

CASE STUDY MATERIALS

September 2020
Level 6
THE PRACTICE OF EMPLOYMENT LAW
Subject Code L6-19



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 19 – THE PRACTICE OF EMPLOYMENT LAW*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or textbooks except a statute book, where permitted, into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

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* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer in the firm of Kempstons, The Manor House, Bedford, MK42 7AB. Your supervising partner is Michael Jericho.

You arrive at work and are given the following documentation to review and consider:

DOCUMENT 1 Email from Andrew Baker to Michael Jericho, 5 May 2020

DOCUMENT 2 Email from Rose Petrillo to Michael Jericho, 8 May 2020

DOCUMENT 3 Memorandum from Michael Jericho re Rose Petrillo, 11 May 2020

DOCUMENT 4 Email from Yusuf Quashir to Michael Jericho, 15 May 2020

DOCUMENT 5 Email from Georgina Kareem to Michael Jericho, 18 May 2020

DOCUMENT 6 Attendance note by Michael Jericho re Georgina Kareem, 29 May 2020

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DOCUMENT 1

EMAIL

From: Baker, Andrew
Sent: 5 May 2020, 10:32
To: Jericho, Michael
Subject: Employment Issues

Dear Mr Jericho,

I hope you may be able to provide me with some guidance on my legal rights in the matters below.

I have been working at Mills Ltd, a carpentry company, for three years. My primary role within the organisation is to oversee the delivery and storage of merchandise at our on-site warehouse.

I should first explain that I have suffered since childhood from a stammer that can affect my ability to verbally interact with my colleagues. I have tried various methods of treatment since my teenage years (I am now 34 years old) but have yet to find anything that eases the condition.

My stammer means that I often take extra time to give instructions to colleagues when we are dealing with deliveries; particularly so with larger deliveries, as my stammer worsens in stressful situations. I need to have a clear idea of what I am going to say ahead of time and I often write things down as a guide, although this can be impractical and does take up quite a bit of my time.

In January, this year, a new employee was hired by Mills Ltd, Jake Cooper. Mr Cooper's role is to assist in the unloading and storing of items when we have a delivery to our warehouse; I therefore oversee his work. I believe Mr Cooper took an instant dislike to me, as he would deliberately and obviously mimic my stammer when other employees were close by. I initially ignored this behaviour, as I did not wish to make a fuss. However, I recently noticed that he is now using the company noticeboard to post jokes about stammering. The noticeboard is a place for colleagues to interact by leaving messages concerning workplace issues, and I am annoyed to see it being used as a tool for mockery. This noticeboard is located in the staffroom and I now feel very uncomfortable – to the extent that I feel unable to enter the staffroom for fear of encountering Mr Cooper and his unpleasant posts. This finally prompted me to approach my superior, Leela Mukerjee, to complain about Mr Cooper's mocking of my stammer and his general attitude towards me.

When I explained my predicament, Ms Mukerjee stated that she would have a word with Mr Cooper and suggest he stop 'teasing me'. His mocking of my stammer nonetheless continues to this day, both in person and on the company noticeboard.

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On a separate issue, Mills Ltd has always held mandatory weekly meetings, where the opportunity to speak is made available to all employees. I have remained silent during all such meetings, due to my stammer effectively preventing me from contributing. However, the company has recently brought in a requirement that, during our weekly company meetings, each employee is to stand up and give a brief overview of the issues and challenges they encountered that week and how these were overcome. The company states that this measure is meant to engender better employee relations and allow individuals to seek confirmation and support from the company and from their colleagues.

However, due to my stammer, I feel unable to meet this new requirement. I explained this to Ms Mukerjee and she told me that the company is steadfast on this new provision. She added that my 'refusal' to contribute would have an adverse effect on the company, as I am a senior member of staff and, if I do not give my weekly overview, more junior staff are also unlikely to contribute to these meetings. I offered to make written notes covering any comments I might have, but this offer was declined.

Your advice would be much appreciated.

Many thanks.

Andrew Baker

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DOCUMENT 2

EMAIL

From: Petrillo, Rose
Sent: 8 May 2020, 14:15
To: Jericho, Michael
Subject: Employment Issues

Good afternoon,

I am writing to you in my capacity as director of a school-based cleaning company, Spotless Ltd. I have recently had to dismiss an employee of the company and I am hoping that, for my peace of mind, you will be able to confirm the legitimacy of my actions.

We have a team of 20 employees at Spotless Ltd and each individual has a distinct role. Therefore, if one employee is absent or late, the others struggle to compensate for their absence and work tasks, and company morale can suffer as well. With this in mind, I recently took the decision to dismiss an employee, Tomas Kershaw, for his repeated lateness.

Tomas was one of my long-serving members of staff, having been with the company for more than five years. He had been arriving at work at 9.30am each morning for the previous eight weeks, despite his shift starting at 8.30am. When I questioned him on his lateness, Tomas stated that he preferred to miss the early morning traffic and would make up the time later in the day. I told him that this was unacceptable, yet he continued to arrive an hour late for work each morning. This persistent lateness was not only detrimental to my business, but it also set a bad precedent for other employees.

This led to my decision to dismiss Tomas earlier this week. I sent him an email explaining he was being dismissed for persistent lateness and he should consider the email to be his notice. Unfortunately, Tomas reacted quite badly upon receiving his dismissal email. He immediately came to my office, claiming to be ignorant of any reasons justifying his termination, despite my explaining that it was based on his persistent lateness.

Again, I am writing to seek confirmation that my actions were appropriate and that we will be legally protected, should Tomas decide to challenge his dismissal.

Regards,

Rose Petrillo
Director, Spotless Ltd

DOCUMENT 3

MEMORANDUM

To: Trainee Lawyer
From: Michael Jericho
Client: Rose Petrillo
Date: 11 May 2020

Hi,

I was contacted today by Rose Petrillo regarding the matters below (I am currently acting for this client on a separate case). I would appreciate it, if you could prepare to help me with this case. Please find the key points below.

Thanks.

Michael

Rose Petrillo is the director of a cleaning company specialising in servicing schools, Spotless Ltd. This company recently took over the provision of cleaning services for two schools from one of its competitors, Cleanliness Ltd. This involved Spotless Ltd taking on three existing employees from Cleanliness Ltd.

Ms Petrillo states that she did not want to take on these new staff, but agreed to do so to facilitate the transfer. It has been three weeks since these contracts were taken over and Ms Petrillo is now seeking to terminate the employment of the three staff transferred from Cleanliness Ltd to Spotless Ltd. Ms Petrillo intends to justify the dismissals on the grounds that the new employees 'do not fit in' with her existing team.

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DOCUMENT 4

EMAIL

From: Quashir, Yusuf
Sent: 15 May 2020, 09:11
To: Jericho, Michael
Subject: Workplace Issues

Dear Mr Jericho,

I would very much appreciate your help in the matter below.

I have been working as a receptionist at Smiles Ltd, a dental surgery, for over eight years without incident. However, in the last few months, a couple of issues have arisen that have made me feel quite undervalued in the workplace.

On 1 May, I received a verbal warning from my employer for leaving my post without managerial permission. However, I believe this to be an unfair reprimand, as I left the workplace after receiving a phone call from my six-year-old son's school, informing me that my son had fallen down a flight of stairs and suffered a cut to his head. I notified my manager, Usha Kent, of the situation and told her I needed to go immediately to my son's school. However, Ms Kent told me that I was not allowed to leave until another colleague returned from her lunchbreak (another hour at least), otherwise she would be short of staff. I nonetheless rushed out of my place of work and drove straight to the school to collect my son and take him to our doctor.

The doctor advised me that the cut to my son's head did not appear to be a serious injury but to 'keep a close eye on him', as he would have a headache for a couple of days. I took the following two days off work to stay at home with my son until his cut had healed and his headache eased. I notified my manager that I would be taking this leave on the evening of the incident. When I returned after these two days off, Ms Kent issued me with a verbal warning for leaving my post without permission on the day of the incident and for taking two days of unauthorised leave.

Furthermore, in the past week, Ms Kent has asked me to arrive 30 minutes early to work each morning to open up the business premises; I then leave 30 minutes earlier in the afternoon, so my total working time remains consistent. Although my contract allows for this variation in working times, I have always made it clear that this early shift does not suit me, as I live quite a long way from the premises. As such, I have never been asked to 'open up' the business in the entire eight years I have worked at the company.

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I therefore firmly believe that this change in my working patterns has been made by Ms Kent purely as retaliation for what she believes is my wrongfully leaving the workplace.

I wonder if you could please advise me as to my rights in relation to the issues above, as I am very upset at the treatment I have received.

Yours,

Yusuf Quashir

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DOCUMENT 5

EMAIL

From: Kareem, Georgina
Sent: 18 May 2020, 16:00
To: Jericho, Michael
Subject: Employment Law Query

Hello,

I have recently become the director of an online travel company, Sites Ltd. I am writing to seek your advice on the matter below.

I am in the process of reviewing our existing company contracts, including employment agreements. I am endeavouring to tighten up all our procedures and documentation, in an effort to ensure the best protection for the company and to avoid potential litigation.

However, when examining the employment contracts of our most senior staff, I believe there is an overall lack of protection afforded to the company, should the employee decide to leave our organisation and join a competitor. As we work within a relatively small industry (bespoke holiday planning for high-net-worth individuals), I can foresee potential problems in the future, where we may lose crucial clients to a competitor if the client forms too close a bond with a senior member of staff with whom they regularly engage.

I have observed that Sites Ltd has just one template contract of employment that is used for all employees from the most junior to the directors, myself included. The only clause in this contract that appears to seek to protect the interest of the company is Clause 14.

I have set out this clause below and would be most grateful if you could advise me whether this level of protection is sufficient; particularly for senior staff who are privy to sensitive data and in regular contact with our clients and suppliers.

Thank you.

Regards,

Georgina Kareem

'Clause 14: No employee may, on or after termination of employment, engage with any existing or former clients or suppliers of Sites Ltd, nor any existing or former employees of the company. This restriction is perpetual and worldwide.'

DOCUMENT 6

ATTENDANCE NOTE

Client: Georgina Kareem

Fee Earner: Michael Jericho

Date: 29 May 2020

Time: 30 minutes

Georgina Kareem, director of Sites Ltd, is an existing client for whom we are currently reviewing contracts of employment.

Phone call meeting with Ms Kareem 29/05/20. The client wishes to seek advice on a separate matter concerning the same company, Sites Ltd. Details below.

Sites Ltd has been involved in a dispute with a former employee, Mr Hennessy, for over 12 months; neither party has consulted ACAS in relation to their dispute.

Mr Hennessy has recently given written confirmation that he is willing to 'drop the matter in dispute' in exchange for the sum of £38,000. Sites Ltd assented, and papers were drafted to give effect to this agreement.

However, when examining the draft agreement, Ms Kareem was concerned that the wording was 'too narrow' and did not appear to preclude Mr Hennessy from accepting the sum offered and then bringing a future claim on a separate matter. Ms Kareem therefore wishes to include an express provision in the agreement prohibiting 'any future claims' against Sites Ltd by Mr Hennessy.

End of Case Study Materials

