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By signing below, I confirm that the work/evidence presented is my own, unaided work. I understand the regulations pertaining to candidate malpractice and the action that may be taken as a result.

Signed: *N.Williams*

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Understanding Employment Law

Task 1

The purpose of employment law is to “legalise the relationship between employers and employees”. Employment law is there to set out what is appropriate for employers to expect from their employees and what is deemed as ethical to ask them to do and the rights of employees in the workplace. Employment law is about social justice where it is about everyone having the right to be free of any discrimination. It is about being treated fairly in the organisation. The Equality Act (2010) sets of the minimum standards from employers (CIPD, 2017).

Employment law can be categorised as either civil or private law (Daniels, 2019a p.19-37). This meaning, that they exist as a result of a claimant (a past employee or existing employee/worker or failed applicant), suing a respondent (employer/previous employer). This is usually because the respondent has not abided by the law (CIPD, 2017).

Employment cases can start in either an Employment Tribunal, County or High Court. This depends on the level of compensation the claimant wants and the legal matter. When there has been a breach in the law around employment, this is when claims are taken to an Employment Tribunal. When there has been a claim against a breach of the common law, this when the claims are taken to the County Court. Claims that are more than £50,000 are heard in the High Court (CIPD, 2017).

Employment Tribunals were established in 1964 to deal with appeals by employers against industrial training levies. Since this period, the law around employment has grown, with them now hearing over 80 different claims. These claims can consist of unfair dismissal and discrimination. More recently employees have been given more legal rights, resulting in an increase in number of claims being submitted to employment tribunals. From 2013 to 2017, the law required people to pay a fee to bring a claim to employment tribunal, this resulted in a decrease in the number of claims. In 2017, the fee was seen as unlawful and discriminatory and therefore the Supreme Court banished the fees, meaning that the number has again risen. Currently employment tribunals have a £25,000 cap on a breach of contract claims (Daniels, 2019a p.19-37).

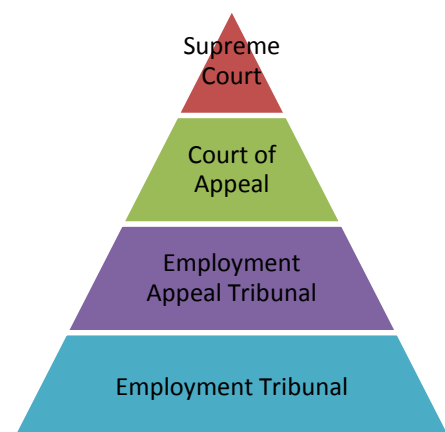
The Process of Employment Tribunals (ACAS, 2019b), (Thompson Reuters, 2019)

• The claimant must contact ACAS and they will offer early conciliation to try and help settle the situation before going down the employment tribunal process. This can be done through a form on their website, where acas will then contact the individual. This is offered for up to one month.
• Claims have to be presented within 3 to 6 months (known as limitation period). This depends on the type of claim being put forward. An unfair dismissal claim would be three months from the last day of employment.
• When someone notifies ACAS about their intention to make a claim, the limitation period is paused. This is resumed once the early conciliation period ends.

At the end of this period, a certificate with a number is issued. This is required to put forward a claim.
Claimant to submit an ET1 form and send to Employment Tribunal.
Employment Tribunal sends a copy to employer along with ET3 for them to complete and return within 28 days. This is a document that states factual details about the employee. It also requires the employer to summarise the main points relating to the situation and defence that is being put forward. When returned, the Employment Judge will review it, and a decision will be made as to whether the case should go directly to a full hearing or whether there is a need for a preliminary hearing. Once the review of the paper has taken place, the employment Tribunal will write to both parties giving the date of the hearing and directions (for example, statements from witnesses need to be written/exchanged with the other party 14 days before the hearing). Witness statements also have to be sent to the Employment Tribunal within this time.
At the hearing, each party and witnesses takes it in turn to present their evidence. It is then that the employment judgement will make their decision.

Appeals from employment tribunals are taken to the **Employment Appeals Tribunal (EAT)** if an individual thinks that a legal mistake has occurred in Employment Tribunal. EAT is an independent of Government and will listen to both sides of the parties involved, before making a decision. The claimant or respondent that loose in an Employment Tribunal has 42 days to appeal against the decision (Law Commission , 2018).

Court of Appeal is used when employees want to appeal against the decision made in Employment appeal tribunal. This doesn't happen very often as once it reaches the Court of Appeal the losing party is required to pay for the winning side's cost. This includes paying for the senior barristers that help to argue the case. They either overturn a judgement that was made previously or they reinstate the original decision made by Employment Tribunal (CIPD, 2017).



A last appeal can be made to the **Supreme Court**. The Supreme Court hears cases that has a impact on the whole population rather than just the parties related to the case. For instance, where a point of law has implications for many employers/employees. Cases that are heard by the Supreme Court are relatively low each year. Criminal cases are brought first to the Magistrates Court. Any serious offences are taken to the Crown Court. “Appeals on issues of fact go to Crown Court, whereas appeals on issues of law go to the High Court. Any further appeals go to the Court of the Appeal and then to the Supreme Court”. The Supreme Court has the final decision (CIPD, 2017).

Task 2

According to Daniels (2019b p.114-115) there are different forms of discrimination in relation to recruitment and selection. These consist of:

Direct	Direct discrimination is when an individual treats another individual less favourably than others based on their protected characteristics. For instance, not recruiting a woman to become an engineer. There are sometimes occasions where an employer will need someone of a specific protected characteristic because of the nature of the role (occupational requirements). For instance, a job that requires a leader for a particular religion.
Associative	Associative discrimination is when an individual treats another individual less favourably because they associate that person with someone that has a certain characteristic. For instance, a mother who has been interviewed mentions her daughter has a disability. Having learnt this, she isn't given the role on the grounds that she would be unable to focus entirely on the role.
Perceptive	Perceptive is when an individual treats another individual less favourably because they perceive them being associated with a particular protected group. For instance, not recruiting an individual as it's perceived that they are of a particular sexual orientation based on the group they are friendly with.
Indirect	This is where the employer applies to all people a provision, criterion or practice which puts another individual of a protected characteristic at a disadvantage, where it is not possible to achieve a legitimate aim or do what they are asked. The law must include a requirement or condition. For instance, a criterion applied to a religion is making Jew employees work Saturdays when Saturday is a religious day for them.

The Equality Act (2010) replaced all smaller legislations that were previously in place with 9 protected characteristics. According to the Equality Act (2010) this act has harmonised areas of discrimination law and made it more straightforward. Employees, workers, job applicants and ex-employees are all protected.

The 9 protected characteristics under the Act are listed below. They must be taken into consideration through the process of recruitment and selection (Equality Act, 2010) :

Age: Employers must not discriminate against younger or older individuals. For instance, requiring an employee to have a certain length of experience as it makes it difficult for younger individuals to apply. It is also discrimination not offering an older individual the job if he/she is the correct person for the role because of the assumption that they will retire soon.

Disability: It is unlawful to discriminate against an individual's disability. A disabled person is defined as "having a physical/mental impairment that has a long term effect on a person's ability to carry out daily activities".

Gender reassignment: Discriminating against an individual who "proposes to, starts or has completed a process to change his/her gender" is unlawful (Daniels, 2019b p.147).

Sex: It is also unlawful to discriminate against another individual's gender.

Race: Discriminating against someone's race is unlawful. This is defined as "colour, nationality, ethnic or national origins".

Marriage and Civil Partnerships: It is unlawful to discriminate towards employees on the grounds of their marital status/civil partnership.

Religion: It is also unlawful to discriminate against someone's religion. This can be defined as "any religion, religious belief or similar philosophical belief" (Daniels, 2019b p.149).

Sexual orientation: Discriminating against another individuals sexual orientation which can be described as "a sexual orientation towards persons of the same sex and opposite sex" is unlawful.

Pregnancy and maternity: It is also unlawful to not consider or hire a candidate (if they are the most suitable for the vacancy) on the grounds of pregnancy or any matter relating to pregnancy.

According to ACAS (2014), employers can take positive action if they think that a shared characteristic it at a disadvantage throughout their organisation or through job applicants.

When deciding on who to promote and recruit, employers can take the protected characteristic into thought. The employee/ job applicants will need to show some evidence that the organisation doesn't have enough people with a particular characteristic. A candidate that has a protected characteristic can help an employer make a decision on who to appoint.

To avoid being unlawful and discriminatory, employers must always consider the abilities and qualifications of all other candidates throughout promotion/recruitment and selection.

According to ACAS (2014), employers can only ask health questions before offering a applicant the job, if it's to help them decide whether there needs to be any reasonable adjustments, whether an applicant can carry out the job, to monitor diversity in the organisation and to take positive action to help assist disabled people.

A contract of employment is a "legal agreement between an employer and employee". An employee is "an individual who has entered into or works under contract of service or apprenticeship" (Employment Rights Act, 1996).

Employment contracts can contain terms that are express, statutory and implied (CIPD, 2019). Express are stated in writing or given verbally. The terms must comply with regulations. According to the Employment Rights Act 1996, Section 1, a written statement should be provided to all employees who have been employed for over one month. Examples that should be included in a written statement are, name of employer and employee, pay, working hours, holiday entitlement, job description/job title and date employment and continuous employment started.

Statutory terms are "imposed, varied or regulated by law such as the minimum statutory notice period". Implied terms can also be implied into contracts because the term is (CIPD, 2019):

- Incorporated by collective agreements
- Incorporated by workforce agreements

- Incorporated by statute
- Incorporated into individual contracts by custom over a period of time

Examples of implied terms include (CIPD, 2019):

- The employer's duty to provide a safe system of work and safe workplace
- The right to receive at least the national minimum wage or living wage
- The right to have a minimum period of notice
- Equality relating to pay
- Give support against bullying
- Respect privacy
- Deal with grievances

Task 3

According to ACAS (2014), a contract of employment is “an agreement between two parties. It is when an employee agrees to work for an employer in return for pay”. An employer may want to vary the contract because of changes in the economy or due to a reorganisation (ACAS, 2014).

A contract can be changed lawfully by an agreement by both the employer and the employee or the employees representatives such as trade unions (CIPD , 2019). Changes might occur because of a need to change hours. The employer should start by consulting with employees that will be affected.

- If 20-99 employees are affected consultation should be with representatives. This should be for a minimum of 30 days.
- If it affects 100+ employees, this should be for a minimum of 45 days.
- Less than 20, there is no requirement to consult with representatives but they should consult with the employees themselves.

The employer should explain to the employee or their representatives the reason for the change. By doing so, the employee will feel consulted, involved and understand the reason for the change taking place. If the employee doesn't accept the change and the employee works under the new changes without making protest, then it is assumed that the employee has accepted the change. If the employee does not work in line with the change, the employer can terminate the contract. Employers should confirm the change in writing to the employee within one month of the change taking place.

According to CIPD (2018c), redundancy applies when the employer has “ceased, or intends to cease, continuing the business, or the requirements for employees to perform work, or to conduct it at the location in which they are employed, has ceased or diminished, or is expected to do so”.

All organisations should go through the following stages outlined in the pyramid:



1) Planning -Organisation should consider alternative approaches to redundancy such as, recruitment freezes and stopping overtime (CIPD, 2018c).
2.)Identifying the pool for selection - Selection for redundancy, will usually consist of at least one of those “who undertake a similar type of work, those who work in a particular department, those who work at a relevant location and those whose work has ceased, reduced or is expected to”(CIPD, 2018c).
3.) Seeking volunteers To avoid the need for compulsory redundancies employers should offer voluntary redundancy and seek volunteers (CIPD, 2018c).
4.) Consulting employees - When 20+ employees are to be made redundant, consultations with trade unions/representatives must start before a set date. For 100 or more, this is 45 days before the notification of redundancies and for 20-99, this is at least 30 days before. The employer must give representatives, the reason, number of proposed redundancies, number of employees affected, proposed selection method, procedure and the method for calculating redundancy payment (CIPD, 2018c).
5.) Selection for redundancy - If not enough volunteers come forward, the employer will have to choose individuals. At least two managers should carry out scoring of the chosen individuals. This can be based on length of service, sickness record and skills/performance. (CIPD, 2018c).
6.) Appeals and dismissal - The employer should write to individuals who are chosen and invite them to a meeting in order to make their decision. This letter should state that they have the right to be accompanied by a Trade Union representative. The employer must write to the employee to give them notice and to give an explanation of the payment they will receive. An employee can appeal against the decision (CIPD, 2018c).
7.) Suitable alternative employment - Other work must be offered by the employer to the employee that is made redundant. Statutory payment isn't given if the employee refuses the work offered by the employer. A 4 week trial period is given to an employee when they start their new role. If they decide that the work is not suitable, then the employee can revert to being redundant (CIPD, 2018c).
8.) Redundancy Payment - To calculate this, an employee should use the following guidance to work out their statutory redundancy pay. An employee is only entitled to this if they have been employed for more than 2 continuous years at the time of dismissal (Documents etc, 2009): • 0.5 week's pay for each under 21 years old • 1 weeks' pay for each year when the employee was between 22 and 40 • 1.5 week's pay for each year of employment between 41 and 64. • Plus Notice Pay
9.) Counselling and support - Outplacement help and advice should be given to employees to help them find employment and get through the difficult time (CIPD, 2018c).

TUPE can apply in two situations (business transfers and service provision changes). TUPE applies to a business transfer if there is a transfer of “an economic entity which retains its identity” (ACAS, 2019c). The outgoing employees transfer over, making them the new employees of the incoming employer. Employees continuous service and terms and conditions of employment transfer with them (ACAS, 2019c). The business that is moving to a new owner/merging with another organisation must provide details of the employees that are transferring over. They must do this 28 days before it takes place. The types of information that will be required is, the name of the employees, age, any disciplinary actions,

grievances issues or legal action in the last 2 years and information regarding any collective agreements (ACAS, 2019c).

Service provision occurs when activities carried out by one provider on behalf of a client are taken over by a new provider. Service provision changes arise where contracts are reassigned. This can be because a contractor takes over activities from a client, a new contractor takes over activities from the old contractor or a client takes over activities from a contractor.

Consultation with employees through representatives (trade unions) or elected employee representatives is important. Below 10 employees, the employer must consult with employees themselves. Failure to do so, it will result in 13 weeks pay per affected employee. A letter should be written which includes, that the transfer is taking place, the reason, expected date, the legal and the social and economic implications for the employee. An employee can object to their employment being transferred. The starting point is that his employment is treated as coming to an end on the date of the transfer. (ACAS, 2019c).

There are occasions where employers will be unable to prevent redundancies and dismissals during transfers. If an employee is dismissed before or after this, and the reason is because of the transfer, it will be automatically unfair unless there is an economic, technical or organisational reason for that change (ETO). Employees who believe that their terms and conditions have been changed have the right to claim constructive unfair dismissal. Where redundancy occurs, employers must consult with the affected employees and through representatives (ACAS, 2019c).

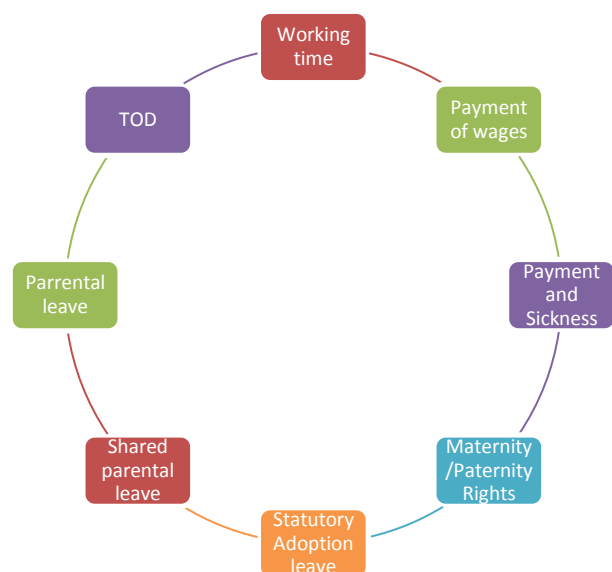
Task 4

According to CIPD (2019), a worker includes “anyone who has entered into or works under, a contract of employment whereby the individual undertakes to do or perform personally any work or services for another party”.

Work can be defined as “a period when the worker is working, at the employer’s disposal and carrying out activities or duties in accordance with usual practice” (CIPD, 2019).

Working Time

The statutory annual leave entitlement for all workers is 28 days. All employers should pay their workers during this time. The 28 days includes 8 public holidays. Over a 17 week period, a worker should not exceed an average of 48 hours per week unless they consent to it. They can do this, as long as they work less than 48 hours in another week. A worker can opt out of this. 11 consecutive hours rest is needed for all adult workers in a 24 hour period. For young workers this is 12. Every seven days, a worker is entitled to 24 hours rest. The length of time allowed for a break must be at least 20 minutes for work over six hours for all adults and 30 minutes for young adults who have done 4 ½ hours (Daniels, 2019c p. 86-110).



Payment of wages/ itemised pay statement

Wages can be defined as “any money paid to a worker in for work done during employment” (Government Legislation, 2000). Lawful deduction from wages can be made where it is authorised by legislation, by contract and where there’s an agreement in writing (Daniels, 2019c p. 96).

The National Minimum Wage “gives workers the right to receive a minimum hourly rate of pay”. The National Living Wage is paid to those aged 25 and above (GOV UK, 2018c):

- £7.83 per hour for 25+
- £7.38 per hour for 21 to 24
- £5.90 per hour for 18 to 20
- £4.20 per hour for 16 to 17
- £3.70 for apprentices aged under 19 years

Employees also have the right to receive a itemised pay statement on/before pay date. These should include, gross pay, variable deductions, fixed deductions and net pay.

Payment and Sickness

All employers are required to pay Statutory Sick Pay (SSP). Sickness for four or more days in a row by an employee who have average earnings at least equal to the lower earnings limit are entitled to receive SSP. SSP is paid for 28 weeks in a 12 month period. This is paid on days the employee would work. The weekly rate for SSP is £92.05 (GOV UK, 2018a).

Maternity/Paternity rights

There are three periods of maternity (CIPD 2018b):

- Compulsory –this is when an employee should not work 2 weeks after childbirth
- Ordinary maternity leave (OML) –Eligible employees are entitled to take 26 weeks OML regardless of their service in the organisation.
- Additional maternity leave (AML) – all pregnant women are entitled to take 26 weeks AML. This starts directly after OML giving a total of 52 weeks.

Only those that work under a contract of employment can take maternity leave. In order to take maternity leave, the woman needs to inform HR/employer in writing to say she is expecting, her EWC (expected week of confinement) and the date she wants her OML to start. This should be done before the 15th week before the expected week of birth.

Statutory Maternity Pay (SMP)

Women who have had a baby have the legal right to be paid for 39 weeks by their employer. This is only in cases where the employee has worked for the employer for at least 26 continuous weeks at the 15th week before the EWC. SMP is 90% of an employees weekly earnings for the first 6 weeks. For the remaining 33 weeks, this is £145.18 a week. During this period, the employee can work for up to 10 KIT days without losing their maternity pay entitlement. This is to keep a relationship between the employee and the workforce (GOV UK, 2018b).

Statutory Paternity leave

The employee must have worked for the employer for at least 26 continuous weeks at the fifteenth week before the EWC to qualify for this (CIPD, 2018b). The employee must be the father of the child, the mother's husband, partner or adopter. The employer must give 28 days notice about taking paternity leave by giving details of the EWC, the length of OPL (usually 1 or 2 consecutive weeks) and the date they want their OPL to start. This must be taken within 56 days of the birth.

Statutory adoption leave (SAL)

This gives employees who adopt the opportunity to take time off to get to know the child. Either parents can take the leave, although not both. There is a period of ordinary adoption

leave which last for 26 weeks. A further 26 weeks of additional adoption leave can be taken giving a total of 52 weeks leave. Statutory adoption pay is given up to 39 weeks (Daniels, 2019c p.104).

Shared parental leave (SPL)

SPL is about sharing the leave with a partner (ACAS, 2018). SPL can be taken when one partner takes some leave followed by the other partner, this cannot be refused by an employer or where there is any other pattern of leave for example two employees taking alternating short periods of leave. Whilst on SPL, the employee is entitled to receive Shared Parental Pay.

Flexible working

To be eligible, the person must be an employee, worked for the organisation continuously for at least 26 weeks and not have made a flexible working request during the last 12 months. The request will be followed by a meeting to discuss. The employee has the right to be accompanied by a colleague. The employer can accept, give a trial period or reject. The employee has 14 days to appeal if they disagree with the decision.

Task 5

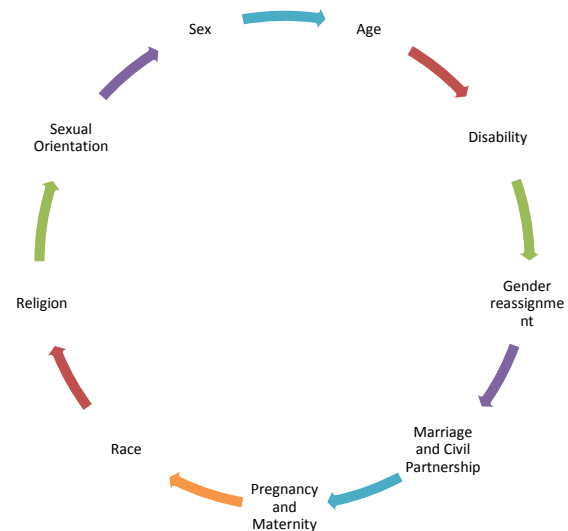
Employers legally have to follow the following Health and Safety legislation. The legislation underpins the following (Daniels, 2019d p.247-248):

Health and Safety at Work Act (1974).	This act explains the main duties relating to the employee and the employer to ensure that Health and Safety in the workplace is followed.
Workplace (Health, Safety and Welfare) 1992	This act is related to the employers, where they have the duty to make sure that equipment/systems and the place of work is kept in excellent condition. They also have the duty to repair any equipment.
Personal Protective Equipment 1992	Any protected equipment that is needed to carry out a role by an employee should be identified by the employer and provided to their employees. They must also ensure that the equipment is kept in good condition, and that they provide that equipment and keep it in a good condition. The employee must be trained to use the equipment.
Health and Safety (Display Screen Equipment) regulations 1992	This act explains the risks when working with the use of display screens. Regular breaks when working with screens is needed, and the need for regular eye examinations.
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (1995)	This act explains the importance of employees to report any incidents that may affect an employee being absent from work. Employers need to make employees aware of the process if they absent from work.
Manual Handling Operations Regulations 1998	Employers must examine all work that involves an employee handling and lifting. Employers should try to eliminate the amount of manual handling and lifting by finding alternative methods. They also need to ensure that all employees are trained correctly to lift heavy equipment.
Provision and Use of Work Equipment Regulations 1998	Employers must supply the appropriate equipment for their employees such as protected clothing and googles if an employee works in a factory. They must also make employees aware of dangers such as fires and explosions. Information should be provided to the employee and training to use the equipment.
Management of Health and Safety at Work Regulations 1999	Employers are required to look at each job role within the organisation and consider any potential risks associated with it and look at ways to reduce/eliminate the risks. This can be done through risk assessments.
Control of Substances Hazardous to Health Regulations (2002)	This regulation sets out the requirements for the storage and use of substances and to conduct a risk assessment of materials that can be hazardous if not used correctly.

Employees have the duty to take care for their own health and safety as well as their own wellbeing when in work. They must also consider how their action can affect others. They have a duty to cooperate with their employer if they feel they need more training in certain

areas. They have the requirements to use any personal protective equipment that is provided and to report any loss or problems with an equipment. They must also follow any appropriate systems at work to ensure safety during manual handling operations. Employees should inform the employer of any dangers that may affect the health and safety within the organisation (Daniels, 2019d p. 250-251).

The Equality Act (2010) supports equality and diversity in the workplace. There are 116 different pieces of legislation that have been brought together in this act. This act has made discrimination legislation more straightforward. It has also harmonised areas of the discrimination law. Employees, workers, job applicants and ex-employees are all protected under this act. It is unlawful to discriminate against an individual on a number of grounds. The 9 protected characteristics under this act are seen in the diagram.



A contract of employment is a legally binding agreement between an employer and employee. The implied duties in relation to employee management at work that are implied into a contract of employment include (CIPD, 2019):

- A duty of mutual trust and confidence between the employer and employee
- The employer's duty to provide safe place of work
- The right to receive at least the national minimum wage or living wage (implied by statute)
- The right to a minimum period of notice (implied by statute)
- Give effective support against bullying
- Respect privacy
- Deal with grievances
- Bring matters to the employees attention for instance what's acceptable on social media
- Indemnify against liabilities

Implied terms can be implied into contracts because the term is (CIPD, 2019):

- Incorporated by collective agreements (agreements with trade unions recognised by the employer)
- Incorporated by workforce agreements (for example, agreements with the workforce as a whole covering issues such as break entitlement)
- Incorporated by statute (requirement by law)
- Incorporated into individual contracts by custom over a period of time
- So obvious that the term is assumed to have been implied

- Needed to give 'business efficacy' to the contract (that is, to make the contract work properly).

Before an employee starts their job, as many terms should be set out in writing and given to them. By doing this, it will avoid a dispute and uncertainty.

Task 6

According to CIPD (2018a), a dismissal is when “a contract is terminated by an employer with/without notice”. There are situations in which a dismissal is automatically unfair. An example of automatic unfair reasons for dismissal (where one year or two year’s continuity of employment is not required) is seeking statutory rights. An example of automatic unfair reasons for dismissal (where one year or two years continuity of employment is required) is failure to disclose a spent conviction.

Unfair dismissal is based on statute and the concept of fairness. The claim must be made within three months of the dismissal (unless there is a sincere reason why this is not achievable) and the maximum compensatory award currently is £83,682 or the employee’s annual salary, whichever is lower (ACAS, 2019a).

According to Daniels (2019e p.163), there are five fair reasons for dismissal. In each case dismissal is only fair if the employer acted reasonably in dismissing the employee for that reason. The employer must have followed an appropriate procedure prior to dismissal.



Capability

According to Daniels, (2019e p.163) and Employment Right Act (1996, Section 98) capability can be defined as “skill, aptitude, health or any other physical or mental quality”. The employer should aim to ensure that all employees understand what is expected of them, and give training and support to them to meet the standards.

<u>Process</u> (Unison , 2016)
Deal with issue informally
Send written confirmation covering date, time, venue, issue, copy of capability procedure and employee job description.
Manager needs to confirm expectations of role and standard required.
The manager needs to consider the circumstances around performance e.g. training
If employer accepts the mitigating reasons, no further action will be taken.
If still concerns, action plan with SMART targets should be set with agreed review date.
If performance isn’t approved a formal meeting should be held.
Send letter to employee detailing time, date, venue and also stating that the employee has the right to be accompanied to the meeting by Trade Union or work colleague.
<u>Stage 1 – (Interview)</u> Both parties will outline and explain their position and give evidence.
Senior manager will review all evidence and decide what action to take.
Can proceed to <i>stage 2 (second review meeting)</i> in more serious cases. The letter should make clear that one of the outcomes from this meeting could be that the case is progressed to

<i>stage 3 (capability hearing).</i>
If an employee's performance has not improved by the date of expiry of the review in stage 2, the employer may decide to hold a third capability hearing.
The letter inviting the employee to the dismissal hearing should make clear that one of the outcomes could be dismissal.
Following the third capability hearing, employer can recommend no further action or dismissal (with notice).
The employee can appeal 5 working days of the decision being made.

The following questions need to be addressed for a capability dismissal to be in order (Daniels 2019e p.163).

1. Does the employer believe the employee is incompetent/unsuitable for the job?
2. Is the belief reasonable?

Evidence will need to be produced by the employer which shows poor performance in the workplace. This must be the reason for the employer dismissing the employee. Dismissal for capability will be one of the following reasons:

1. Lack of ability or skill

Most failures of skill or ability will be fairly minor and addressed through the various stages of the disciplinary process. It is not very often that capability is serious enough for dismissal for a first attempt.

2. Lack of capability because of ill health

The employer must consider the nature of the illness, the potential length of the absence and how the situation will impact on the organisation. Factors that should be considered when deciding if it is fair to dismiss is:

- Would a reasonable employer have waited longer?
- Is the employer able and is it reasonable to wait longer?
- Has the employee been consulted?
- Have the opinions been balanced against the opinions of a medical practitioner?

3. Loss of or failure to achieve a qualification

A qualification can be defined as "any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee holds". Loss of or failure to achieve a qualification that is essential for the role may be a fair reason for dismissal if the employer has helped as much as they can.

Misconduct

There are two categories for conduct (misconduct):

Gross misconduct, which can result in dismissal without notice for instance theft and assault.

Misconduct, which is a less serious offence. This is usually dealt with through disciplinary warning, however if the employee doesn't improve with their behaviour, then there is possibility that the employer can dismiss the employee for instance bad language. This will be dismissal with notice (Daniels, 2019e p.165).



The employer must show that they have acted reasonably in reaching the decision to dismiss. The Employment Tribunal is there to “determine whether the employer investigated the situation thoroughly enough, had a reasonable belief that the employee committed the act and then took a reasonable course of action”. The test of reasonableness is set out in the *British Home Stores v Burchell* (1980) case. This case proves the need for the employer to have “a reasonable belief in the guilt of the employee based on thorough and reasonable investigation” Daniels, (2019e p.165). The organisation must follow the acas code of practice, and failure to do so Employment Tribunals will take this into consideration when considering cases. Employees may end up winning the case which will lead to a fine for the organisation.

Grievance

According to Acas Code of Practice (2019a), a grievance can be defined as “concerns, problems or complaints that employees raise with the employers”.

If the employer breaches the contract of employment, the employee can terminate the contract of employment and claim constructive dismissal. An employee must have worked for their employer for a minimum period before they qualify for the right to claim for unfair dismissal. If an employee started their job on/or after 6 April 2012, the qualifying period is 2 years. Before this, it is 1 year.

The employee must demonstrate that there was a breach of the contract, the breach caused the employee to resign and there was no delay in resigning. If the employment tribunal finds that an employee has been unfairly dismissed, they have to decide on a remedy (Daniels, 2019e p.163):

- Re-engagement (return to same employer but different job)
- Reinstatement (return to same employer in the same job)
- Compensation, this consists of basic and compensation award.

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