

**LEVEL 3 - UNIT 6 – EMPLOYMENT LAW
SUGGESTED ANSWERS – June 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

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

SECTION A

1. The right to claim compensation for being unfairly dismissed (after a qualifying period) and the right to maternity, paternity or adoption leave and pay on becoming a parent.
2. It is a common-law duty not to work for a competitor and that the employee should respect trade secrets and account for all profits.
3. Transfer of Undertakings (Protection of Employment) Regulations 2006.
4. Two protected characteristics could be s.5 age or s.11 sex.
5. A contract of employment can be terminated by the employer, or with the expiry of a fixed term contract/ limited term, or terminated by the employee in circumstances where the employee is entitled to terminate e.g. repudiatory breach.
6. A claim for wrongful dismissal can be brought if the employee has not committed a fundamental breach of contract, or if the employer has committed a fundamental breach of contract/ repudiated the contract, or has dismissed the employee with no notice/ incorrect or no PILON.
7. A redundancy situation can arise where the employer has closed the business or closed the place where the employee worked or needs less employees to carry out work, s.139 Employment Rights Act 1996.
8. An advantage of the control test is that it is easy to apply as the employer can tell the employee what to do and how and when to do it. A disadvantage of the control test is that it can be too narrow and cannot be used on its own.

9. This could include any of the restrictive covenants:
 - Garden leave clauses;
 - Mobility clause or Non-dealing clause;
 - Other sensible suggestions will be credited.

10. The notice period entitlement of someone with 15 years of service would be contained within s.86 the Employment Rights Act 1996. The notice periods are at least 1 weeks' notice if employed between one month and 2 years, 2 weeks' notice after 2 years of employment, with an additional 1 weeks' notice for each year of employment, up to a maximum of 12 weeks' notice. For someone who has been employed for 15 years the notice period would be 12 weeks.

SECTION B

Scenario 1 Questions

1. The advantages of being self-employed could include:
 - more flexible style of working;
 - choosing your working hours;
 - flexibility as to when to take your holidays;
 - being able to negotiate your own pay rate.

2. (a) The Integration test, which considers how much a part of the organisation the employee is, is often used when considering skilled people such as doctors. Alternatively the mutuality of obligations test, which considers whether the employer is obliged to offer work, and whether the employee is obliged to accept it, e.g Cassidy v Minister of Health [1951].
 - (b)(i) The correct application of all factors likely to indicate that Heidi is an employee, for example she must provide a personal service, has an ID badge and displays the company logo on the vehicle.
 - (b)(ii) The correct application of all the factors likely to indicate that Heidi could be self-employed are that she had to maintain her own vehicle and has a contract that says she is self-employed.

3. (a) All employees should receive the S1 statement of particular terms within 2 months of starting work.
 - (b) Firstly, Heidi should raise a grievance and, if it is not resolved, then she could apply to a tribunal for a declaration of what should have been included.
 - (c) Identification of what must be included in the S1 statement such as the date of continuous employment or details or notice periods.
 - (d) The National Minimum Wage Act 1998 which states the minimum wage that must be paid according to specific age ranges.

4. Idris will make a claim for victimisation, (s.27 Equality Act), as he has suffered a detriment for trying to enforce Heidi's right not to be discriminated against. Heidi has been subjected to age discrimination. Idris has been made to work permanent nights and has been given 50% less orders. E.g St Helens Borough Council v Derbyshire and others [2007].

Scenario 2 Questions

1. (a) Faith is eligible to claim unfair dismissal as she is an employee and is not a member of any excluded class, she has the correct length of continuous employment, s.108 Employment Rights Act 1996, and she has been dismissed.
 - (b) Clifford should have used the Acas code of conduct. He should have established all the facts and then written to Faith inviting her to attend a meeting. He should allow Faith to be accompanied to meeting. She should be notified of the outcome and be given the opportunity to appeal to decision. Once the appeal has been held

Clifford will need to notify Faith of the final decision. All of this must be done promptly and consistently.

2. (a) The only forum for a claim of unfair dismissal is the Tribunal. It must be started within 3 months of the effective date of dismissal, s.97 Employment Rights Act 1996.
- (b) Faith has been dismissed for the potentially fair reason of 'some other substantial reason', in this case pressure from a dissatisfied customer. Faith refused to allow Oliver to take part in her classes and, fearing bad publicity, Clifford dismissed her. E.g. Treganowan v Robert Knee & Company Ltd [1975]. The dismissal will need to be substantially fair (s.98(4) Employment Rights Act 1996), meaning that the employer should act reasonably in all the circumstances and 'within the band of reasonable responses'. Iceland Frozen foods v Jones [1983]. Here Clifford dismissed Faith to protect his business interests, so the response could be considered reasonable.
3. There is no duty to provide a reference, but if one is supplied then it must be accurate. As Clifford produced a poor reference it is likely to be a negligent misstatement, as incorrect information was supplied. Faith will need to show she suffered a loss as a consequence of the reference. E.g. Spring v Guardian Assurance plc [1994].
4. Clifford could have included a non-solicitation covenant within the contract.
5. Claim 1, Archie may try to claim under the Working Time Regulations 1998, which state that a person cannot work more than 48 hours per week. Archie is working overtime to cover Faith's classes. Overtime is included when calculating the maximum hours a person works each week. Archie is working more than the 48 hours permitted. However, as the total number of hours worked is calculated over a 17-week period, this would put Archie below the maximum hours permitted. As Archie is still below the maximum it is unlikely his claim will succeed at this time, however he is entitled to a 20-minute break every 6 hours, which he is not currently receiving.

Claim 2, Under the National Minimum Wage Act 1998 Archie is entitled to be paid the correct rate for 18-20 year olds. This is currently £5.60 per hour. He is not being paid the correct amount so he is likely to succeed.

Scenario 3 Questions

1. Ashar would need to follow the Kempston Today's disciplinary procedure or those set out by Acas. He will need to conduct a thorough investigation and write to Lance detailing the allegations and inviting him to attend a disciplinary hearing. He should also inform Lance of his right to be accompanied to the meeting. Lance should be given the opportunity to respond to the allegations and he should be notified in writing the decisions of the hearing. Lance should also be given the opportunity to appeal the decision. All of this must be done promptly and consistently.
2. (a) Celia could try to claim wrongful dismissal (s.86 Employment Rights Act 1996). She has been summarily dismissed without any notice.

She should have received 3 months' notice, as her contractual notice is higher than the statutory minimum. She has not received any PILON. However, Celia could have committed a fundamental breach which would allow her employer to terminate the contract. Fighting at work could amount to gross misconduct and would therefore justify a summary dismissal. Usually a single incident is unlikely to justify summary dismissal unless it is a serious crime. Celia has been convicted of assault and the dismissal could be justified on these facts.

- (b) Celia would be entitled to payment in lieu of the 3 months' notice which would include the net wages or salary that she would have earned. She would also be entitled to any arrears prior to the dismissal and the monetary value of her contractual benefits, which would include the meal vouchers, private health care and gym membership. Also the net pay in lieu of any holiday entitlement not taken up to the date on which Celia would have left. She would be able to claim compensation for hurt feelings.
3. (a) S.10(1) religion means any religion or lack of religion and s.10(2) belief is any religious or philosophical belief or lack or belief. Nicholson v Grainger plc and others [2009] defines belief as being genuinely held and not an opinion, it must be a substantial aspect of human life. It must attain a certain level of seriousness and importance within society and be worthy of respect.
- (b) Mikhail has been subjected to direct discrimination under s.13 Equality Act 2010. He has been treated less favourably because he has a strong belief in the environment. Sandy has refused to pick up his coffee and calls him names. His belief is genuinely held. The second claim would be harassment under s.26, which is unwanted conduct relating to a protected characteristic. Here, there is an intimidating and degrading environment. He is being called names like 'tree-hugger' and told his beliefs are stupid e.g. Insitu cleaning Co v Heads [1995].
4. The claimant has to establish a *prima facie* case and then the burden will shift to the employer to establish that discrimination did not occur, s.136 Equality Act 2010.