is paid in Sterling, which could allow him to establish that he is an employee, e.g. Ravat v Halliburton Manufacturing and Services Ltd (Scotland) (2012).

Andrew also has the correct amount of qualifying employment, as he has been continually employed for 4 years. Any absence due to illness or injury, up to 26 weeks, does not break the qualifying period, s.212 ERA 1996.

Andrew has also been dismissed. This became clear when he received the letter. Therefore, he is eligible to claim.

- (b) The potentially fair reason to dismiss Andrew would be unsatisfactory conduct, (s.98(2) ERA). This is because Andrew failed to obey a reasonable/lawful order. This is a breach of the implied duty to obey reasonable orders. However, in this instance, he refused to use faulty equipment, which means this is not a reasonable/lawful order, as it would be a breach of health and safety. This would not amount to

misconduct. Therefore, Zelma did not have a potentially fair reason to dismiss.

3. Bella's contract does not have to be in writing (s.203 ERA 1996), however, she is entitled to s.1 statement ERA 1996. This should be provided within 2 months of starting work. Failure to provide it means that Bella can apply to a tribunal, where the tribunal can insert their own terms. Zelma could also be forced to pay compensation to Bella.
4. Under the Working Time Regulations 1998, employees are entitled to 5.6 weeks' holiday per year pro rata. Full-time employees are entitled to 28 days per year, including bank holidays. 15 days is less than the minimum that Bella is entitled to.
5. Bella has been directly discriminated against, s.13 Equality Act (EA) 2010; as she has less holiday entitlement than the other employees. She has been treated less favourably because of a protected characteristic, in this case race (s.9 EA 2010). Race covers nationality, ethnic or national origins. Bella is Somalian and Zelma refers to her as a foreigner. She is entitled to the same holidays as everyone else, e.g. James v Eastleigh Borough Council (1990).

## Scenario 2 Questions

1. (a) Under the Working Time Regulations (WTR) 1998, Ethel, as a young worker aged 16-17, should have worked no more than 40 hours per week. Once she turned 18, the maximum working week is 48 hours per week.  
  
(b) The correct minimum wages for the correct age ranges should be correctly identified. National Minimum Wage Act 1998.
2. WFC should have included a mobility clause in the employees' contracts. This would have stated that employees must move within certain limits, if the clause is considered reasonable, e.g. United Bank Ltd v Akhar (1989). Fifteen miles is not unreasonable, and would have been likely to be enforceable. As there is no clause, they cannot be forced to move. It could be a potential redundancy situation.
3. The potentially fair reason for dismissal is conduct/misconduct. Finley has lied about his illness. He has breached his duty of implied mutual trust. This is a repudiatory breach that goes to the root of the contract and will be considered gross misconduct e.g. Ajaj v Metroline West Ltd. WFC must act reasonably in treating the conduct as a sufficient reason for the dismissal.
4. In order for WFC to have carried out sufficient investigations regarding Finley's reason for absence, they should have followed the ACAS Code of Practice 1. They would need to establish all the facts, have reasonable belief that the employee is guilty, by carrying out as much investigation as possible, e.g. British Home stores v Burchell (1978). In this situation, they did not carry out any investigation, they merely took Kinga's word.
5. The remedies available for a claim of unfair dismissal include:
  - re-engagement; where the employee is offered a comparable job;
  - reinstatement: where the employee is given the same job;

- financial award; which contains three elements, the financial, basic and compensatory awards.

### Scenario 3 Questions

- (a) A disability is defined as where a person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
  - (b) Miles has a physical impairment, as his face is disfigured. This would be considered substantial, as it is more than minor or trivial. He can no longer do what he could do before the impairment, e.g. Paterson v Commissioner of Police for the Metropolis (2007). It is considered long term, as it is permanent. It also affects his ability to carry out day-to-day activities, such as speaking for long periods of time.  
  
Para 6 sch1 Equality Act (EA) 2010 specifically includes cancer and disfigurement as a disability, even if it does not affect a person's day-to-day activities.
- (a) The factors the employer should consider when making reasonable adjustments are the effectiveness of the change; the practicality of the adjustment; and the cost of the adjustment.
  - (b) S.21 defines a failure to provide reasonable adjustments as a form of discrimination. Changing the timetables will be effective, as Miles will be able to perform his duties. He will not have to speak for long periods of time. It might not be practical to change the timetables; this would depend on all the circumstances. It is not discrimination to treat a non-disabled person less favourably than a disabled person, even if the other tutors requested the same treatment, Olaf could refuse their requests e.g. Archibald v Fife Council (2004).
3. In relation to the name calling, Miles would be able to claim harassment s.26 EA 2010. This is because he has received unwanted conduct in relation to a protected characteristic, which has violated his dignity. The effect of the name calling has created a degrading and humiliating workplace e.g. Insitu Cleaning v Heads (1995).
4. Miles is an employee of Tutorz and he has been dismissed because of his disability, this is an automatically unfair reason for dismissal and there is no qualifying period of service in this situation. Miles will need to bring his claim within 3 months of the effective date of dismissal. He is likely to be successful.