Qualification: CIPD Diploma in Applied Human Resources

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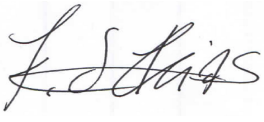
Signed: 

Date: 27 April 2020

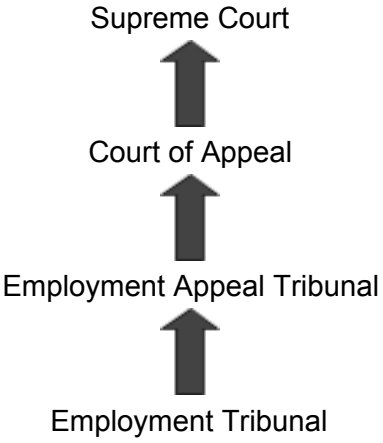
1. **Explain the purpose of employment law and outline the role played by the tribunal and courts system in enforcing employment law.**

Employment law is governed by civil law but some matters can fall under criminal law such as crimes that breach laws such as the Health and Safety at Work Act 1974 or The Data Protection Act 2018. Civil law deals with disputes between two parties (Daniels, 2019, p.6), and in the case of employment tribunals, between employers and their employer, in relation to their contract of employment.
Laws are critical to society, in the UK there are 3 main varieties of law at work; Statute law, Common Law and European laws. Statute law are acts of government and the main sources of legislation (Daniels, 2019, p.8). Common Law, or case law, has developed from previous judgements in courts and therefore sets a precedent for future law. European law still holds in the UK, most European laws have been copied across to domestic UK law as a result of Brexit.

The purpose of employment law is to enhance social justice (Taylor & Woodhams, 2016, p.26) and to provide legal protection to employees against exploitation, to ensure they have basic rights and are able to work safely. It also serves to balance power between an employee and their employer, as well as giving Trade Unions legal support. It also ensures that Trade Unions are regulated and prevents them from becoming too powerful, in order to protect the economy. Employment regulation in the UK can encourage workers to choose to work in the UK rather than abroad. It also promotes good practice within the employment relationship which ideally encourages those in the welfare system into work (Armstrong, 2020, p.607).
There are however arguments against employment regulation, they are mainly economic ie. higher unemployment and slow economic growth (Taylor & Woodhams, 2016, p.26). Employer costs are also raised through ensuring policy, procedure and reducing risks. This can have a negative effect on the employment of minority groups as companies may have reservations about hiring them due to their employment rights. Companies may choose to invest in another country that has less regulations rather than the UK to increase profits and save money through not having to deal with UK employment law costs, overall making the UK economy less competitive. In essence the UK government aims to develop a labour market that is flexible, effective and fair through the regulation of employment law (Armstrong, 2020, p.606).

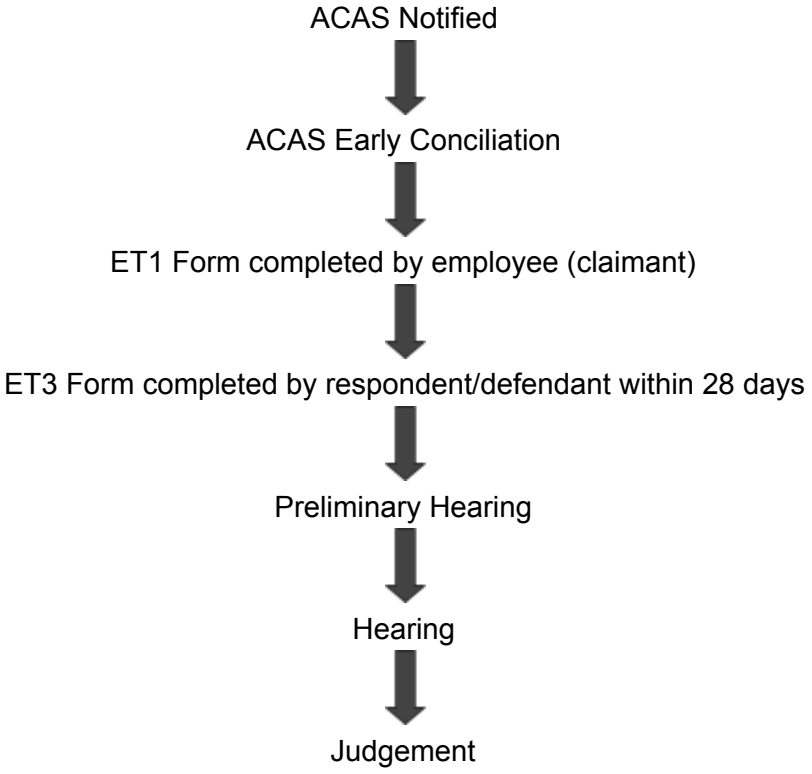
In the UK employment law is enforced through tribunals and the court system. Tribunals were originally created by the Industrial Training Act 1964 (Daniels, 2019, p.19) and have since evolved to the system used today. The court system is hierarchical, as show below:

Figure 1 The Court System



Employment law cases are heard at Employment Tribunals (ET) where claims must, in most cases, be made within 3 months, less 1 day and is known as the limitation date (ACAS, 2020). A summary of the ET process is outlined below:

Figure 2 Employment Tribunal Process



The claimant needs to contact the Advisory, Conciliation and Arbitration Service (ACAS) to notify them of the details of the case and get a certificate in order to go to a tribunal. ACAS contacts the employer (respondent) and attempts to facilitate a settlement between the two parties, known as early conciliation. Failing an early conciliation, paperwork needs to be submitted and the case then goes to a preliminary hearing to decide whether the case is suitable for tribunal. If suitable a date will be set for the case to go to tribunal and be heard by a judge or a panel of 3 people, evidence will have already been submitted and so will be reviewed and witnesses may be called. Following the judgement the claimant can appeal the outcome to a higher court within 14 days. It is difficult to appeal a judgement but I can be heard at an Employment Appeal Tribunal and only on a point of law. ie. if it is believed that the judge made an error in law. Potentially from there the case could go to the Court of Appeal or as high as the Supreme Court.

There are codes of practice that both employers and employees should adhere to, an important one is the ACAS Code of Practice on disciplinary and grievance procedures. Failure to follow the Code does not make a person or organisation liable to proceedings. ET's will take the Code into account when considering relevant cases. Pay awards can be lifted by up to 25% for an unreasonable failure to comply with the Code and it can also be reduced if an employee has unreasonably failed to follow the guidance set out in the Code (ACAS, 2015).

2. **Summarise the main principles of discrimination law in relation to recruitment and selection and explain how contracts of employment are established.**

Discrimination is when someone is treated unfairly for any of these characteristics:

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy or maternity
- Race (including colour, nationality, ethnic/national origin)
- Religion or belief
- Sex
- Sexual orientation

These characteristics are protected by law under the Equality Act 2010.

There are different types of discrimination (Daniels, 2019, p.114-122):

- Direct- where a person is treated less favourably because of a protected characteristic.
- Associative- person is treated less favourably because they are associated with someone with a protected characteristic.
- Perceptive- person is treated less favourably because they are perceived to be part of a protected group that has a protected characteristic.
- Indirect- a person is treated less favourably as a result of a practice.
- Harassment- person receives unwanted or offensive behavior as a result of a protected characteristic.
- Victimisation- person is peanalised for exercising their rights under the Equality Act.
- Discrimination arising from disability- person is treated less favourably as a result linked to their disability.
- Failure to make reasonable adjustments- where the employer puts a provision or practice in place or fails to provide a reasonable provision, which results in a disabled employee being put at a substantial disadvantage compared to those who aren't disabled.

Note that there are some protected characteristics that are exempt from the above types of discrimination, eg. marrage/civil partnership and pregnancy/maternity cannot apply in associative discrimination.

Equal opportunities are an important part of the recruitment and selection process, therefore employers should endeavour to educate all managers regarding this to protect the organisation from potential claims. Employers need to ensure that their recruitment process is fair so all applicants are treated equally, fairly and so that no one is discriminated against. Job advertisements need to be drafted with care and language needs to be gender neutral with no reference to age or race.
There are some exceptions, these are known as ‘occupational requirements’ and ‘objective justification’. Occupational requirements is where employers legally advertise jobs for particular groups of people, (Taylor & Woodhams, 2016, p.29) for example, a job can only be done by a person of particular gender, race or age as it is a requirement of the role but the employer would need to prove that this was the case. Objective justification is where the employer can prove that there is a good business reason to discriminate against a protected characteristic but they should always check whether there is a suitable alternative that does not discriminate, or discriminates less (ACAS, 2020).
Employers can take positive action in their recruitment process in order to enable or encourage applicants with a protected characteristic or an under represented group to apply to boost diversity. Subsequently they can also positively discriminate during the selection and recruitment process by offering a candidate with a protected characteristic over a like candidate who does not have a protected characteristic (Taylor & Woodhams, 2016, p.30).
Breach of the Equality Act (2010) could lead to an employer being held liable if they are found to have discriminated. If discimination is committed by one of their employees during the course of employment, this is known as vicarious liability.
Remedies for discrimination can include; a declaration of the rights of the parties; recommendation of actions the employer should take and finally, compensation which can address injury to feelings and loss/damages (Daniels, 2019, p.114-127).

A contract of employment is a legal agreement between two parties (Daniels, 2019, p.40). They can be established through a phone call, emails or ideally via a written contract. There a 5 main conditions required for a contract of employment to be established (Taylor & Woodhams, 2016, p.31):

- An unconditional offer
- Acceptance of the unconditional offer
- Intention to form a legal relationship
- Consideration of payment
- Certainty/ clarity of the main terms and conditions

As of April 2020 employers are required to provide employees and workers with a written statement of terms and conditions on or before their first day of employment and include various statements including; name of employee and employer; start date of employment; job title and salary to name a few.
A contract of employment is expressed in 3 terms; Express terms, Implied terms and Statutory rights. Express terms are the terms that have been discussed and agreed upon, but cannot diminish any statutory rights (Daniels, 2019, p.46).

Implied terms are terms not specifically agreed upon but are obtained from:

- Collective agreements- an agreement made by collectively bargaining between the employer and trade union on topics such as pay, shift patterns, etc. Express incorporation is a clear statement that both employer and employee agree to be bound by a collective agreement. Implied incorporation is where there are no express terms but the collective agreement has been implied in the contract.
- Statute- automatically forms a contract of employment eg. National Minimum Wage Act 1996.
- Custom and practice- is the way things are done in an organisation.
- The courts- developed through various court cases
- Work rules- Most organisations have a set of rules that employees need to abide by.

3. **An organisation is planning a major reorganisation which will involve moving some staff to other sites and outsourcing a major function to a sub-contractor.**
(a) Outline when and how contracts can be changed lawfully
(b) Explain briefly the main requirements of redundancy law
(c) Summarise the main requirements of the law on business transfers.

Employers cannot unilaterally vary a contract of employment (COE) as it could lead to claims of constructive dismissal or claims for damages (Daniels, 2019, p.77), unless the contract expresses that the employer has rights to vary a COE. There are other ways in which employers can lawfully change a contract:

- Flexibility clause- gives the employer the right to make reasonable changes in accordance to business needs (Taylor & Woodhams, 2016, p.32).
- Implementing a change- where the employer receives express agreement and consent through consultation with its employees, whilst adhering to specific timescales.
- Writing to confirm contractual changes- employers write to employees to outline and contractual changes, this tends to only be used where the employer foresees no negative response from in relation to the proposed changes.
- Dismissing then re-hiring- Terminating the current COE and then offering to re-hire under the new COE. This is risky due to the possibility of unfair dismissal cases being brought and so should only be used as a last resort.

Redundancy rights apply if a person is legally classed as an employee and has worked continuously for 2 years before they are made redundant (ACAS, 2020). Redundancy usually occurs when an employer reduces the number of its employees for economic reasons, (Taylor & Woodhams, 2016, p.33) when the employer ceases or intends to cease business or in a location of business where employees work. Redundancy can also apply when the requirement of the business ceases/is expected to cease or diminish or there are changes to the type or work required of its employees (Daniels, 2019, p.189). Employers need to notify, in writing, the Secretary of State for Trade and Industry if they intend to make more than 20 employees redundant.
Employees can be made redundant as a result of a statutory ban. For example, if an employee, who was a driver, received a statutory ban of having their driving licence revoked, they are now unable to fulfill their duties as a result of a legal restriction.
In a redundancy situation the first step is to consult with affected employees. The Trade Union and Labour Relations Act (1992) sets out legislation that relates to different time limits for collective consultation that must be adhered to:

- >100 employees = at least 45 days
- >20 but <100 employees = at least 30 days
- <20 employees = reasonable period of time (not covered under collective consultation)

Failure to adhere to these timescales could lead to a protective award to the amount that the employee would have earned during that consultation period, if adhered to correctly (Daniels, 2019, p.192). Collective consultation needs to take place with trade unions or employee representatives, if there is no trade union (Daniels, 2019, p.190). Employees need to be given information in writing at the start of the consultation including; the reason for redundancy, the types of jobs involved, total number or employees affected, selection methods, procedures to be followed and the method of calculating redundancy pay.
An organisation may ask for employees to volunteer for redundancy in order to reduce the overall number of redundancies and employers may wish to offer enhanced redundancy payments to encourage this (Daniels, 2019, p.192).

In most organisations it is clear which roles are at risk or redundancy due to economic reasons therefore a selection pool can be created. Employers need to establish an objective, fair and reasonable selection method in order to select employees for redundancy, selection criteria can include length of service, skills and attendance record.
Redundancy dismissal is where employers consult with individual employees who have been identified for potential redundancy before making any decision to dismiss (Daniels, 2019, p.196). At consultation the employee has the right to be accompanied and also the right to appeal a redundancy dismissal.
Those who have 2 years service at the time of dismissal are entitled to receive statutory redundancy pay. Statutory redundancy is calculated based on age, length of service and gross pay. An offer of suitable alternative employment may be made to an employee at risk of redundancy. If the employee accepts the new role it will take effect without a break in employment and they can be put on a statutory trial period of at least 4 weeks, to see if the role is suitable for them (Armstrong, 2020, p.600). If the employee declines a suitable alternative role or if the employer offers to renew or re-engage under a new contract the employee will not be entitled to redundancy pay.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects employees rights when the organisation or service they work for transfers to a new employer.
TUPE applies in business transfers when a business or part of a business transfers to a new owner or merges with another business to make a brand new employer (ACAS, 2020). TUPE applies in service provision transfers where:

- Activities carried out by 1 person transfer to another (outsourcing)
- A new contractor takes over activities from another contractor (second and generation outsourcing/ re-tendering).
- The organisation takes activities in house from a contractor (known as insourcing).

TUPE does not apply if there is a one off event that lasts a short duration, if the customer changes, if there are transfer of shares or if there are no economic changes.
Automatic transfer principle is where the employees of the old employer automatically become employees of the new employer at the point of transfer. This means that they carry with them their continuous service from the outgoing (transferor) employer, and the same terms and conditions of employment they had with their previous employer (ACAS, 2020). There are some aspects that do not transfer such as pensions.
The transferor organisation is legally required to provide the new organisation (transferee) with information about the employees transferring, known as Employee Liability information (Daniels, 2019, p.202). This information includes the names and ages of all the employees; a statement of particulars; collective agreements; any disciplinary, legal or grievance actions.
Employees affected have the right to be consulted throughout the entire process and have the right to representation. Failure to consult could lead to compensation of up to 13 weeks pay being awarded for each employee. Employees should be informed that the transfer is taking place, when, why and of any implications and measures anticipated.
Following a transfer, the new employer may have employees with different terms and conditions working alongside each other. They may want to change or vary contracts to bring them in line with their organisation. However, TUPE protects against any contract changes as they would be rendered as void. There is a legitimate way to change contracts if they can be supported by a 'economic, technical or organisational' (ETO) reason (Daniels, 2019, p.203).
Employees who object or refuse do not transfer and their contract of employment may be terminated on the date of transfer, meaning there is no dismissal or they can choose to resign. Dismissal will be deemed unfair if the only reason for dismissal is the transfer itself.

4. **Summarise:**
   (a) the major statutory rights employees have in relation to pay, holidays and working time and,
   (b) the major maternity, paternity and other family-friendly employment rights.

There are 3 types of people who work in an organisation; a worker, an employee or someone who is self-employed. The Employment Rights Act 1996 states that an employee is an individual that enters into work under a contract of employment and a worker is an individual who works under a contract of employment or personally performs work or services for another party (Daniels, 2019, p.40). Workers and the self-employed have less protection in employment law.

Statutory rights for employees are key factors outlined in any contract of employment and include the following:

Right to Pay/ National Minimum Wage (NMW)
The Low Pay Commission makes annual recommendations and advises the government on suitable rate for NMW in order to maximise living standards for low paid workers (Taylor & Woodhams, 2016, p.35). It is the employers responsibility to ensure it pays the NMW for its employees, based on age. The Employment Rights Act 1996 states that an employee has the right to be given by their employer, at or before the time any payment of wages or salary is made, a written itemised pay statement (GOV.UK, 1996).

Equal Pay
Both men and women should be paid the same for completing 'like, equivalent or work of equal value', if they are employed by the same employer (Taylor & Woodhams, 2016, p.36). If an employee feels that they have not been paid equally and wish to bring and equal pay claim they need to be able to prove a 'comparator', which is a person of opposite gender who is employed by the same employer and is completing like, equivalent or work of equal value but is paid more or has better terms and conditions of employment.

Working Time Regulations (WTR)
The Working Time Regulations 1998 outlines basic working rights and include the following:
- A maximum limit of 48 hours per work per week
- A minimum of 4 weeks paid annual leave per year plus 8 statutory bank holidays
- Minimum timings for rest breaks
- Provisions for breaks night workers and regular health checks
- Provisions to limit working time for workers aged 16-18.

However there are exceptions to these which include employees choosing to opt out, workforce agreements and averaging.

Holiday pay
Employees and workers are entitled to 5.6 weeks paid leave, which is inclusive of the 8 statutory bank holidays in the UK.

Statutory Sick pay (SSP)
Employees who are unable to work due to sickness are entitled to SSP, which is a daily rate set by the government and is paid through the employer's payroll system. If they are sick and unable to attend work for 4 or more calendar days and have average earnings that are equal to or below the lower earnings limit are entitled to SSP (Daniels, 2019, p.99). SSP is only paid for days the employee would normally have worked and for a maximum of 28 weeks in a 12 month period.

Maternity
If a woman is pregnant or is on maternity leave they are protected against dismissal, discrimination and anything else that may lead to detrimental treatment as a result of her pregnancy (Daniels, 2019, p.101). She is also entitled to paid time off work to attend antenatal appointments. As with all employees the employer has a duty of care to protect their health and safety and should carry out a risk assessment for new and expectant mothers.
In order to be entitled to maternity leave the employee must inform her employer that she is pregnant, when her expected week of childbirth (EWC) is and the date that she wishes to start her ordinary maternity leave (OML). This must be done no later than the fifteenth week before the EWC. Maternity leave can be automatically triggered if the employee goes into premature labour or has pregnancy related absence 4 weeks before EWC. In these cases the employer must notify the employee of the new start and end date within 28 days of receiving notification. There are 3 different types of maternity leave:
- Ordinary Maternity leave (OML) = 26 weeks
- Compulsory Maternity leave (CML) = 2 weeks immediately following childbirth the employee cannot work (4 weeks for factory workers). This 2 weeks forms part of OML.
- Additional Maternity leave (AML) = 26 weeks

An employee is entitled to Statutory maternity pay (SNP) if she has been continuously employed for 26 weeks to and including the 15th week EWC and receives average earnings that are lower than the limit for National Insurance contributions (Taylor & Woodhams, 2016, p.37).
On returning to work from maternity leave the employee also has the right to return to her role or a suitable alternative role where their terms and conditions are not any less favourable than if she had not been off work.

Paternity leave
Ordinary Paternity Leave (OPL) is a right for eligible employees only. Partners of newborn babies that will have responsibility for the child have the statutory rights to OPL, if they have been employed for 26 weeks at the start of the 14th week before EWC and give required written notice. (Taylor & Woodhams, 2016, p.39). OPL is for 2 weeks and the employee can take either one period of leave or 2 but it must be taken within 56 days of the date the child was born. There is no change to contractual terms, benefits or continuity or service during OPL and the employee has the right to return to the same job. However if OMP is taken alongside other statutory leave it can be for no longer than 4 weeks and the employer may be entitled to offer then to return to a suitable alternative role. On completion of CML the mother may wish to utilise shared parental leave. This is where the entitlement to paid leave is divided between the couple.

Adoption leave
Statutory adoption leave is similar to maternity entitlements, the main difference being that timescales are calculated on the date in which the child is matched with the adopter. Employees are entitled to up to 52 weeks statutory adoption leave (SAL) which is made up of 26 weeks ordinary adoption leave (OAL) and 26 weeks additional adoption leave (AAL). Statutory adoption pay is paid for up to 39 weeks. The employee also has the right to return to the same or a suitable alternative job.

Parental leave
Employees that have been continuously employed for at least 1 year and have the responsibility for a child under the age of 18 are eligible for statutory parental leave, which is unpaid. They can take up to 18 weeks parental leave in blocks of weeks, that is no more than 4 weeks in one year.

Dependants leave
Employees are entitled to take reasonable, unpaid time off to care for dependents. A dependant is someone who is dependent on the employee, such as a spouse, child or elderly parent.
Dependants leave can be taken in circumstances where a dependant is unwell or if normal childcare arrangements are disrupted, (Daniels, 2019, p.107) there is no requirement to give notice.

Flexible working
Requests for flexible working can only be made by employees that have been employed continuously for at least 26 weeks and that have also not previously submitted a request within the past 12 months. Flexible working requests can include reducing or varying the hours or days worked or requesting to work from a different location. The request for flexible working needs to be explicit and employers should follow the ACAS Code of Practice. Outcomes can include acceptance, a trial period or rejection. The employee has the right to appeal a rejection within 14 days if they feel the process has not been followed correctly.

5. **Summarise:**
(a) the major requirements of health and safety law
(b) key legislation supporting equality and diversity in the workplace
(c) the concept of implied duties in relation to employee management at work

Health and safety (H&S) law in the UK is mainly governed by the Health and Safety at Work Act 1974 (HASAWA), amongst others and is enforced by Health and Safety Executive (HSE) (Armstrong, 2020, p.609) and requires of employers the following duties:
- To provide safe and adequate plant and equipment
- A safe premises and/or place of work
- Ensure competent and safe fellow employees
- A safe system of work

Employers should educate employees on what is expected of them in regards to H&S, this can be done through training, posters and leaflets (Daniels, 2019, p.251).

It is not only the employers who have a duty to adhere to H&S, employees also have the following duties:
- To take reasonable care for their H&S and that of others.
- To cooperate with employer to ensure and follow H&S requirements and systems at work.
- Use Personal Protective Equipment (PPE) where provided and report any loss, damage or defect.
- To inform their employer of any serious risks or dangers to H&S.

Most cases relating to breaches in H&S are brought against employers, however, employees can also be prosecuted for non compliance which could lead to large fines in both cases. Penalties can include negligence which focuses on claims for damages where the employer owned a duty of care; breached that duty due to negligence and if the employee suffered damage as a result of the negligence (Daniels, 2019, p.255). If the negligence is committed by the employee then damages may be reduced.

The Equality Act 2010 replaced over 100 pieces of legislation and was created to make legislation more defined and straightforward and is supported by the Equality and Human Rights Commission. It protects employees, workers, job applicants and also ex-employees. It offers individuals stronger protection against discrimination and gives employers more clarity about their responsibilities (Equality and Human Rights Commission, 2011, p.18). The Equality and Human Rights Commission has published a Statutory Code of Practice which has been approved by Parliament.
Equality in the workplace means equal opportunities for all so people are treated equally and fairly and not discriminated against as a result of a protected characteristic (ACAS, 2020) such a sex, age or race. Diversity is important to businesses due to globalisation and the competitive labour markets that they operate in (Marchington and Wilkinson, 2012, p.23). Marchington and Wilkinson (2012) also believe that organisations that effectively manage equality and diversity in the workforce can include having access to a wider pool of job applicants, improved customer satisfaction, improved motivation, creativity and a reduction in discrimination cases.

As well as terms implied in a COE there are other commitments that both employer and employee need to abide by. Daniels (2019) outlines implied terms of the employer to include the following:
- To pay wages during the period of employment.
- To provide work if earnings depend on work being provided.
- To provide non-misleading references .
- To take reasonable care for the Health and safety of employees.
- Indemnify employees against liabilities and losses during the course of employment.
- Bring matters or rights to the employees attention.
- Give effective support against bullying.
- Respect privacy.
- To deal effectively with grievances.
- To take care not to damage the relationship of trust and confidence.

Duties that fall on employees include:
- To obey all reasonable instructions.
- To co-operate with their employer.
- A duty of fidelity, where employees must not carry out activities that conflict or compete with their employer.
- Take reasonable care in their duties so not to injure a person or damage property.
- To take care not to damage the relationship of trust and confidence

6. Explain briefly the main requirements of unfair dismissal law in respect of:
(a) capability
(b) misconduct
(c) grievance

Dismissal is where a contract of employment is terminated by the employer (with or without notice) or employee (without notice due to employer conduct) or a fixed-term contract is not renewed.

An employee has the right not to be unfairly dismissed by their employer. Unfair dismissal cannot be claimed if the person is not an employee ie. workers; has less than 2 years continuous service; is employed under an illegal contract or are employed by the police service (Daniels, 2016, p.162-163). Unfair dismissal claims would require the Claimant to prove that they have the right to bring a claim forward by proving that they were in fact dismissed for a non dismissible reason. Constructive dismissal is when an employee feels they have to resign because of the actions of their employer (ACAS, 2020).
There are various fair reasons for dismissal which include Capability, misconduct and grievance.

Capability and Qualifications

Capability as defined by the Employment Rights Act (1996) is a *'skill, aptitude, health or any other physical or mental quality'.* Qualifications are a degree, diploma, academic, technical or professional qualification that is relevant to the position which the employee holds (Daniels, 2016, p.163). Ideally required qualifications should be stated at the recruitment stage and that any skills or requirements are highlighted at this stage or during induction so the employee has clear knowledge of what is expected of them and the penalty for not reaching these requirements. If after a reasonable time the employee is not performing the employer should make the employee aware and also try to assist with training to bring them to the required standard. If after this the employee is still underperforming then the employer should take reasonable steps to investigate potential solutions (Daniels, 2016, p.164) before disciplinary action and subsequent dismissal can be considered.
If capability arises as a result of ill health the employer needs to consider whether they may be covered under the Equality Act. The should glean the nature of the illness, any potential length of absence and any impact that it may have on the organisation (Daniels, 2016, p.163). When considering dismissal on the grounds of ill health or long term sickness, employers should look at reasonable waiting times for them and the employee, whether the employee was consulted and acquiring medical opinions or evidence to understand the illness and long term prognosis.

Misconduct

Misconduct comes under two categories; Gross misconduct and misconduct. With misconduct being the less serious. In cases of misconduct it is important to carry out an investigation to establish the facts of the case, this may require holding investigatory meetings with the employee before proceeding to any disciplinary hearing (ACAS, 2015) and the ACAS Code of Practice on disciplinary and grievance procedure should be considered and followed. In misconduct cases, different people should carry out the investigation and disciplinary hearing. During an investigation meeting the employee has no right to be accompanied and a period of paid suspension may be considered necessary. A period of suspension, if appropriate should be as short as possible and regularly reviewed.
If following the investigation it is found that there is a disciplinary case to answer, the employee should be notified of this in writing and should contain information about the alleged misconduct and of any possible consequences. Other information that should be included are details of the time and venue for the disciplinary hearing and the right to be accompanied. This notification can include copies of any evidence, witness statements, etc, as appropriate. This information should allow the employee to prepare to answer the case at a disciplinary hearing (ACAS, 2015). The hearing should be held without delay but whilst giving the employee reasonable time to prepare.
If following the disciplinary hearing misconduct is confirmed it is usual to issue a warning. There are a few different types of warnings that can be issued:

- Verbal (not covered by ACAS Code)
- Formal written warning (duration of 6 months)
- Final written warning if the misconduct is sufficiently serious. A change in behaviour or improvement may be required and the employee informed of the consequences of further misconduct/failure to improve, any contractual penalties and the duration of the warning (12 months).
- Dismissal (with notice) should only be taken by an authoritative manager with the employee being informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end and any appropriate period of notice and their right of appeal (ACAS, 2015)

In gross misconduct cases the offence is often so serious that there is no option but to determine a summary dismissal without notice. Again the employee has the right to appeal and the appeal should be dealt with impartially and if possible, by a manager who has not previously been involved in the case. The employee has the right to be accompanied at appeal and should be informed in writing of the decision of (ACAS, 2015).

Grievance

ACAS (2019, p. 37) defines a grievance as ‘concerns, problems or complaints that employees raise with their employers.’ If it is not possible to resolve a grievance informally employees should raise the matter in writing formally with a manager or HR (who is not the subject of the grievance) and should state the nature of the grievance (ACAS, 2015) The employer should consider and follow the ACAS Code of Practice on disciplinary and grievance procedures and hold a formal meeting as soon as possible with the employee to discuss the grievance. The employee has the statutory right to be accompanied by a fellow colleague or trade union representative. Following the initial meeting a course of action should be decided and an investigation may be appropriate, decisions and actions intended to be taken to resolve the grievance should be confirmed with the employee in writing. The employee should be informed that they can appeal if they are not happy with the action taken (ACAS, 2020). Appeals should be heard impartially and by a manager not previously involved, at a time and place communicated in advance. Again, the employee has the right to be accompanied and the outcome of the appeal should be communicated in writing without unreasonable delay (ACAS, 2020). Employers should also ensure any action taken is monitored and reviewed in order to adequately deal with the issues raised in the grievance.
If formal action is required, such as dismissal, the employer will need to prove that the action was reasonable or justified in the circumstances, if the case were to go to an employment tribunal (ACAS, 2015, p.40).

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