

Duty to obey employers reasonable instructions law employment essay

[Law](#)



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ITC Student Number: CO1630113
Name: Natasha Urukalic
Address: 11 Maplehurst Close Kingston upon Thames Surrey KT1 2HD
Email address: natasha_urukalic@yahoo.co.uk
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Question 1

(a) Employers are required to provide their employees with a written statement of terms and conditions of their employment. Section 1 of the Employment Rights Act 1996 ("ERA 1996") provides that such a statement, otherwise known as "section 1 statement" needs to be provided within two months of employment starting and needs to reflect the main terms of the employment relationship. Statement needs to identify both the employer and the employee and contain details of dates on which employment and

continuous employment began. Statement also needs to show the details of remuneration including periods at which salary will be paid, details of sick pay and pensions. It will contain details of notice and specify the amount of notice each party is required to give in case of termination of employment. Other information, such as, description of work, job title, place of work, hours of work and holiday entitlement will also need to be incorporated. It is common for a section 1 statement to refer to other documents which may contain details pertinent to the employment. Such documents may be employee handbooks or company policy documents, and may contain information on sickness, pension schemes, disciplinary and grievance procedures and other employment related matters. It is important that if section 1 statement refers to such documents, these documents are kept up to date and are accessible to all employees.

(b) Written statement is not considered to be the same as a written contract of employment. It is a statement setting out the main terms of the employment relationship. However, in absence of the written contract of employment, written statement can be the only evidence of the terms of employment that the parties agreed. Therefore, it is an essential document that employers must provide to employees within two months from the start of employment. If the parties are in dispute and there is no written contract of employment, written statement will allow the tribunals to determine the agreed terms of employment.

(c) If an employer fails to provide the statement, an employee can seek remedies under section 11(1) of ERA 1996. Furthermore, if an employee has already been issued with a written statement, but his terms of employment have since changed, the employer must issue an amended

statement within two months of the change of terms of employment. Types of remedies available to an employee will depend on whether he is still in employment and whether he has a separate successful claim relating to his employment. Most commonly, the remedy for failing to provide a written statement is declaration. Section 12(1) of ERA 1996 gives Employment Tribunals powers to determine what terms should have been incorporated. It further enables the tribunals to consider the employer as having issued a written statement containing such terms. However, it is important to note that following the Court of Appeal decision in *Eagland v British Telecommunications plc* [1992], the tribunal does not have the power to add terms simply because they feel they should have been included. Where an employee is still in employment or is within the three month limitation period following the termination of employment, remedies available to him are restricted to a declaration by the Employment Tribunal confirming or amending the statement. However, if an employee has a separate successful employment claim, then in addition to the declaration, employee may receive compensation of between two and four weeks' pay.

Question 2

(a)

Name: This Statement sets out the main terms and conditions of employment between Azhar Farooq (the employee/you) and Translate (the employer/we). Commencement date: Your employment commences on 6 December 2012. Continuous employment: Your continuous employment with Translate commences on 6 December 2012. Job title: You will be employed in a role of a translator. Permanent/fixed term: You are employed on a

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permanent basis. Place of work: Your main place of work will be Translate's Leeds office. Pay: Your salary is £2, 800 per month which shall be payable on the last Friday of every month. Hours of work: You will be required to work 37 hours per week. Holidays: You are entitled to 30 days annual leave. In addition you are entitled to paid bank holidays. Sickness: Details of sickness absence and pay can be found in Company's sickness and absence policy. Pensions: You may join the Company's stakeholder pension scheme. Full details of the Scheme are available from the HR manager. Notice: Your employment may be terminated by either party giving four weeks' notice in writing. Collective agreements: There are no collective agreements which directly affect your employment. Overseas work: Not applicable. Disciplinary matters: Details of disciplinary procedures can be found in the Employee Handbook. Grievances: Details of grievance procedures can be found in the Employee Handbook.(b)There are four main duties all employees owe to their employers. 1. Duty to be ready and willing to workThis means that work cannot be performed, unless an employee is willing and ready to work. In obeying this duty, an employee is said to be providing a consideration to an employer in return for the work given to him by his employer. If an employee is not willing or ready to work, the work cannot be carried out and therefore the employee will be in breach of his contract of employment. 2. Duty of reasonable care and competenceAn employee must carry out all duties relating to his employment with reasonable care and competence. In failing to act in this way, an employee may be putting himself and his colleagues in danger. Where a negligent act is caused by an employee, both employer and employee may be held jointly liable. The consequence of this is that an

employee may be liable for a percentage of damages and an employer may seek to recover these from him. This was considered in the House of Lords case *Lister v Romford Ice and Cold Storage* [1957] where an employer successfully recovered damages by bringing an action against the negligent employee.

3. Duty to obey employer's reasonable instructions

An employee must obey employer's reasonable instructions pertinent to their employment. Where an employee breaches this duty by failing to obey employer's reasonable instructions, their disobedience may be regarded as a fundamental breach of contract and may entitle the employer to dismiss the employee without notice. In *Laws v London Chronicle* [1959] it was held that although disobedience may result in summary dismissal, the employer needs to take care when determining whether a single act justifies summary dismissal. It is worth emphasising that employer's instructions must be reasonable and must not put an employee in a position where he is asked to conduct himself in an improper manner. In *Morrish v Henllys* [1973] the court held that employer's instruction requiring an employee to falsify records was not a reasonable instruction. As a consequence, the employee was successful in claiming unfair dismissal.

4. Duty of loyalty and fidelity

There are several aspects to this duty.

Secret profits

Employee must not make a secret profit from their employment. In *Boston Deep Sea Fishing v Ansell* [1888] it was found that by taking bribes from a supplier an employee was making a secret profit. By making a secret profit, an employee was committing a fundamental breach of the contract.

Disclosure of misconduct

Employees are required to disclose misconduct to an employer. However, the extent to which this duty extends to all employees will depend

on whose misconduct it is and what their position is within the company. In *Bell v Lever Bros* [1932] it was held that an employee was not required to disclose his own misconduct. However, this is contrasted with *Syborn v Rochem* [1983] where an employee together with his subordinates was planning to set up a rival company. As a manager he was under a duty to report his subordinates' misconduct and it was irrelevant that in doing so he was also disclosing his own misconduct. Therefore, an employee, who has managerial duties towards other employees, is under a duty to disclose any misconduct.

Competition Employees are prevented from working for a competitor during their employment. However, as was considered in *HIVAC v Park Royal* [1946], an employee may also be prevented from working for a competitor in his spare time. Employees' spare time is entirely theirs, therefore this prevention is limited only to those situations where it can be demonstrated that by working for a competitor, an employee is effectively damaging the employer's business.

Confidential information Employers are entitled to protect the confidential information relating to their business and the extent to which this can be done successfully was considered in *Faccenda Chicken v Fowler* [1986]. In this case the Court of Appeal found that there are essentially two types of confidential information and depending on which type it is, an employee may be prevented from using it even after the employment has ended. Information consisting of trade secrets will generally entitle employers to impose a restriction on employees preventing them from misusing it during the employment but also after the employment has ended. Confidential information that imposes an obligation on employees not to misuse it while in employment does not prevent

employees from using it once the employment has ended. In order to ensure that confidential information does not get misused both during and after the employment, employers may wish to consider incorporating covenants preventing employees from misusing it.(c)There are four main common law duties that employers owe to their employees. 1. Duty to provide workThe general principle is that as long as the employee is being paid, there is no duty to provide work. This was established in *Collier v Sunday Referee Publishing Co Ltd* [1940]. There are some exceptions to this principle. Where an employee's remuneration is commission based, as was the case in *Devonald v Rosser & Sons* [1906], he cannot be denied work. Furthermore, if an employee is a performer, he will benefit not only from remuneration, but also from publicity. Denying work to a performer would also mean denying him publicity as was considered in *Clayton & Waller v Oliver* [1930]. 2. Duty to pay wagesEmployer is under a duty to pay wages and this duty is so essential to the contract, that failure to pay wages would lead to a repudiatory breach of contract. It is important to note that the remuneration agreed in the contract is the remuneration the employer is expected to pay. In *Rigby v Ferodo Ltd* [1987] an employer introduced a pay cut across the board. The employees continued to work, but under protest and eventually brought a successful claim for the unpaid percentage of their wages. 3. Duty of safety and careEmployers are under a duty to provide safe environment for employees. *Wilson & Clyde Coal Ltd v English* [1938] established that this duty is comprised of three elements. The first element is the duty to provide a safe system of work, which would ensure that all employees follow correct procedures. The second element is a duty to provide safe and

competent employees, ensuring that all employees are trained to a required level and are competent in dealing with their daily duties. The final element is a duty to provide safe plant and equipment, ensuring that all equipment and workplaces are free of hazards and maintained regularly, therefore minimising any risks of injuries to the employees. 4. Duty of mutual trust and confidence it is important that employers are conducting themselves in a manner that will not destroy or damage the employment relationship.

Therefore, employers must take into account how their conduct may reflect on their employees. This was the case in *Malik v BCCI* [1997] where an employer was in breach of this duty when they conducted themselves in a fraudulent manner. An employee stated that employer's misconduct damaged his reputation and successfully brought a claim for breach of contract. (d) Post-termination clauses may be used to restrict former employee from acting in a way that may be detrimental to the employer.

Post-termination clauses are known as restrictive covenants and will only be enforceable in specific circumstances. In order for a restrictive covenant to be valid, it must protect the legitimate interest of the employer and it must not go further than necessary in protecting such interest. It is therefore crucial that covenants are reasonable, and this is determined by taking into account various factors such as duration of the covenant, geographical area it relates to and whether it is limited to only services or products. It is important that employers are careful when drafting restrictive covenants, as those that are drafted too widely will not be enforceable. There are four types of restrictive covenants. Non-competition covenants will normally apply where an employee may have access to confidential information and

company's trade secrets. It prohibits the employee from working for a competitor within a specified area and for a specified period. This was considered in *Thomas v Farr plc* [2007] where the Court of Appeal upheld a restriction for a period of 12 months. The Court of Appeal emphasised that the employer only needs to demonstrate that the nature of employee's work was such that the employee would be exposed to highly confidential information. Non-solicitation covenants will prevent former employees from trying to take the business from his former employer. It is important to note that attempting to restrict the solicitation of potential future business will not be considered reasonable and is likely to be unenforceable. Non-poaching covenants are similar to non-solicitation covenants. The main difference is that they prevent former employees from trying to employ their former colleagues. Non-dealing covenants are probably the most encompassing of the four types. They prohibit the employee from soliciting his employer's clients after the employment has ended, and also from working for such clients. Even where a client approaches the former employee directly, the employee would be bound by the covenant. The High Court in *Towry EJ Ltd v Barry Bennett and others* [2012] found that in this particular case the non-solicitation clause was not effective as there was no evidence of actual solicitation. Interestingly, the High Court commented that a non-dealing clause would have been more effective as it would have been possible to stop the former employees from working with their former clients. It would be advisable to incorporate post-termination clauses to Translate's employment contracts. As Translate are developing a new software package which the employee, Azhar Farooq, will be testing and will have access to

trade secrets, Translate may wish to incorporate a non-competition covenant. Taking into account the frequency of changes made to the software, Translate should ensure that the period of restriction is reasonable. Newer versions of software are significantly different from older versions, therefore it is safe to presume that employee's knowledge would be out of date within a definable period of time.