



GCSE

Law

Unit **B143**: Employment Rights and Responsibilities

General Certificate of Secondary Education

Mark Scheme for June 2017

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All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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Annotations

Annotation	Meaning
	Extendable vertical wavy line
NAQ	Not answered question
L1	Level 1
L2	Level 2
L3	Level 3
BOD	Benefit of Doubt
	Cross
REP	Repeat
	Tick
VG	Vague
	Omission mark
NBOD	Benefit of doubt not given
E	Expansion of a point
	Development of point

MARK SCHEME

Question		Answer	Mark	Guidance
1	(a)	<p>Candidates will identify any three of the following characteristics:</p> <ul style="list-style-type: none"> • They run their own business or organisation • They have no specific contract of employment • They may have a contract to provide services for a money consideration over a fixed period of time for a client • They have to pay their own income tax and National Insurance contributions • They can set a charge for their work normally before they commence work • They can set their own holidays • They don't have the same rights of employment as those people who are employed • They can hire someone else to do the work • They use their own money to buy business assets such as clothing and tools for the job • They can work for more than one client at a time. <p>Credit any other relevant response.</p>	3	1 mark for each characteristic identified

Question		Answer	Mark	Guidance												
	(b)	<p>Candidates will successfully tick any or all of the following:</p> <table><tr><td>i</td><td>✓</td></tr><tr><td>ii</td><td></td></tr><tr><td>iii</td><td></td></tr><tr><td>iv</td><td>✓</td></tr><tr><td>v</td><td></td></tr><tr><td>vi</td><td>✓</td></tr></table>	i	✓	ii		iii		iv	✓	v		vi	✓	3	<p>1 mark for each correct tick identifying a correct employment particular.</p> <p>If there are more than three ticks pick the first three in top to bottom order.</p> <p>Accept any other mark e.g. X that clearly defines the candidate's response.</p>
i	✓															
ii																
iii																
iv	✓															
v																
vi	✓															
	(c) (i)	<p>Candidates will explain the following:</p> <p>Control Test:</p> <ul style="list-style-type: none">• This test looks at the amount of control the 'employer' has over an 'employee'• It is not a decisive test but can provide evidence in favour or against the worker being an employee or self-employed• This test looks at the actual tasks the person must carry out and how long they are to be carried out• This test looks at whether the 'employee' is given a set number of hours per day to carry out their work <p>Credit any other relevant response.</p> <p>Integration Test:</p> <ul style="list-style-type: none">• This looks at the extent to which the 'employee' is part of the organisation or company	9	<p>For <u>each</u> test explained:</p> <p>3 marks – develops an explanation on the test. 2 marks – explains the relevant test with some elaboration. 1 mark - explains the relevant test or makes any valid point. 0 marks - no response or nothing worthy of credit.</p> <p>(Maximum for question: 9 marks)</p>												

Question	Answer	Mark	Guidance
	<ul style="list-style-type: none"> • It is not a decisive test but can provide evidence in favour or against the worker being an employee or self-employed • If you are taken on to manage staff, then you are most likely to be an employee of the organisation • If you are entitled to company benefits such as paid leave, then you are more likely to be an employee. <p>Credit any other relevant response.</p> <p>Economic Reality Test</p> <ul style="list-style-type: none"> • This test looks at the extent that the 'employee' personally bears a financial risk while at work • It is not a decisive test but can provide evidence in favour or against the worker being an employee or self-employed • If you are provided with the equipment and materials that you need then you are likely to be an employee <p>Credit any other relevant response.</p>		

Question		Answer	Mark	Guidance
2	(a)	<p>Candidates will identify any three of the following:</p> <ul style="list-style-type: none"> • Indirect discrimination • Harassment • Victimisation 	3	<p>1 mark for each relevant way identified.</p> <p>Credit specific named ways or a definition of a way that unlawful discrimination can happen.</p> <p>Do not accept 'direct discrimination' as it is in the stem of the question.</p>
	(b)	<p>Candidates will discuss any three of the following:</p> <p>Situation 1 (John):</p> <ul style="list-style-type: none"> • This could be an example of direct discrimination • This could be an example of gender discrimination or a claim under equal pay • Paying a man less than a woman when they do the same job is unlawful • John would be entitled to the same wages as Jill • There seems to be no lawful justification in paying him less wages. <p>Credit any other relevant response.</p> <p>Situation 2 (Ryan):</p> <ul style="list-style-type: none"> • This could be an example of indirect discrimination • This could be an example of age discrimination • As Ryan is under 55 years old he is told he will not be given the job which looks likely to be on the 	6	<p>Credit should be given to both breadth and depth:</p> <p>2 marks – discusses one relevant reason with some elaboration</p> <p>1 mark - discusses a relevant reason or makes any valid point</p> <p>0 marks - no response or nothing worthy of credit</p> <p>(Maximum 2 marks per reason)</p> <p>Allow credit for responses using the Equality Act 2010 or specific pre-2010 legislation.</p>

Question	Answer	Mark	Guidance
	<p>grounds of him being 17 years' old</p> <ul style="list-style-type: none"> • It is possible that the company could show a good reason for a particular condition • It is unlikely that it would be the case here based on age alone unless objectively justified <p>Credit any other relevant response.</p> <p>Situation 3 (Klaus):</p> <ul style="list-style-type: none"> • This could be an example of direct discrimination or victimisation • This could be an example of disability discrimination • As Klaus suffers from depression he cannot be treated less favourably because of his mental health • In refusing to allow flexi-time for his hospital visits this is likely to be unlawful as the firm must be flexible about his hours for rehabilitation • In such circumstances his firm would need to make 'reasonable adjustments' so that Klaus is not disadvantaged by his mental health while employed. <p>Credit any other relevant response.</p>		

Question			Answer	Mark	Guidance
3	(a)		Candidates will insert common , Judge and employees in this order.	3	1 mark for each correct word identified
	(b)		<p>Candidates will mark the boxes as follows:</p> <p>i Breach of duty</p> <p>ii No breach of duty</p> <p>iii Breach of duty</p> <p>iv Breach of duty</p> <p>v No breach of duty</p> <p>vi No breach of duty.</p>	6	1 mark each for each correct answer
	(c)		<p>Candidates will successfully identify any of the following:</p> <ul style="list-style-type: none"> • Safety overalls must be worn • Safety boots must be worn • Respiratory equipment must be worn • No access to unauthorised persons • Fire exit • First aid kit • Trip hazard/step • High voltage. <p>Credit any other relevant response.</p>	3	<p>1 mark for each correct sign in a warehouse identified</p> <p>Allow any relevant and legitimate signs or a brief description of a sign which have relevance to a warehouse.</p>

Question		Answer	Mark	Guidance
3	(d)	<p>Candidates will describe up to three of the following:</p> <p>Breach (table leg): The employer is likely to be in breach of this Regulation because the table leg is broken meaning the workstation is not suitable for the employee to work at. Sitting at an awkward angle would mean a strain on their posture and also the table could break at any time causing damage to the worker or to the office.</p> <p>Breach (broken chair): The employer is likely to be in breach of this Regulation because the employee is sitting on an unsuitable box as their swivel-chair is broken. The employer is under a duty and must provide suitable seats if work can or is to be done sitting down. Since the box/crate cannot be adjusted for height or direction this could lead to a strain on their posture. As the box is marked 'fragile' the box could break at any time causing damage to the worker or to the office.</p> <p>Breach (toilet out of order): The employer is likely to be in breach of this Regulation because the toilet is 'out-of-order.' The employer must provide suitable and sufficient toilet facilities that are easily accessible and this looks unlikely here. If this is the only toilet, then this is not a suitable situation for the employee to have to go elsewhere to use the toilet.</p> <p>Credit any other relevant response.</p>	6	<p>Credit should be given to both breadth and depth:</p> <p>2 marks – describes one relevant reason with some elaboration 1 mark - describes a relevant reason or makes any valid point 0 marks - no response or nothing worthy of credit</p> <p>In relation to each:</p> <p>1 mark for describing the reason for the breach. 1 mark for describing the breach of each scenario.</p> <p>(Maximum 2 marks per reason)</p>

Question			Answer	Mark	Guidance
4	(a)	(i)	<p>Candidates will identify any three of the following examples:</p> <ul style="list-style-type: none"> • A reduction in the wages of an individual employee without any or legitimate explanation • A failure to pay an employee their wages • A demotion to a lesser work without legitimate explanation • Changing duties, job description, working hours or place of work without legitimate agreement • Making it impossible to do the job effectively • Failure to prevent bullying, harassment or disruption from fellow workers • Forcing an employee to work in dangerous conditions • Breaching 'mutual trust' for example wrongly and without evidence accusing a person of theft. <p>Credit any other relevant response.</p>	3	1 mark for each example identified
	(a)	(ii)	<p>Candidates will explain any of the following:</p> <ul style="list-style-type: none"> • If Chris has taken the money from the teacher's purse without permission and this can be proved to be theft, then in committing a <u>crime</u> Chris can be summarily dismissed. • When Chris grabs and threatens Patrick when he is confronted about the taking of the money this would undoubtedly be seen as <u>violent behaviour or fighting</u> and therefore could be summarily dismissed. • As Joanne sees Chris looking at pornographic images on the internet this would be clear 	3	<p>1 mark each for each correct answer</p> <p>Credit can only be given where the candidate explains why Chris' actions could be considered a reason for constructive dismissal rather than simply identifying a fact.</p>

Question			Answer	Mark	Guidance
			<p>grounds for summary dismissal as <u>accessing pornographic images or websites</u> would be an acceptable reason.</p> <p>Credit any other relevant response.</p>		
	(b)		<p>Candidates will identify any three of the following steps:</p> <ul style="list-style-type: none"> • The employer must show that they acted reasonably • The employer must investigate the situation • The employer must have normally followed the statutory minimum dismissal procedure • The employer must send the employee a written statement explaining why there is a need to dismiss • The employer must hold a meeting with the employee to discuss the matter • The employee is entitled to representation in the meeting, for example, a trades' union rep. • The employer must hold an appeal meeting if asked to do so • The employer must make a final decision and inform the employee of this and the notice period in writing. <p>Credit any other relevant response.</p>	3	<p>1 mark for each step identified</p> <p>Do not credit 'the employer must show a valid reason for dismissal' as this is in the stem of the question.</p>

Question		Answer	Mark	Guidance
4	(c)*	<p>Candidates will discuss any two of the following:</p> <ul style="list-style-type: none"> One fair and reasonable reason to make someone redundant would be if new technology or a new system of work is introduced. The introduction of new technology would bring in cost and time efficiencies. This would mean an employee or employees would not be required as they are replaced by the technologies. One fair and reasonable reason to make someone redundant would be where the job the employee was hired for no longer exists. This could be for a variety of reasons. The company may have decided that the goods or services are proving too expensive to produce or carry out. Or, there may not be a market for the product or service as it could have been banned/made illegal or demand has stopped. One fair and reasonable reason to make someone redundant would be where staff costs have to be reduced through reducing staff numbers. In difficult economic times and in order to survive companies may have to cut back on staff to concentrate on core business or more profitable lines. Failure to do this could mean the business going out of business and many more employees losing their jobs. <p>Credit any other valid response.</p>	6	<p>Candidates will score as follows:</p> <p>Level 3: 5–6 marks – points explained with good reasoning and with effective communication through discussion. The response is well organised, structured, with few errors in grammar, punctuation and spelling. To get into Level 3 overall at least two of the reasons discussed must each be in Level 3.</p> <p>Level 2: 3–4 marks – points made with some elaboration and adequate communication. The response is adequately organised, structured and with some errors of spelling, punctuation and grammar.</p> <p>Level 1: 1–2 marks – basic points made with basic communication. The response lacks organisation, structure and accuracy of spelling, punctuation and grammar.</p> <p>0 marks – no response or no response worthy of credit.</p> <p>Credit should be given for both breadth and depth.</p>

Question		Answer	Mark	Guidance
4	(d)	<p>Candidates will discuss any of the following:</p> <ul style="list-style-type: none"> • If there are fewer than 20 employees being made redundant, then the statutory minimum dismissal procedure should be followed • If the employer is making 20 or more employees redundant then the collective redundancy procedure must be followed instead • A consultation must be provided between the employer and either a trade union representative or an elected employee representative if not using a trade union • The consultation must cover ways to avoid redundancy, the reasons for redundancy and how to limit the effects of redundancy, for example retraining • Once redundancies have been agreed between the employer and trade union/elected representative then fair reasons for redundancy must be decided for example 'last in, first out', volunteers, appraisals or qualifications and experience etc. <p>Credit any other relevant response.</p>	3	<p>3 marks – develops a discussion on collective redundancy 2 marks – discusses collective redundancy with some elaboration 1 mark - makes any valid discussion point on collective redundancy 0 marks - no response or nothing worthy of credit</p> <p>Candidates can be credited with specific detail of the process</p> <p>Candidates can be credited with both breadth and depth</p>

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