

**LEVEL 3 - UNIT 13 – THE PRACTICE OF EMPLOYMENT LAW  
SUGGESTED ANSWERS – JANUARY 2018**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

**Question 1**

- (a) The relevant protected characteristic is age.
- (b) The type of discrimination is Direct Discrimination. This is defined in Section 13 Equality Act 2010, where A treats B less favourably than another because of a protected characteristic. This can also apply on the basis of a perceived characteristic. Joanne did not get the job as Michael thought that she looked young. The discrimination will be lawful if the employer can show that it is a proportionate means of achieving a legitimate aim. There is nothing to suggest that this is the case here.
- (c) (i) The type of discrimination is Indirect Discrimination. Section 19 Equality Act 2010 states that this occurs where A applies a provision, criterion or practice (PCP) to B, the PCP is applied to all, it puts people with that characteristic at a disadvantage and it puts B at that disadvantage. The discrimination will be lawful if it is a proportionate means of achieving a legitimate aim.
  - (ii) The requirement to hold a driving licence for at least 10 years is a PCP, it is applied to all, it is likely to put younger people at a disadvantage and it puts Aleksandr at a disadvantage. There is nothing to suggest that this is a proportionate means of achieving a legitimate aim. However, sensible arguments either way were credited.

**Question 2**

- (a) Form ET1 will be used to submit the claim to an Employment Tribunal.
- (b) There is a time limit of three months from the date of the dismissal or, as is the case here, the act complained of. Time will be paused for up to one month to allow early reconciliation and this can be extended for a further

fourteen days, if needed. Time will start to run again once the certificate is received from ACAS. The effect is to stop the clock of the limitation period.

### Question 3

- (a) Dismissal is either when the employer terminates the contract, when a fixed term contract expires and is not renewed, or if there is a constructive dismissal. Constructive dismissal is where the employer has breached the contract so that the employee leaves, and this happens when the breach goes to the root of the contract. The demotion and the humiliation in front of others is likely to be viewed as a breach going to the root of the contract, so Chris is likely to have been constructively dismissed. Credit was given to students who also mentioned the significance of Chris accepting his demotion.
- (b) A person must be an employee, and there is nothing to suggest that Chris is not an employee. Chris must make the claim within three months of the effective date of termination. The employee must not be in an excluded class and this does not appear to be relevant here. There is a minimum qualifying period of employment of two years and Chris has been employed for six years. Chris is eligible to make a claim for Unfair Dismissal, Employment Rights Act (ERA) 1996.
- (c) The potentially fair reasons for dismissal are capability and qualifications, conduct, illegality, redundancy and some other substantial reason. The potentially fair reason which applies to Chris is likely to be capability.
- (d) (i) Chris could/should have used the firm's grievance procedure.  
(ii) An employment lawyer could, for example, draft a disciplinary procedure.

### Question 4

- (a) (i) An employee has the right, at law, to take a reasonable amount of time off work, unpaid. This is to deal with unexpected emergencies affecting dependants and to make long-term arrangements. There is no minimum length of service.  
(ii) One day off is likely to be a reasonable amount of time, a week may not be, but this will depend on the circumstances. There was/is no need to pay Kevin. The illness sounds unexpected but the pre-planned dentist appointment does not. The child is a dependant and it is irrelevant that Kevin has only been employed for six months.
- (b) An employee is limited to working 48 hours in any seven day period. However, this is an average based on a 17 week reference period (unless varied). It would appear that, as Jane started work six months ago, this has been breached. The employee can opt out, but there is nothing to suggest that this has happened here. Jane is also entitled to have a 20 minute rest break if she has worked for more than 6 hours. Again, this appears to have been breached.
- (c) The payment is calculated by reference to length of service, with a maximum of 20 years. Here, the employee has worked for 5 years. The calculation depends on the age of the employee, with an employee able to claim one and a half week's pay for each year of service in which the

employee was aged over 41, one week's pay for each year in which the employee was aged between 22 and 40, and half a week's pay for each year up to the age of 21. The calculation is based on the weekly pay of the employee with a maximum of £489 per week, ERA 1996.