

Title: Understanding Employment Law

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

Employment law affects and influences HR decision making; Taking decisions that make operational sense, may go against the law and impact the working conditions and lives of employees. The balance of power between employees and employers has been a long source of debate; the argument falls between economics on one hand and social justice and protection on the other. As Taylor and Woodhams (2016) discuss, too much regulation it is argued inhibits economic growth, too few rules, and workers can be exploited, denied rights and certain groups can be prevented from the opportunity to work.

The purpose of employment law therefore is to regulate the relationship between employer and employees (Daniels, 2019). In broad terms this means it governs what employers can expect from employees, what employers can ask employees to do and it covers the rights of employees at work (CIPD, 2017a).

Employment Law takes the form of statutes passed by the UK Parliament and laws created via directives from EU law-making institutions. However, employment law also comes from common law; laws evolved over time from judges' decisions and rulings (Taylor and Woodhams, 2016). Employment law falls largely under civil law, but some employment practices are covered by criminal law, such as health and safety, data protection and corporate manslaughter (Daniels, 2019).

Civil Law is concerned with the resolution of disputes between two parties and is based on the law of contract, of tort and of property. Where there are employment disputes, these are heard in the civil court, where one party (the claimant) sues another (the respondent) either for compensation or another remedy (CIPD, 2017a). The claimant, who is usually a former employee, an existing employee, or a failed job applicant, will use the court system to allege that the employer or former employer has caused them detrimental damage and therefore has contravened the law.

Should such a case arise there is a set process to be followed and a number of courts that can decide on an outcome. Firstly the claimant will inform ACAS (Advisory, Conciliation and Arbitration Service) of their intention. ACAS will speak to the claimant and the respondent and try to reach an out-of-court settlement, called early conciliation (ACAS, 2019a). If this fails, the claimant can take the case to an employment tribunal once the correct forms have been submitted within a set timeframe.

Employment Tribunals are presided over by a panel of three people (an Employment Judge and two lay members) who hear claims relating to over 80 different points of law (see table 1) relating to all employment rights (CIPD, 2017a). With an increase in legal rights for

employees and possibly a more litigious outlook in society, claims made during the 2000s grew substantially. This prompted the introduction of fees in 2013; however in 2017 the fee system was the subject of a legal challenge and subsequently fees were dropped.

At the tribunal a legal process ensues, often involving legal representation on both sides. If the employment tribunal (ET) sees in favour of the claimant, compensation is awarded. Losing employers may also be ordered to pay a penalty. The losing party in the Employment Tribunal has 42 days to appeal the decision (should they wish to) and must set out in writing the grounds for appeal, however, as Taylor and Woodhams (2017) state, appeals can only be made on the application or interpretation of the law. In such circumstances the appeal will be held at the next court in the hierarchy (see Table 2); in this case the EAT (Employment Appeals Tribunal).

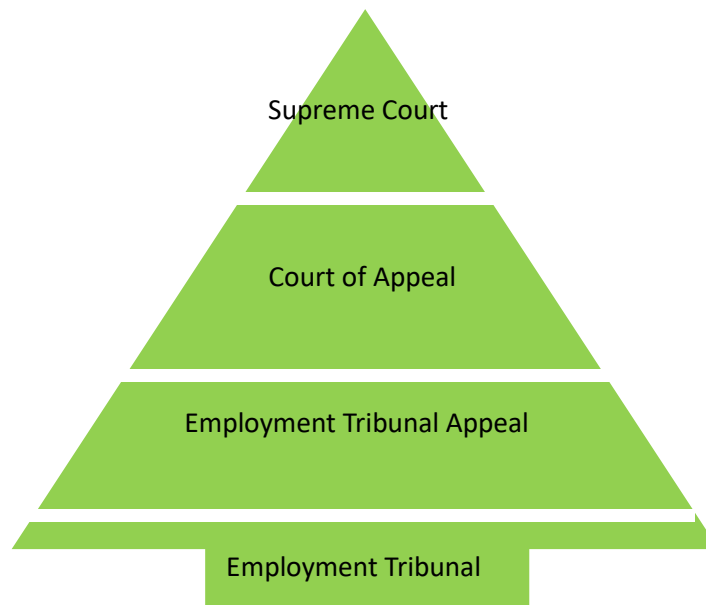
The EAT will deliver one of four possible outcomes: the appeal may be dismissed, it may be allowed, or may be allowed and remitted back to the original tribunal (or a new tribunal panel) to rehear the evidence and make a final decision. The EAT has an important role to play, as they interpret how emerging employment statutes are interpreted, thus impacting on employers, employees and working practices (Taylor and Woodhams, 2017). There are proposed reforms to the EAT, such as increasing the cap on breach of contract claims, extending limitation period to 6 months and allowing multiple respondents to seek contributions from each other (CIPD, 2017a).

A further two courts sit within the UK hierarchy; the Court of Appeal and the Supreme Court. Cases to the Court of Appeal are rare (CIPD, 2017a), but are called to judge employment cases and can overturn decisions made at the EAT. A final appeal to the Supreme Court is only possible where a point of law that has ‘general public importance’ is disputed. However, if a case concerns a principle of EU law there exists the possibility of a further appeal to the European Court of Justice.

Table 1. Employment rights heard in Employment Tribunals.

Unfair dismissal
Unlawful dismissal
Unauthorised deduction from wages
Redundancy payments
Working Time Regulations
Equal pay
National Minimum Wage
Whistleblowing
Family-friendly employment regulations

Table 2. Employment Court hierarchy



(Word count: 785)

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

Effective recruitment is crucial for any organisation. However, recruitment practices are governed by UK law and HR managers need to be aware of the legal consequences of their actions; particularly discrimination, which is covered by the Equality Act 2010 (see table 3 for the protected characteristics).

Table 3 – Equality Act, 2010, Protected Characteristics.

Age
Disability
Gender reassignment
Sex
Sexual orientation
Marriage and civil partnership
Race, ethnicity and national origin
Religion or belief.
Pregnancy and maternity

During the recruitment process there is the potential for direct and indirect discrimination against one (or more) of the protected characteristics. Direct discrimination is where an employee is treated less favourably than someone else on the grounds of a protected characteristic (Daniels, 2019). For example, asking a female candidate if she intends to have children and then failing to shortlist her because of this (CIPD, 2017b) would be grounds for direct discrimination. This is unlawful; there is no defence to this, no matter the justification.

There are exceptions, for example if jobs have occupational requirements. This could be modelling or acting, where the recruiter can specify gender, race or age. Only in the case of age or disability are employers entitled by law to use something called general justification, to show why they made the decision. This could be that in employing the disabled candidate the employer could not make any 'reasonable adjustments' to working conditions to accommodate the needs of the candidate e.g. is the action proportionate to achieving a legitimate aim? (Taylor and Woodhams, 2016).

The same legal test is used in cases of indirect discrimination which Daniels (2019) states is where the employer applies to all people a provision, criterion or practice (PCP) which puts people of a particular characteristic at a disadvantage and is not a proportionate means of achieving a legitimate aim. Indirect discrimination can occur during the recruitment process, (e.g. the case of *Fhima vs Travel Jigsaw*) where the recruiter wanted the applicant to work shifts. The applicant observed the Sabbath and could not work Saturdays; she was rejected being told they wanted staff who could work Saturdays. In this case *Travel Jigsaw* lost the discrimination case because they were unable to show that the requirement to work Saturdays was objectively justified (Willis, 2015).

Discrimination law, as has been described, applies to all workers, whatever their contractual status. However, contractual status is an important construct, as some aspects of employment law only applies to those who are under 'contracts of employment' (Taylor and Woodhams, 2016).

In employment law a contract is made between the employer and the employee, consisting of a number of obligations on both sides of the agreement (Daniels, 2019). However, not everyone who is working within an organisation has a contract or indeed is an employee. There are three alternatives:

- 1 – an employee. As defined by the 1996 Employment Rights Act as an 'individual who has entered into or works under a contract of employment'.
- 2 – a worker – 'an individual who either works under a contract of employment or works under any other contract where that individual agrees to personally perform work or services for another party'
- 3 – self-employed.

These are relevant distinctions because, in terms of employment law, employment status is important because employees, workers and the self-employed have different rights. In cases brought to an Employment Tribunal, it is the role of the Court to identify a person's employment status in order to apply their judgement to an individual case (Daniels, 2019). In the event of any dispute it is the contract of employment that explains their employment relationship and the way in which the employer and the employee have agreed to work together.

The contract of employment is a legal document. It is easy to create in that it does not need written documentation or a handshake and can be formed during a telephone conversation or via email (Taylor and Woodhams, 2016). However, care should be taken in determining its content and as such, should be written down. In UK law there are 5 major conditions that need to be in place for a contract to exist: an unconditional offer, an unconditional acceptance of the offer, an intention to form a legal relationship, consideration and certainty (Taylor and Woodhams, 2016).

The terms of the contract are classified as 1) express terms 2) implied terms. Express terms are those that have specifically been discussed and agreed by both parties (e.g. additional pay or holidays). Implied terms are not specifically stated but are as the name suggests, implied, e.g. mutual trust and confidence, safe place of work, trade union agreements (CIPD, 2019a). In addition to this all terms must adhere to the statutory rights (e.g. minimum legal standard such as national minimum wage).

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Task 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.

Sometimes employers will need to react to business circumstances and change contracts of employment; this is lawful. However, contracts cannot be changed without the employee being consulted (Taylor and Woodhams, 2016). This is because a contract, once formed, is legally binding on both parties. If a contract is changed unilaterally, the employer will be in breach of contract; the employee can resign and make a claim of constructive dismissal or stay in work and seek to claim damages (ACAS, 2019b).

A contract may contain express terms which allow the employer to make changes to em-

employee's terms and conditions. These are termed flexibility clauses which could give an employer wiggle room, as acceptance of that initial contact implies consent. However, employers need to be reasonable in changes they make, as the courts place a very narrow interpretation on what such clauses allow (ACAS, 2019b).

Consultation is key in changing a contract; how and who is consulted is dictated by the number of employees affected by the changes. 100+ employees, consultation should be with representatives and last 45 days; 20-99 employees, with representatives and last 30 days; fewer than 20 employees there is no requirement for representation but employees should be consulted individually (Daniels, 2019). If successful, contract changes can be agreed. If an employee works in accordance with the changes, and makes no protest, it can be interpreted that the employee accepts the changes. If no agreement can be reached an employer can serve notice to terminate the existing contract and offer to re-engage the employee on the new terms. However, in effect the employer is dismissing the employee and as such a fair dismissal process must be followed (Daniels, 2019).

Redundancy is one of the five potential fair reasons for dismissal and occurs when an employer is reducing its headcount for economic reasons (Taylor and Woodhams, 2016). An employee is dismissed when the following conditions are met; "the employer has ceased, or intends to cease continuing business or, the requirements for employees to perform work of a specific type, or to conduct it at the location in which they are employed, has ceased or diminished, or is expected to do so" (CIPD, 2018a).

When there are genuine redundancies the employer is liable for a redundancy period payment and a redundancy payment. Dismissed employees (with more than two years' service) are entitled to a minimum statutory redundancy payment. Failure to follow procedures could risk a case of unfair dismissal. The procedures are:

- 1) The employer must identify a pool of employees 'at risk'. It is the job that is redundant, so if more than one person is doing the job, and only some jobs are to go, a pool is a fair way of determining who is to be selected (Daniels, 2019).
- 2) The employer must consult with those at risk. Individual consultation is always required and where there is trade union membership, the period of consultation is laid out under the Trade Union and Labour Relations Act 1992 (Daniels, 2019).
- 3) The method of selection must be agreed, and the process must be fair and objective e.g. last in, first out, is unsatisfactory and potential could be seen as discriminatory against younger employees (CIPD, 2018a).
- 4) Employees should be offered alternative employment and an appeal process should be in place.

A Transfer of undertakings (protection of employees) or TUPE are a set of rules that protect employees and are applied in two situations; where a business is taken over by another, where

the contract to provide a service is lost and won by another organisation (outsourced or in-sourced) (CIPD, 2018b).

TUPE is governed by the TUPE Regulations 2006, which state that when a transfer of an undertaking takes place, all the contractual rights of an employee are transferred from the old owner to the new owner, including continuity of service, contracts of employment, trade union recognition and all rights and obligations within the contract of employment (Daniels, 2019). Without such legislation, the new business/service provider could pick and choose employees they wanted to keep and dismiss any not wanted (CIPD, 2018b).

When a TUPE situation arises the following steps should be taken. Firstly, affected employees need to be identified and communicated with on the process; secondly, all staff involved have the right to be consulted both before and after the transfer about liability information and information pertaining to potential new terms and conditions. Once a TUPE transfer has been identified any changes to terms or conditions or dismissals will be automatically unfair, with significant compensation consequences. (CIPD, 2018b). Where TUPE rules be complied with and an employee rejects a TUPE transfer and resigns, there is no case for unfair dismissal (Taylor and Woodhams, 2016).

(Word count:785)

Task 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

The hours that an employee works, their pay and holidays are fundamental elements of a contract of employment. There are statutory rights, enshrined in Law that employees have in these areas that cannot be diminished by the contract.

Work and working hours are defined by the Working Time Directive. The directive outlines that a worker is anyone who enters into a contract of employment or any other contract whether express or implied, where the individual performs any work for another party (Daniels, 2019). Most notably, self-employed people are excluded. However recent cases brought to the Supreme Court (e.g. Plimlico Plumbers), have created workers in the gig economy, who may afford various levels of protection, which is now impacting on working time and holiday pay (The Guardian, 2018).

Work is defined as a period when someone is working at the employer's disposal in accordance with usual practice; a period when the worker is receiving relevant training or any other

period that is to be treated as working within the regulations (Daniels, 2019). These definitions are important because there are limits to how long a worker can work under the Working time Directive:

- 1) The number of hours worked, including overtime must not exceed an average of 48 hours per week over a 17 week reference period.
- 2) All adults are entitled to at least 11 consecutive hours' rest in every 24 hour period.
- 3) 24 hours' rest in every 7 day work period (or averaged over a 14 day period).
- 4) Break/rest times can be collectively agreed but is 20 minutes in a 6 hour period. Young workers are entitled to a break of 30 minutes every 4 1/2 hours.

Young people (under 13) are not allowed to work, unless in the modelling or acting professions, which require a special license. There are also specific rules on 13-14 year olds, 15-16 year olds and under 18s which determine length of work and rest periods.

With regard to holidays the minimum statutory requirement for paid holiday each year for a full time employee is 28 days including public holidays (part time workers are entitled to 5.6 weeks pro-rata) (CIPD, 2016). Bank holidays can still be counted towards the entitlement and the rules extend to employees and workers covered by the Working Time Regulations (CIPD, 2016). Employers should calculate holiday pay based on an average weekly wage, which includes any extra payments for Sunday working, not just on normal hours. Employees are entitled to a week's normal holiday pay in respect of each week of their statutory 5.6 weeks' (or 28 days') holiday entitlement.

When determining pay UK employers must meet legislative requirements, for example, the provision of equal pay and the National Minimum Wage (NMW) (CIPD, 2019b). The NMW applies to all workers age 16 and over. There are currently four categories covering apprentices, workers aged under 18, 18 to 20s, and those aged 21 to 24. In April 2016, National Living Wage was introduced for those aged 25 or over. Equal pay is an aspect of sex discrimination law giving the right for men and women to be paid the same for the same, or equivalent, work (Taylor and Woodhams, 2016). Law also determines that with regard to pay all employees are entitled to an itemised pay statement before being paid and the right not to have unauthorised deductions taken from pay.

There are statutory rights for employees covering maternity, paternity, adoption leave, shared parental leave and what's often called family friendly rights (covering the right to take unpaid leave for emergencies, to take 4 months unpaid parental leave and the right to request flexible working (Taylor and Woodhams, 2016). Maternity, paternity and adoption rights apply to parents both before and after birth or adoption. The rights provide parents with the time needed to maintain family responsibilities while keeping their right to return to work. Fathers, adoptive parents and same-sex partners are entitled to paternity or maternity leave, adoption and shared parental leave. For a breakdown of the rights please see table 4.

Table 4.

Parental Leave	Dependants Leave
Statutory rights: • Unpaid leave to look after their child's welfare. • Child must be under 18 years of age. • Leave to be taken as whole weeks (unless child is disabled). • Must give 21 days' notice • 18 weeks per child limited to 4 weeks per year.	Statutory rights: • Reasonable amount of time off to deal with an emergency. • Unpaid. • Not meant to cover situations an employee was already aware of (i.e. hospital appointments).
Maternity Leave	Paternity Leave
Statutory rights: • No qualifying period • OML 26 weeks • CML 2 weeks after birth • AML 26 weeks • Up to 39 weeks Maternity pay/allowance • Unbroken contract • Right to return to the same job	Statutory rights: • Qualifying period of 26 weeks employment • Unpaid leave to accompany a pregnant woman to antenatal appointments • Up to 2 weeks (consecutive) paternity leave • Up to 2 weeks Statutory Paternity Pay
Shared Parental Leave	Adoption Leave
Statutory rights: • Up to 52 weeks SPL (minus any maternity or adoption leave) • Up to 3 separate blocks of SPL for each parent • Up to 39 weeks Shared parental pay/allowance	Statutory rights: • Qualifying employees may take up to 52 weeks' adoption leave (see maternity leave) • The primary adopter can take paid time off for up to five adoption appointments. • Statutory Adoption Pay (SAP) is payable for 39 weeks and there is a qualifying service requirement of 26 weeks' continuous employment. The rate of SAP is the same as SMP

In April 2003, the UK Government introduced the 'right to request flexible working' which historically applied to parents and certain other carers. The legislation now includes all employees with at least 26 weeks' continuous employment, regardless of parental or caring responsibilities. Employers have a duty to consider a request in a reasonable manner and can only refuse a request for flexible working if they can show that one of a specific number of grounds apply (CIPD, 2019).

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Task 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**

The Health and Safety at Work act 1974 states that: It shall be the duty of every employer to ensure, as far as possible the health, safety and welfare at work of all his employees. The Management of Health and Safety at Work Regulations, 1999 (the Management Regulations), generally made more explicit what employers are required to do to manage workplace health and safety (H&S) (HSE, 2003). The act covers all employers and employees, not just heavy industry.

The requirements under UK law includes the following:

- 1) to maintain plant and equipment
- 2) safe premises and/or place of work
- 3) competent and safe fellow employees
- 4) A safe system of work (Daniels, 2019).

As Daniels (2019) points out, there are duties incumbent on the employees within the workplace. These include to take care of themselves and others who may be affected by their acts, to co-operate with their employer to ensure H&S requirements are met, to use, store and monitor PPE, to follow appropriate systems of work and to inform the employer of any dangers/shortcomings in all aspects of H&S.

In addition, all workplaces with more than 5 employees must have a written H&S policy which should outline the use of risk-assessments (Taylor and Woodhams, 2016). This includes identifying physical dangers, but also dangerous practices that could lead to stress and mental breakdowns, as the employee could be liable for psychiatric injury as well as physical. There have been many claims from service industries where the employers' duty of care has been breached and claims for stress upheld (Walker Vs Northumberland Council) (Daniels, 2019). The penalties can range from personal injury claims, to negligence to Criminal action, such as Corporate Manslaughter.

Equality and Diversity in the workplace is technically covered by the Protection from Harassment Act 1997, which makes harassment, of whatever nature, a criminal offense. Harassment is defined as pursuing a course of conduct that causes fear or violence in another person. The victim can seek injunctions and damages under the act. Daniels (2019) states this act is rarely used in the workplace. Taylor and Woodhams (2016) suggest that this is due to harassment being hard to prove and because general bullying is covered by a duty to care within an Employment Contract (implied duties – see table 5) which, if shown to be breached, can lead to a

court case and damages payments.

Harassment cases are much more likely to be brought to court following the introduction of the Equality Act, 2010, which brought together over 116 pieces of legislation. It replaced previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and ensures consistency in what employers and employees need to do to make their workplaces a fair environment and comply with the law (ACAS, 2017). It has become the legal basis for supporting equality and diversity within the workplace.

There are 9 protected characteristics covered by the Equality Act 2010 (see table 3) and the Act specifies six types of discrimination; direct, indirect, by association, perception, harassment and victimisation (and a further two specific to disability) (Daniels, 2019). Please see Table 4 for an overview of the forms of discrimination.

Table 4. Forms of discrimination

Direct	Occurs where: • Because of a protected characteristic, A is treated less favourably than B. • Needs a comparator. • Cannot be justified.
Indirect	Occurs where an employer applies a provision, criterion or practice (PCP), which: • Puts A at a disadvantage because of a protected characteristic. • A is disadvantaged because they cannot comply • Not a proportionate means of achieving a legitimate aim.
Association	Occurs where: • A is treated less favourably because they associate with someone who is of a protected characteristic. • Does not cover pregnancy & maternity, or marriage and civil partnership.
Perception	Occurs where: • A is discriminated against because B perceives they are in a protected characteristic (even if they are not). • Does not cover pregnancy & maternity, or marriage and civil partnership.
Harassment	Occurs where: • B harasses A and carries out unwanted conduct which has the purpose or effect of violating A's dignity or creating a hostile, degrading or humiliating environment. • Does not cover pregnancy & maternity, or marriage and civil partnership.

Victimisation	Occurs where: • B treats A less favourably because A has or intends to, brought proceedings, provided information or a witness to, under the Equality Act – ‘protected acts’.
Disability – discrimination	Occurs where: • B treats A less favourably because of something arising from A’s disability. • B cannot show that treatment is objectively justified as a proportionate means.
Disability - Failure to make reasonable demands	Occurs where: • A PCP puts B at a substantial disadvantage. • A physical feature of the employers’ premises puts B at a disadvantage. • Where A would be at a disadvantage but for an auxiliary aid.

Legally, employers must abide by relevant health & safety, employment law and discrimination laws. This includes to cause, or fail to prevent, physical or psychological injury, and employers must fulfil their responsibilities with regard to personal injury and negligence claims. However, employers also have a moral and ethical duty of care, indeed there is a clear business case for doing so (ACAS, 2012). Formed from common law these are often referred to as implied terms or duties as although some sit within specific legislation, these obligations are implied into the contract of employment (Daniels, 2019) and focus on the management of the relationship between employer and employee.

An employer can be deemed to have breached their duty of care (i.e. breaching implied terms of law) by failing to do everything that was reasonable in the circumstances. There are requirements on the employee too; to obey all instructions, to co-operate, avoid conflict of interest and to take reasonable care. Failure to comply could again see court action.

Table 5 - Implied duties

To pay wages
To provide work
To take care providing references
Health and Safety
Indemnity against Liabilities (paying legitimate work expenses).
Bringing matters to the employees attention
Give effective support against bullying
Respect privacy
Deal with grievances
Not damage the relationship of trust

(word count: 694)

Task 6 - Explain briefly the main requirements of unfair dismissal law in respect of:

(a) capability

(b) misconduct

(c) grievance

Section 94 of the Employment Rights Act 1996 states that an employee has the right not to be unfairly dismissed by their employer. If a person is dismissed unfairly they can make a claim at an ET (Employment Tribunal). But, they have to be employees (working under a contract of service), have 2 years of continuous employment and have a legal contract (Daniels, 2019).

If an employee resigns, mutually agrees to terminate the contract, or when the contract is said to be frustrated (long-term sick, imprisonment) – a dismissal has not taken place (Daniels, 2019). Wrongful dismissal occurs when the employer terminates the contract of employment, and in doing so breaches the contract. The most common reason is terminating a contract without giving the contractual notice period. The period of notice is a matter for agreement between the parties and is subject to minimum periods outlined by law (CIPD, 2018c).

Section 98 of the Act lists five potential reasons for a fair dismissal, these being, capability or qualifications, conduct, redundancy, statutory ban or another substantial reason. The employer should see dismissal as a last resort, and must also have acted fairly and reasonably in carrying it out (CIPD, 2018c). When a person is dismissed their contract is terminated without notice, a fixed term contract is not renewed, or the employee terminates the contract without notice because of the employers' conduct. The latter situation could see grounds for a claim of constructive dismissal (Daniels, 2019).

Capability is defined by the act as 'a skill, aptitude, health or any other physical or mental quality'. Taylor and Woodhams (2016) suggest that the legal principles are straightforward, it is putting them into practice that can be a challenge. At interview, induction, and beyond the employee should be made aware of the capability requirements of the job. Subsequently, should there be poor performance a formal hearing and a warning can be issued. A period of time is then given, with performance reviewed and a decision made whether to dismiss or not. If capability related to ill-health the employer must consider the nature of the illness, the actual and potential period of absence, and the impact on the business. However, a long-term medical condition could be regarded as a disability, thus invoking the Equality Act 2010 (Daniels, 2019). Should a case go to ET, an assessment will be made as to reasonableness, with regard to training, support and help for the employee.

Misconduct is divided into two categories: Misconduct – usually minor offenses deal through

a disciplinary and a warning, and gross misconduct, such as theft or assault, vandalism or falsification of records (Daniels, 2019). With both categories employees have discretion in determining what is treated as misconduct and gross, however policies and expected behaviours need to be written and communicated to all employees (Taylor and Woodhams, 2016). A dismissal under gross misconduct is potentially fair. Should the case go to ET, they will not be looking at guilt, but rather at whether the employer acted within the range of 'reasonable response' (Daniels, 2019) i.e. did they follow the proper procedures (the 1980 BHS v Burchell case was seminal in this).

With both misconduct and capability, procedures need to be followed. It is suggested that the ACAS Code of Practice be used, proceeding in a timely manner, with a full investigation, a hearing (accompanied if required) and a right to appeal provided. Employment tribunals are legally required to take the Code of Practice into account when considering relevant cases. Tribunals are also able to adjust any compensatory awards made in these cases by up to 25 per cent for unreasonable failure to comply with its provision (ACAS, 2019a). It is therefore imperative for all employees to be able to demonstrate that the procedure for carrying out the dismissal was fair.

Grievances are concerns, problems or complaints that employees raise with their employers. Issues that may cause grievances include problems concerning terms and conditions of employment or working practices, health and safety, work relations, bullying and harassment, or discrimination (CIPD, 2018d). Often a grievance will arise as a result of, or during, the disciplinary procedure. Where an employee raises a grievance during the disciplinary procedure the latter may be temporarily suspended in order to deal with the grievance. There is no absolute obligation on employers to suspend the disciplinary procedure - employers can exercise their discretion (Daniels, 2019).

The ACAS guide also sets out a multi-stage process for addressing a grievance. Stage 1- written letter setting out the grounds for dismissal and include evidence and invite the employee to a meeting. Stage 2 – A meeting is held to discuss the grievance. Stage 3 – if action is taken, the employee has a right to appeal.

(Word count: 787)

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