



PROGRAM : NATIONAL DIPLOMA:
INDUSTRIAL ENGINEERING TECHNOLOGY

SUBJECT : MANUFACTURING RELATIONS 2

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DATE : SSA EXAMINATION
: 25 JULY 2016

WEIGHT : 40:60

DURATION : 3 HOURS (SESSION 2) 11:30 - 14:30

TOTAL MARKS : 100

EXAMINER : MS T MOHONO

MODERATOR : MRS R STEENKAMP

NUMBER OF PAGES : 6 PAGES EXCLUDING THE COVER PAGE

INSTRUCTIONS

1. PLEASE ANSWER ALL THE QUESTIONS.
 2. NO MARKS WILL BE GIVEN TO ILLEGIBLE WORK.
 3. NUMBER YOUR QUESTIONS CLEARLY
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QUESTION 1

Answer the following true or false questions by selecting **A as True** and **B as False** on the answer sheet given:

1. Under the Control Test courts only recognize the right to control, in principle, due to the fact that highly skilled employees are given a free hand when performing their work.
2. Salaried shareholders reporting to the Managing Director are not regarded as employees.
3. Parties to a contract of employment may cede their rights under the contract to a third party without the consent of the other.
4. Some provisions of the BCEA can be varied only between an employer organization and a registered trade union for example through a collective agreement.
5. Misconduct is sufficient grounds for dismissal even if it is committed before or after entering into a contract of employment.
6. Labor courts do not permit suspension without pay as a form of disciplinary penalty.
7. Employees who are working for more than four months and who works four days or more are entitled to 2 days paid leave during a twelve month leave cycle towards family responsibilities.
8. Claims for any monies due to the employee is not treated as preferred claims against the insolvent estate.
9. Final written warning is normally effective for 6 months, after which it lapses.
10. The employer can effectively suspend employees by dismissing them and re-engage them after a suitable interval.
11. Constructive dismissal means that an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.
12. Reinstatement suggest that the period of service between dismissal and resumption of service is deemed broken.

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P. T. O

QUESTION 2

Answer the following multiple choice questions by selecting one most appropriate answer from those given on the answer sheet provided:

13. The methods of terminating a contract exclude the following: (1)
- A. By Agreement
 - B. Completion of a fixed-term contract
 - C. Impossibility of performance
 - D. Termination on insolvency
 - E. Employee fell pregnant
14. The LRA does not regulate the following aspect of the collective bargaining relationship between employer and employees: (1)
- A. Freedom of association
 - B. Organizational rights of trade -unions,
 - C. Collective agreements
 - D. Performance standards
 - E. Bargaining Councils
15. The LRA does not regulate the following aspect of the employment relationship between employer and employee: (1)
- A. Methods for terminating a contract of employment,
 - B. Forms of industrial action
 - C. Grounds for dismissal and procedures to follow
 - D. Unfair Labor Practice
 - E. Remedies for unfair dismissal and unfair labor practice
16. The relationship between employer and an employee is called the: (1)
- A. Employment relationship
 - B. Collective bargaining relationship
 - C. Contractual relationship
 - D. Causal relationship
 - E. Bargaining relationship

17. The relationship between employer or employer organization and the trade union is called the: (1)
- A. Employment relationship
 - B. Collective bargaining relationship
 - C. Contractual relationship
 - D. Causal relationship
 - E. Bargaining relationship
18. The following employee is excluded from many of the protections under the BCEA.(1)
- A. Employee who works less than 24 hours a month for an employer
 - B. Senior managerial employee
 - C. Permanent employee
 - D. Sales staff who travel to customers premises and who regulate their own hours
 - E. An employee who earn in excess of the amount determined by the Minister in terms of Section 6(3) of the Basic Conditions of Employment Act.
19. This type of employee is excluded from protections relating to working hours under the BCEA (1)
- A. Sales staff who travel to customers premises and who regulate their own hours
 - B. Employee who works less than 24 hours a month for an employer
 - C. An employee who earn in excess of the amount determined by the Minister in terms of Section 6(3) of the Basic Conditions of Employment Act.
 - D. Senior managerial employee
 - E. Permanent employee
20. Katlego's contract of employment states that she is employed in Cape Town. When her employer tells her that she has to work in East London, some 1200km's away, Katlego immediately resigns. Which of the following may this be considered an example of? (1)
- A. Unfair dismissal
 - B. Constructive dismissal
 - C. Summary dismissal?
21. The following does not form part of the forms of unfair labor practice as per the LRA.(1)
- A. An employer's unfair conduct in relation to the promotion, demotion, probation or training of an employee or in relation to the provision of benefits to an employee
 - B. Not renewing a fixed term contract of employment of a temporary employee or renewing it on less favorable terms, where the employee reasonably expected it to be renewed on the same or similar terms.

- C. Unfair suspension or any other unfair disciplinary action against an employee
 - D. An employer's failure to reinstate or re-employ a former employee in terms of any agreement;
 - E. An occupational detriment (other than dismissal) in contravention of the Protected Disclosures Act, No 26 of 2000, on account of the employee having made a protected disclosure defined in that Act.
22. The following does not form part of the types of grounds for dismissal as per the LRA
- A. Termination of the contract of employment by the employer with or without notice;
 - B. Not renewing a fixed term contract of employment of a temporary employee or renewing it on less favorable terms, where the employee reasonably expected it to be renewed on the same or similar terms.
 - C. Refusing to allow an employee to resume work after she took maternity leave to which she was legally entitled
 - D. Selectively re-employing one or more employees who have been dismissed for the same or similar reasons and refusing to re-employ another or others.
 - E. Resignation from work by an employee because the employer has made continued employment intolerable for the employee.
23. Which of the factors listed below does not result in incapacity (inter alia): (1)
- A. A terminal illness which renders the employee unable to perform his tasks
 - B. A motor-vehicle accident
 - C. Chronic sickness such as high blood pressure
 - D. Drug addiction
 - E. Incompetence.
24. Which of the following statements is incorrect regarding suspension? (1)
- A. Suspension without pay is allowed as a sanction if it is provided in a disciplinary code.
 - B. Suspension without pay is not allowed as a sanction
 - C. The employer has an obligation to pay the suspended employee even if the wrongdoer is suspended pending a criminal trial.
 - D. While lawfully suspended, an employee remains an employee and as such is subject to the authority of the employer.
 - E. Alternative employment could be seen as resignation by the employee if suspended.

25. A person is an employee if that person: (1)
- A. Is not subject to control or direction of another person.
 - B. Has not worked for another person for an average of 40 hours per month for the past three months.
 - C. Receives wages from the other person.
 - D. Is working for more than one person.
26. Definition of an employee does not include: (1)
- A. Casual employees
 - B. Directors of companies
 - C. Independent contractor
 - D. Former employee being lawfully and fairly dismissed but offered re-employment
 - E. Seasonal workers whose contracts had expired but who were not offered re-employment the next season.
27. The following is not deemed as part of the remedies for unfair dismissal and unfair labor practices (1)
- A. Reinstatement
 - B. Re-employment
 - C. Compensation
 - D. Retirement
28. On the remedies for unfair dismissal, in which instances will the court or arbitrator may choose not to order reinstatement of re-employment: (1)
- 1. Where the employee does not wish to be reinstated or re-employed.
 - 2. Where the circumstances surrounding the dismissal would make a continued employment relationship intolerable.
 - 3. Where it would not be reasonably practicable for the employer to reinstate or re-employ the employee
 - 4. Where the dismissal is unfair only because the employer did not follow a fair procedure.

Choose the most appropriate answer:

- A. 1, 3 and 4
- B. 2, 3 and 4
- C. 1, 2 and 3
- D. all the above

- E. none of the above
29. A collective agreement is defined in Section 213 of the LRA as a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand:
1. One or more employers
 2. One or more registered employers' organizations
 3. One or more employers organizations
 4. More registered employers' organizations.
- A. 1, 3 and 4
- B. 2, 3 and 4
- C. 1, 2 and 3
- D. all the above
- E. none of the above
30. Which statement is incorrect regarding parties to a contract?
- A. Contracts by minors under the age of 7 years are null and void.
 - B. Minors that are tacitly emancipated may be compelled to honor employment contracts.
 - C. Where business is transferred as a going concern from one employer to another employer, the contract of employment is not automatically transferred.
 - D. Employment of children in advertising, sports or cultural activities may be permitted by sectoral agreements.

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QUESTION 3

The aim of the LRA is to ensure a protected strike is a simple endurance contest to test whether the employer can do without the service of the strikers for longer than they can do without wages. List the available options for the employer during a protected strike.

- 3.1 List the available options for the employer during a protected strike. (10)
- 3.2 What is the difference between a strike and a protest action? (4)
- 3.3 How is protection afforded to the secondary strikers under the LRA? (2)

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QUESTION 4

Match Column A with Column B

Column A	Column B
4.1 Trade union	A. This is a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded between one or more registered unions.
4.2 Bargaining council	B. This is a process whereby a commissioner of the CCMA or a member of the bargaining council hears both parties to the dispute and attempts to help them arrive at a mutually suitable agreement.
4.3 Collective bargaining	C. This is a work stoppage or concerted refusal of employees to perform work that their employer has assigned to them in order to force the employer to grant certain demanded concessions.
4.4 Conciliation	D. Their main function is to regulate relations between management and labor in the sectors of employment over which they have jurisdiction by concluding collective agreements, and to settle disputes between parties falling within their registered scope
4.5 Collective agreement	E. An association of employees whose principal purpose is to regulate the relations between employees and employers, including any employers' organization
4.6 Dismissal on grounds of Incapacity	F. This is a ground for dismissal lies in the needs of the business.

Column A	Column B
4.7 Dismissal on grounds of Misconduct	G. This is a ground for dismissal whereby an employee may be dismissed for incapacity when s/he is incapable of doing the work which s/he was employed to do
4.8 Dismissal on grounds of Operational Requirements	H. This is a ground for dismissal refers to bad behavior on the part of an employee. Whenever an employee breaks a workplace rule, s/he is guilty of misconduct and this may in certain instances lead to dismissal.
4.9 Protest action	I. Is a process by which employers and organized groups of employees seek to reconcile their conflicting goals through mutual accommodation.
4.10 Strike	J. This is a partial concerted refusal to work, or the retardation of work for the purpose of promoting or defending the socio economic interests of workers.

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QUESTION 5

The employer of a plant receives an offer to triple the output of the plant after company went through recession in the previous year and was forced to lay off employees. In order to meet the required output more workers were required.

- 5.1 What are the two possibilities concerning their past employees that are at the company's disposal? (2)
- 5.2 What is the difference between the two possibilities mentioned on 5.1? (4)
- 5.3 Explain which of the two possibilities highlighted in 5.1 would be most favorable for the ex-employees? (4)

[10]

QUESTION 6

Read the case study on “Setting of Employee targets must be realistic” attached and answer the following questions:

- 6.1 On what ground do employers base their dismissal on? (2)
- 6.2 What is arbitration? (2)
- 6.3 What are the consequences of not meeting employment targets? (2)
- 6.4 What does procedural fairness and substantial fairness mean? (4)
- 6.5 How are performance targets managed? (2)
- 6.6 Explain dismissal for poor performance. (2)
- 6.7 What are the requirements for a fair hearing? (10)

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TOTAL MARKS = 100

Setting of employee targets must be realistic

Employers must prove poor performance prior to dismissal of a worker



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Industrial issues

THE PREVAILING economic pressure on companies is not only causing a constant flow of retrenchments, but companies are also pressed for economic survival and performance.

The setting of employee performance targets, its reasonableness and its attainability are daily workplace activities which frequently cause problems.

So too are employers' continuous drive to ensure that employees achieve these performance targets, and if not, disciplinary action follows.

An analysis of case law highlights employers' so-called "scientific", (il)logical and arbitrary ways of determining performance standards, especially sales and revenue targets. Some "calculations" used by employers include grandiose visions of market dominance or penetration, merely dividing the budgetary new-business revenue increase by the number of sales persons and adding it to their previous year's targets, and so on.

When considering the fairness of a dismissal for poor performance, case law provides certain

guidelines, which employers will ignore at their peril.

Firstly, it is an entrenched labour law principle that employers have the prerogative to set performance/sales standards/targets which their employees are expected to meet.

Where an employee fails to meet the performance standards expected, disciplinary action for poor work performance, which could include, dismissal, could be initiated by the employer. The aforesaid process could be detailed in a company's own disciplinary policy, failing which, Item 9 of Schedule 8 of the Labour Relations Act regulates the procedural and substantive fairness prerequisites.

These fairness prerequisites should be common knowledge and could be summarised as requiring a factual investigation as to whether an employee failed to meet a performance standard and, if so, whether the employee was aware of this standard, was given a fair opportunity to meet the standard and whether dismissal was an

appropriate sanction.

Readers should note that Item 9 does not specify a requirement that the performance standard/target must be reasonable, attainable or fair, but merely that such target exists and that the employee did not meet them.

However, arbitrators and Labour Court judges have ruled that they will not merely accept arbitrary targets/standards set by employers that are unfair, unattainable or unreasonable. Where an employee challenges the unrealistic nature of targets/standards, employers will have to lead compelling evi-

(1) prove that an employee failed to reach a target/standard and (2) that such failure was due to the employee's poor work performance. Readers are reminded that the mere non-attainment of the performance target is not necessarily sufficient to prove poor work performance.

In this regard, case law requires of employers, during the so-called performance counselling meeting(s)/disciplinary hearing, to determine, on a balance of probability, what the cause was of the non-attainment of the targets. Where these causes are attributed to external factors or reasons beyond an employee's control, a dismissal or any other form of disciplinary action would be viewed to be unfair.

In one particular case, an employee did not meet the set sales targets and, after counselling, the targets were reduced and agreed to by the employee. After not meeting these reduced targets, the employee was dismissed for incapacity due to her poor performance.

At arbitration the employee argued that, even after having agreed thereto, the standards set by the company were unattainable as the market was not receptive to the company's products. It was unable to prove the contrary and the employee's dismissal was ruled to be unfair. She was awarded six months' salary as compensation.

Employers and employees should take cognisance of the fact that, as per case law, the achieving of the desired targets/performance standards are the responsibility of both parties. For example, there is also an obligation on the employer to counsel, direct and assist. Notwithstanding having done so, but the targets still remain unreasonable and unattainable, employers will find it difficult to prove a fair dismissal.

Readers are also reminded that, especially at more senior levels, performance targets are sometimes a lot more fuzzy. However, the same legal principles would apply, namely that the mere non-attainment of a target could be insufficient to ensure a fair dismissal.

Unfortunately, dealing with poor-performance dismissals is legally a bit more complex than discussed above. In this regard, confusion frequently exists as to differentiating between misconduct and poor performance and/or gross negligence and/or the employee's incapacity.

Space does not permit a detailed legal explanation, and readers are advised to obtain professional labour law advice when more complex cases are dealt with.

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The labour law and the courts do not accept arbitrary targets

dence to prove the contrary

Case law also reiterates that employers, when determining disciplinary action, must also consider prevailing circumstances, for example, an employee being on sick leave, business cycles, market/port characteristics, lack of support structures, lack of product, the prevailing economic climate, and so on.

In order to effect fair discipline, case law requires of employers to