



PROGRAM : LLB
SUBJECT : LABOUR LAW
CODE : ABR0021/ LLW41B0
DATE : 12 NOVEMBER 2021
DURATION : 4 HOURS
WEIGHT : 50/50
EXAMINER : DR ES FOURIE (UJ)
MODERATOR : PROF MM BOTHA (UP)
MARKS : 60

NUMBER OF PAGES: 4 PAGES

INSTRUCTIONS:

1. PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWERS ACCORDINGLY. PLEASE SEE EXAM INSTRUCTIONS ATTACHED: ANNEXURE A.
2. ANSWER ALL THE QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY. REFER TO ANY RELEVANT AUTHORITY

MODULE: ABR0021/ LLW41B0 (LABOUR LAW)

QUESTION 1

Ms K was employed at Mzansi Local Municipality. Her immediate supervisor was Mr Peters. They were often required to work together, and she had a good working relationship with Mr Peters. However, on 15 February 2021, she was sexually assaulted by Mr Peters. Shortly before the assault, there was some tension in the working relationship when Ms K refused to perform a task requested of her by Mr Peters. She refused the instruction, as she was of the view that it fell outside her job description. On Monday, 18 February 2021, Ms K was alone in her office when Mr Peters entered. After greeting her, he walked directly to where she was sitting at her desk. He bent down with his head over hers and tried to force his tongue into her mouth. Ms K reported the matter to the HR Manager; however, no steps were taken to investigate the claim. Ms K resigned and stated: "I have been forced to resign". At this stage she was also suffering from Post-Traumatic Stress Disorder. Ms K seeks your advice in respect of this matter.

Critically analyse the legal position of Ms K and advise her of all possible remedies that she may have under all applicable labour legislation. In your answer you must also consider applicable relevant concepts and onus of proof in the relevant disputes.

[20]

QUESTION 2

Union B, represents employees at Gold Mines Limited. Union B is a registered union which represents 30 of the 160 employees at the Johannesburg workplace. The employer has, however, entered into a threshold agreement with Union A (a majority union). The terms of which stipulate that for future unions to be sufficiently representative they need at least 40% of the employees as members.

MODULE: ABR0021/ LLW41B0 (LABOUR LAW)

- 2.1 Can Union B obtain organisational rights? If so, describe the process(es) that Union B must follow to obtain organisational rights and discuss the organisational rights that the union may obtain. (10)
- 2.2 Gold Mines Limited concluded a retrenchment agreement concluded with the majority trade union A. The minority trade union B, was not consulted, as the union was excluded by a collective agreement. The members of B, and individual employees that did not belong to the above union were therefore not consulted with reference to the retrenchments.
- Kindly advise the parties as to the constitutionality of the above process. In your answer you must also critically evaluate relevant and applicable sections in the LRA in light of the above scenario. (10)

[20]

QUESTION 3

The Labour Relations Act 66 of 1995 (LRA) recognises and regulates exceptions to the right of freedom of association. Design an advisory document in which you address the constitutionality of these exceptions. [10]

QUESTION 4

Big Enterprises (BE), a motor car manufacturer, has concluded a recognition agreement with the National Union of Mineworkers (NUM).

In terms of this agreement, NUM is recognised in respect of its members in a defined bargaining unit – all weekly paid employees.

MODULE: ABR0021/ LLW41B0 (LABOUR LAW)

Sixty (60) per cent of the employees in the bargaining unit are members of the union; the other forty (40) per cent of the employees in the bargaining unit are either not represented by any union whatsoever or they are represented by the Alternative Union of Mineworkers (AUW). Even so, the company always extends whatever wage increase it agrees with the union to all employees in the bargaining unit, irrespective of their union membership. The current wage agreement expired at the end of August 2021 and the parties are in dispute over wages for 2022. The dispute has been referred to the CCMA by NUM and conciliation failed. A certificate of non-resolution of the dispute has been issued by the CCMA.

Consider the above and answer the following questions:

- 4.1 Employees of Apollo Tyres, a tyre company, give seven days' notice of their intention to embark on industrial action in support of the employees of Big Enterprises. Apollo Tyres wants to approach the Labour Court for an interdict prohibiting the employees from striking. Evaluate whether the proposed industrial action by the employees complies with the relevant legislative provisions. (5)
- 4.2 Critically evaluate the differences between protest action and the right to picket. (5)

[10]

TOTAL MARKS:

[60]