

Cipd employment law essay

Law



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Supporting Good Practice in Managing Employment Relations 3MER

Introduction: The aim/objectives of this assignment are to explore employee relations in detail, including the internal and external factor impacting on employment relationship, psychological contract, and differences between fair and unfair dismissals, redundancy. 1. Understand the impact of employment law at the start of the employment relationship : 1.

Internal and external factor that impact on the employment relationship: The absolute melodious bond between employers and employees is crucial for the smooth running of an organisation, where there is a give and take relationship and there are various factor affecting the relationship Internally and Externally i. e. Organisationalculture, historical context, performance, pay and reward, economic factor, technologyfactor, unemployment etc. Internal Factor: Organisational culture is defined by many writers as being " the way we do things round here " It is manifested in the rituals of an organisational, in its people, dress, habits, working times and style, attitudes , office layout , almost every intangible aspect of its being. It is also perpetuated by stories, office gossip, heroes and heroines, decor, social life and the language that various parts of the organisation regularly use at work. (CIPD 2011) * Psychological contract the term was first used in the early 1960s but became more popular following the economic downturn in the early 1990s.

It has been defined as 'the perceptions of the two parties, employee and employer, of what their mutual obligations are towards each other'. (CIPD 2012). In which employers expect commitment to goals and value, hard working, flexibility, honesty, be courteous to client and staff. In return

employee except a pleasant and safe working environment, job security, pays commensurate with performance feedback, skill development aid to employability and fair treatment. External Factor: Technological factor: Due to the ever growing demand of technology there are advantage and disadvantage. There are development in energy sources, mobile technology and medical discoveries etc. These help employees to develop the skills and training. And the same may also create a gap in the market or barrier for the entry in the given market, which may de-motivate staff. Economical factor: Slow economic growth/ decline may result in employees just fortunate of having a job.

Due to the euro crisis, lowest interest rate, exchange rates and inflation rate, wage rates and unemployment. 2. The different types of employment status: There are three main categories of employment status such as Employee: Has a contract of service, have set working hours, have options of paternal leave, have rights of unfair dismissal. Workers: Does the work personally, either may have set working hours; contract may be verbal or written, they usually work for fixed time, doesn't have rights of unfair dismissal.

Business/ Genuinely Self- Employed: They contract for service and employers are the customers, they have a set of working hours, is contracted for each model of work - either verbal or written, contracted by service not time and doesn't hold any rights for unfair dismissal/ redundancy. 1. 3 Identify and analyse the reasons why it is important to determine an individual's employment status: Below are the 3 major employment status and reasons for the importance of identifying them: Permanent: An employee has a permanent contract, has access to all the perks and benefits in the firm.

Under the Employment Rights Act 1996 permanent employees are entitled to written terms and conditions after 8 weeks of employment and once they have acquired continuous employment for a certain period of time they acquire certain rights (e. g. 1 year for right to claim unfair dismissal; 2 years for redundancy payments). They also have the employment rights such as Statutory Sick Pay. An employee receives a wage/salary rather than seeking remuneration in the form of profits whether the wage is subject to deductions under the PAYE scheme whether an employee is obliged to perform the duties of his or her job.

The Company provides the tools, equipment, premises or any other materials that are required to do the work. In economic down turn employers may reduce their or put in a cap into their employees bonus or pay rise. Contractors/ Self - Employed: Whereby a person will work for themselves rather than an employer. It is important to establish this type of worker as they will be entitled to the core legal rights, they will be entitled to receive the National Minimum Wage and be protected against unlawful deduction from wages.

They don't receive any holiday pay or sick pay when they are not available for work. Economic down turn may not affect to such an individual. Agency workers or ' temps': They have the opportunity to sign on several employment agencies and can work on a variety of assignments through out the year for different organisation. It is important to establish this type of worker as they will be entitled to the core legal rights. They are paid on invoice and may be VAT registered and be protected against unlawful deduction from wages. . Understand the main individual rights that the

employee has during the employment relationship: 2. 1 Explain the importance of work life balance within the employment relationship and how it can be influenced by legislation: The Working Time Regulations (1998) implement the European Working Time Directive into GB law. The purpose of the legislation was to have adequate breaks. The importance of work life balance in an employment relationship is vital for two way relationship.

To keep an individual motivated to avoid sluggish, to make them feel happier and valued. An individual is more refreshed after a regular break and can be more effective into this work and put in new ideas which leads to enhance the performance. A tired worker is more likely to make mistake- but due to WTR there may be reduction of mistakes. There is also a good employer branding around the globe encouraging more people to apply for jobs. A positive culture is build up with an individual willing to work and better productivity.

According to the WTR Act an employee can work an average up to 48 hours a week (opt out), a right to have break for 20 minutes every 6 hours in work, a right to have a day off each week, Entitled for 28 days annual leave every year, an average of 8 hours of work in a night shift. 2. 2 Summarise the legal support that may be given to employees as a family member: In our present time and looking at the current situation there are both employee and employers are in need to maintain a good working life balance.

Employers have to keep employee motivated, help them in case of emergency i. e. (allowing them to work flexible time) and help them understand maternity, paternity, adoption pay. Maternity Leave and Pay: A employee who is a new mother of her biological child is entitled to have 39

weeks of SMP (Statutory Maternity Pay), the first 6 weeks is 90 percent of their average gross weekly earning with no upper limit and the next 33 weeks at lower of either the standard rate of ? 135. 45, or 90 percent of their average gross weekly earning.

All pregnant employees are entitled for 52 weeks statutory maternity leave (26 weeks ordinary leave and 26 weeks additional leave). ' Compulsory' maternity leave is of two weeks immediately after giving birth during which the employee is not permitted to work. Paternity Leave: The Employment Act 2002 which includes Paternity Leave. An employee should qualify for such a leave and pay if they have been in the company for 26 weeks or more. From 3 April 2011 additional entitlement to ordinary paternity leaves which is minimum of 2 weeks and additional of 26 weeks. 20 weeks after the child is born). Additional Paternity Leave is for a maximum of 26 weeks. If the employee's partner has returned to work, the leave can be taken between 20 weeks and one year after your child is born. Adoption Leave and Pay: An employee who has worked continuously for the same employer for 26 weeks or more qualify for paid adoption leave. There are two types of adoption leave: 26 weeks ordinary adoption leave and 26 additional adoption leave, giving a total of 52 weeks. SAP (Statutory Adoption Leave) is payable for 39 weeks.

The rate of SAP is same as the lower rate of SMP. Dependant Leave: An employee whose child is under 5 or who has a disable child age 18 or under they holds the right to take parental leave. An employee who has a continuous service least for a year qualifies for paternal leave. An employee have the right to have unpaid time off work to deal with emergencies

involving a 'dependant' - this could be employee's husband, wife, partner, child, parent, or anyone living in your household as a member of the family.

2. 3 Explain the reasons for treating employees fairly in relation to pay:

The purpose of the Equal Pay Act 1970 is to eliminate discrimination between men and women in terms of pay. This law gives a woman the right to be paid the same as a man like work, work of equal value and work rated as equivalent by analytical job evaluation study. Enhancing Employer Brand: Giving them equal pay boosts employees confidence, keep employees motivated and to keep them in the business longer than ever before. At Bloomberg these benefits are based on the annual salary, and salaries are benchmarked to job levels which are assigned to the role.

This ensures salaries are fair for the job being performed, regardless of gender, race, or age, to ensure there is no discrimination among employees. Increased Productivity: Due to the Act there is an ever increasing productivity to be seen, At JIG a case occurred where employees knew there is equality in gender and pay in place. Employees were treated fair, the morale increased, they are well known for their excellent customer/ client service and employees started to settle down within their jobs for long period of time. 2. 4 Summarise the main points of discrimination legislation:

Anti - Discrimination legislation is now incorporated within the Equality Act 2010. The purpose of this legislation is to build up nine separate pieces of anti - discrimination legislation into a single Act, creates a new single equality duty on public bodies, and allows for wider equality objectives to be included in tenders for public sector contracts. The lists of 9 protected characteristics are: Age, Disability, Gender reassignment, marriage and civil

partner, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Direct discrimination: This occurs when someone is treated less favourably than another on account of having a disability, or on the grounds of age, sex, race, religion or sexual orientation. When deciding whether direct discrimination has taken place a comparator issued. At Bloomberg all employees are treated equally but not discriminating between an older and younger candidate going for the same job. **Indirect discrimination:** This is when a disability or sex is disadvantaged by a provision, criterion or practice which is broadly applied.

These could be policies at work, college rules and qualifications. At JIG there were changes made on working shift patterns to dress and display the new lines in the company which were out of business hours. All employers were required to work till 10 twice a week. Women are going to be immoderately affected by this, as women are more likely than men to have caring responsibilities. One particular woman cannot work the shifts and she claims indirect discrimination, as the shift changes particularly disadvantage women who may wish to collect children from school and right out her normal duties.

Victimisation: This occurs when an employee is treated less favourably because they have made or supported a complaint related to the Act, or they are suspected of doing so. At Bloomberg security there was occasion where an employee has given evidence in connection to a discrimination claim, and 4 months later they felt that they have been victimised by their supervisor due to these event that had happened. **Harassment:** The Harassment Act

was introduced in 1997 to protect individuals from harassment situations in and out of the workplace.

Harassment is where an employer or an employee violates another person's dignity or creates an uncomfortable or offensive environment for them. Such a situation has not yet arisen at Bloomberg.

2. 5 Explain the good practice that underpins organisational policies and can contribute to the psychological contract: Psychological contract has been defined as 'the perceptions of the two parties' employee and employer, of what their mutual obligations are towards each other'. (CIPD 2005) An individual's expectation that some organised system will act with predictability or goodwill' (Maguire and Phillips 2008). The psychological contract is more positive if there is evidence of the following: A high-quality workplace - this is made up of six factors linked to stress and well-being, namely: a manageable workload, some personal control over the job, support from supervisors and colleagues, positive relationships at work, a reasonably clear role, a sense of control or involvement in changes. At Bloomberg in our department every staff and line-manager at the start of every shift there is a briefing to be held every morning.

There is a psychological contract between the staff and the line-manager in order to attend the briefing every staff member in the morning is expected to come 15 minutes early prior to the starting time, and vice-versa there are allowed to leave 15 minutes earlier prior to their finish time. In that way trust is not affected, the psychological contract is maintained resulting in an increased loyalty, more efficiency and longer working period.

3. Understand

the issues to address at the termination of the employment relationship 1.

Explain the differences between fair and unfair dismissals:

Dismissal is when employer ends the employment they don't always have to give notice. If dismissed, the employer must show they've: a valid reason that they can justify and act reasonably in the circumstances. Fair Dismissal: Dismissal is normally fair if an employer can show that it is for one of the following reasons: A reason related to an employee's conduct A reason related to an employee's capability or qualifications for the job Because of a redundancy Because a statutory duty or restriction prohibited the employment being continued Some other substantial reason of a kind which justifies the dismissal.

And that they acted reasonably in treating that reason as sufficient for dismissal. Unfair Dismissal: Unfair dismissal is when employer does not have a fair reason or it's not lawful for dismissing an employee. It is when the employer has not followed the correct and lawful company's process when dismissing the employee. Summary dismissal: Employee can be dismissed for ' gross misconduct' without employer going through the normal disciplinary procedures. This can happen if, for example, violent towards a colleague, customer or property.

Constructive dismissal: Is when an employee is forced to leave their job against their will because of their employer's conduct. Example: let other employees harass or bullying. Automatically unfair reasons for dismissal (where one year or two years continuity of employment is not required) Dismissals will be automatically unfair if related to: A reason connected with pregnancy, taking maternity leave and pay, paternity leave and pay,

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additional paternity leave and pay (from April 2011) adoption leave and pay, childbirth and parental leave - Section 99 of the Employment Rights Act 1996 (ERA).

Seeking to exercise the right to request flexible working. Taking leave for family emergencies or to care for dependants - Section 57A of the ERA. Taking time off for jury service. Potentially fair reasons for dismissal: To be fair, a dismissal must be for one of these reasons: Capability or qualifications Conduct Illegality or contravention of a statutory duty Some other substantial reason Redundancy The process to follow and reduce the likelihood of unfair dismissal: Understanding the purpose and scope of problem. , Principle: Action taken to nature of the problem

The Procedure: Oral, first, final written warning and dismissal Gross Misconduct and giving them a chance for Appeal. 2. Explain the importance of exit interviews: The exit interview at Bloomberg provides an opportunity to allow the employer and employee to express and acquiring their reasons for leaving. Exit interviews can sometimes prove difficult to collect information, as some employees prefer, or are not willing to disclose their reasons for leaving or any problems they have had occurred in during their employment.

The importance of an exit interview to Employers is that, if conducted well it delivers an excellent opportunity for Bloomberg to gain insight into employees' perceptions of the organisation overall, underlying workplace issues and managerial leadership. The importance of an exit interview for the Employee is to voice their views on their working experience during their time at Bloomberg. This also gives them a chance to suggest improvements

to their role and to draw a line under their employment relationship. 3. Summarise the key stages to be followed when managing redundancies:

Redundancy: A redundancy occurs where a dismissal is wholly or mainly because employees have ceased to carry the employers business or intend to cease to carry out the employers business. Either for the purpose for which the employees is employed or in the place where the employee was employed. (Kate Russell 2011) Key stages followed in managing redundancy: The first stage of redundancy involves planning from HR and line - manager arbitrates to discuss the organisation or department structure. The second stage is lawfully identifying the employees which are due to put into risk, by a fair, objective and non discriminatory selection criteria.

The third stage involves the moment of truth, information the employees and consultation meetings. The final meeting with the employee will be formal and includes the right to be accompanied. There may be several meetings prior to the final meeting in reference with what help or alternatives could be provided. The fourth stage is if the redundancy occurs it will be in written and with full explanation of redundancy payments of what they are likely to receive. Redundancy pay depends on age, current pay (or statutory limit) and length of service. Pay is calculated as follows: 0. week's pay for each full year of service for those under 22 years of age 1 week's pay for each full year of service for 22-41 year olds 1. 5 week's pay for each full year of service for those over 41 The fifth stage is where Employee holds the right to appeal against the decision which has made by the employer. The final stage occurs when there aren't any alternative jobs and appeal against the decision, the redundancy payment is realised. After the redundancy is

communicated, Employees can often feels depressed. Trainings sessions and advice on seeking new employment are been given.