

Employment law essay sample

[Business](#), [Employment](#)



Introduction

The aim of this Assessment is to demonstrate an understanding of employment regulation and how it is enforced. Other areas covered include; how to manage recruitment, manage issues relating to pay and working time lawfully and how to ensure that staff are treated lawfully when they at work. Finally it will cover managing performance and disciplinary matters lawfully.

Activity 1

The purpose of Employment Law is to provide legal protection to employees and employers. Employment Law is set up to ensure legal guidelines and standards are met with recruiting, working standards, pay and allowances and the disciplinary process. It is also aimed at protecting a person's Equality and Human Rights such as discrimination against gender, disability, race, sexual orientation, religion and pregnancy. Broadly speaking, the employment relationship is regulated by both voluntary and legal measures. Voluntary measures comprise agreements and other decisions that derive from collective bargaining, arbitration, conciliation, mediation, and grievance and discipline handling. They also include voluntarily accepted standards of good employment practice.

Legal measures are European Union (EU) treaties and directives, the European Convention on Human Rights and Fundamental Freedoms 1950, British statute law, the common law of contract and of tort, case law, statutory codes of practice and some international standards. In practice, these are not isolated sets of measures. Voluntary and legal measures invariably interlink and influence each other (catalogue. pearsoned. co. uk). There is also a strong economic argument for equality within the workplace.

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If people are not able to reach their full potential, the economy suffers (WWW. GOV. UK).

The philosophy behind this is when individuals are given the correct working conditions and environment to work, along with a level playing field with equal opportunities and rewards, they are more likely to be happy at work thus providing a better performance. A bi-product of this means they will be rewarded with promotion and higher pay which will contribute more tax revenue in the UK. It also provides them with a platform to train and influence others, which in turn will produce a similar effect and make the organisation as a whole become a more attractive venue for customers and investors.

In the UK most employment law is categorised as 'civil law' or 'private law', meaning that is enforced as a result of one party (the claimant) suing another (the respondent) either for compensation or some other remedy in a civil court. The claimant, who is normally a former employee or worker, an existing employee or worker, or a failed job applicant, therefore uses the court system to allege that the respondent has caused them some kind of detriment and has done so in contravention of the law (www. CIPD).

An example of when a case may be brought before an employment tribunal is if an potential employee feels they have not been employed by an organisation due to their disability, with the employee choosing an able bodied person on the ground they will be more capable of carrying out the role better. Such an act could be judged as incompliant with the Disability

Discrimination Act 1995 therefore create grounds for an employment tribunal.

Prior to such a case being considered by an Employment Tribunal it must be referred to ACAS (Advisory, Conciliation and Arbitration Service) who will in turn review the case prior to submission to the courts. Once a case is referred to an Employment Tribunal, a fee (fee amount dependant on type of claim) will be required from the claimant to ACAS to pursue the case. The courts may order for these fees to be reimbursed by the respondent should the claimant be successful with their case.

The Employment Tribunal was traditionally made up of a legally qualified judge and two lay members, with one lay member representing the interests of the employer and one representing the interests of the employee. In more recent times there has been an increasing trend of cases being reviewed by an independent judge alone. They will review the case using their experience and the evidence brought before them (descriptive documents, witness statements) followed by both parties Submissions. Once the Tribunal has come to its decision, it becomes legally binding to both parties and can only be appealed if the Tribunal has made mistake in the application of the law or the judgement was one which no reasonable tribunal could have reached.

In order to avoid an Employment Tribunal, which can prove expensive to the complainant and the respondent, cases may be settled before and during formal legal proceedings. This is often arranged by a mediator.

Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. This person maybe from within the organisation, or use an external mediator should that be deemed more appropriate (ACAS Code of Practice¹, Apr 2009)

If both parties fail to reach a resolution internally, a settlement can still be reached prior to the case reaching a tribunal. ACAS can play a significant role in this. A new set of arrangements was introduced in 2014 that gives ACAS conciliation officers a much more pertinent role. In a bid to encourage the parties reach out-of-court settlements and so reduce the costs of running the tribunal system, from 1 Apr 2014 new pre-claim conciliation system came into operation. Claimants are now required to inform ACAS of their intention to pursue a claim before formally lodging it at their local Tribunal office. ACAS is then obliged to offer conciliation. If conciliation is unsuccessful within a 'prescribed period' of one month (possibly extending to 6 weeks) the claimant can proceed to lodge a tribunal claim (WWW. CIPD).

Activity 2 - Managing Recruitment

When an organisation is considering the recruitment of new personnel there are many processes they must adhere to in order to legally select the correct candidate for the role. The process should be fair, transparent and within legal guidelines.

The importance of diversity should be taken into account at each stage of the recruitment process. Processes and systems should be regularly reviewed to ensure hidden bias is removed and to ensure talent is not being blocked from entering the organisation. Everyone taking part in activities such as shortlisting and interviewing should be aware of relevant legislation and the importance of avoiding discrimination.

In order to achieve this, employers must follow a lawful process and be fully coherent with the Equality Act 2010.

The Equality Act came into force on 01 October 2010. The Equality Act brings together over 116 separate pieces of legislation into one single Act.

Combined, they make up a new Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society. (WWW. CIPD).

The nine main pieces of legislation that have merged are:

The Equal Pay Act 1970

The Sex Discrimination Act 1975

The Race relations Act 1976

The Disability Discrimination Act 1995

The Employment Equality (Religion or Belief) Regulations 2003
Employment Equality (Sexual Orientation) Regulations 2003

The Employment Equality (Age) Regulations 2006

The Equality Act 2006, Part 2

The Equality Act (Sexual Orientation) Regulations 2007

(www.equalityhumanrights.com)

The recruitment process involves working through a series of stages:

Defining the role.

Attracting applications.

Managing the selection process.

Making the appointment.

Before recruiting for a new or existing position, it is important to invest time in gathering information about the nature of the job. This means thinking not only about the content (such as the tasks) making up the job, but also the job's purpose, the outputs required by the job holder and how it fits into the organisation's structure. This analysis should form the basis of a job description and person specification/job profile.

The job analysis leads to writing a job description. This explains the job to the candidates, and helps the recruitment process by providing a clear guide to all involved about the requirements of the job. It can also be used to communicate expectations about performance to employees and managers (WWW. CIPD). This will help to ensure effective performance in the job.

It is important these methods adhere to Employment Law, for example when advertising the role, the Organisation does not discriminate. If the role could be carried out by a disabled applicant, provisions should be made to ensure that all possible candidates are provided with the necessary adjustments to

make this possible. If however, a certain disability will create a Health and Safety risk, for example working on a building site, it is considered reasonable that the candidate may not be suited, as long as it is justified and all necessary assessments are carried out prior.

There are several methods of attracting applicants such as:

Employee referral schemes - Some organisations operate an employee referral scheme. These schemes usually offer an incentive to existing employees to assist in the recruitment of family or friends. External methods - There are many options available for generating interest from individuals outside the organisation. The most popular methods for seeking candidates include employer's corporate website, recruitment agencies, commercial job boards and professional networking sites such as LinkedIn. .

Advertisements should be clear and indicate the:

Requirements of the job

Necessary and the desirable criteria for job applicants (to limit the number of inappropriate applications received) Nature of the organisation's activities

Job location

Reward package

Job tenure

Details of how to apply.

External Recruitment Services - Many organisations make use of external providers to assist with their recruitment. Widely known in the industry as recruitment agencies or recruitment consultants, they offer employers a range of services - attracting candidates, managing candidate responses,

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screening and shortlisting, or running assessment centers on the employer's behalf.

Other ways to attract applications include building links with local colleges/universities, working with the Job Centre and holding open days. (WWW. CIPD).

There are two main formats in which applications are likely to be received: the Curriculum Vitae (CV) or the application form.

Application forms allow for information to be presented in a consistent format, and therefore make it easier to collect information and assess the candidate's suitability for the job.

CV's give candidates the opportunity to sell themselves in their own way and don't restrict the fitting of information into boxes which often happens on application forms. However, CVs make it possible for candidates to include lots of additional, irrelevant material which may make them harder to assess consistently.

Both of these processes would normally require the applicant to provide several references, personal, professional or a mixture of both.

Selecting candidates involves two main processes: shortlisting and assessing applicants to decide who should be offered a job.

Selection decisions should be made after using a range of tools appropriate to the time and resources available. All tools used should be validated and constantly reviewed to ensure their fairness and reliability.

A range of different methods can be used to assess candidates. Whatever method is used it is important to ensure that candidates know in advance what to expect from the selection process, for example, the type of assessment they are going to undergo and the length of time it will take. Organisations should also check whether the applicant has any need for adjustments due to a disability such as improved accessibility or parking within a complex. (WWW. CIPD).

Before making an offer of employment, employers have responsibility for checking that applicants have the right to work in the UK and are appropriate for the work. Employers are also increasingly making use of social media to research candidates' backgrounds. An example would be to view a candidates Facebook account, which can often reveal useful information. In some cases should the candidate have inappropriate material on such a site it can be detrimental to their application.

Once a shortlist of potential candidates has been identified, they will normally be invited to attend an interview process. Interviews give an opportunity for the interviewer and interviewee to meet face to face and exchange information. The interview process should be fair, unbiased and transparent.

Employers must be careful when asking questions about specific issues during a job interview such as religious beliefs which can be considered as discriminatory, and may constitute an illegal hiring practice, leaving the organisation subject to an employment tribunal on the grounds of racial discrimination.

Once the interview process has taken place, the organisation will be well equipped to make an informed decision on a suitable candidate for the position. They will then inform the successful applicant and make them a provisional offer of employment.

Offers of employment should always be made in writing, however a verbal offer of employment made in an interview is as legally binding as a letter to the candidate.

If the candidate accepts the position they must then be given a contract of employment which constitutes a legally binding document. This is an agreement between the employer and employee on the terms of working conditions including their employment rights, responsibilities and duties. Employment contracts can consist of a mixture of express and implied terms.

Once a candidate has been offered a position they are then entitled, within two months of their start of employment to receive a Written Statement of Particulars for their employment. The Written Statement of Particulars must include: Names of the employer and employee

Date when employment began

Date on which the employee's continuous employment began

Scale or rate of remuneration or the method of calculating the remuneration

Intervals at which remuneration is paid, that is, weekly, monthly or other specified intervals Terms and conditions relating to hours of work, including any terms and conditions relating to normal working hours Terms and conditions relating to entitlement to holidays, including public holidays and

holiday pay, in such a manner as to allow them to be precisely calculated Job title or a brief description of the type of work the employee is employed to do Place of work or an indication that an employee is required or permitted to work at various locations. (www. CIPD)

Activity 6 – Discipline Procedures

Background

An employee has been suspected of coming to work while under the influence of illegal drugs. It clearly states in the employee's contract that such an act is considered as gross misconduct and it is also well documented on notice boards within the organisation. The organisation also has a duty under the Health and Safety at Work Act to ensure that individuals do not create a risk to themselves or others by committing such an act.

Procedure

The first step in this case would be to inform the individual of the suspected case and suspend them with full pay while the organisation carries out an investigation. It is important to inform the individual that the suspension is not yet considered to be a disciplinary action. Because of the nature of the allegation, the employer is obliged to consider the Health and Safety of the workforce and that it is not put at risk during the investigation period should the allegation prove to be correct. The investigation should be carried out immediately and completed as soon as possible.

During the investigation, it is important to acknowledge whether the employee suspected of drug use is not currently prescribed any drugs that maybe effecting their work performance. They should also investigate whether there are any mental health issues related to drug use and if so, would it be practical to offer support to the individual should it be deemed appropriate. It is also important that throughout its disciplinary process, the organisation is consistent with its decision making in relation to other cases it may have dealt with in the past, in order to avoid any contradiction should the case be referred to an employment tribunal. In this case the individual has denied taking any illegal drugs, and is not prescribed any either.

Following the investigation the organisation has deemed that there is sufficient evidence that the employee has a disciplinary case to answer.

The accused employee must then be notified of any pending disciplinary action in writing. The letter should include the specifics of the alleged misconduct and its possible consequences. It should also include any written evidence such as witness statements to allow the accused to prepare to answer any questions at the disciplinary meeting. The notification should inform the accused of the date, time and venue of the disciplinary meeting and advise them of their right to be accompanied at the meeting. The chosen companion may be a fellow worker, a legal or a certified union representative. They may put forward a case for the individual but are not allowed to answer any direct questions on behalf of the accused.

By allowing the accused to prepare their case and accompany them with all of the evidence and procedures, it is consistent with the ACAS Code of

Practice for Disciplinary and Grievance Procedures. This will help to support its case should the disciplinary matter be referred to an employment tribunal.

Employers and employees (and their companions) should make every effort to attend the meeting. The meeting should be held without delay whilst giving the accused reasonable time to prepare their case. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this. If any new evidence is brought up during the hearing, it may be considered necessary to stop the meeting to allow further investigation to allow the accused to receive the fairest representation. This will also be viewed as a reasonable response from an employment tribunal.

Prior to making a decision, to demonstrate that the accused has been treated fairly, it is important to summarise the case to the individual, including their specific accusation and the evidence and arguments that have been put forward.

After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing. In this case the

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individual's behaviour is considered as gross misconduct, and deemed reasonable to dismiss the individual from the organisation.

The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

In this case of misconduct, due to the health and safety risk to other employees, it is deemed serious enough or have such serious consequences that a call for dismissal without notice is admissible even for a first offence. A fair disciplinary process should always be followed, before dismissing for gross misconduct to minimise the risk of having to defend the case at an employment tribunal.

Should the employee feel that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing also informing them that they have a statutory right to be accompanied at appeal hearings. The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case. This would show a degree of impartiality from the employer to an Employment Tribunal Judge and also demonstrates that the accused was treated fairly. The accused should always be informed in writing of the results of the appeal hearing as soon as possible. (ACAS Code of Practice 1- Disciplinary and Grievance Procedures, April 2009).

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