

Employment Law

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Introduction

This essay looks at the terms of employment and implied duties of both employer and employees. It provides a summary of the key features of employment law as it relates to equality of opportunity for employees and explains the role of an employment tribunal and how it differs from a court

1.1 Terms of employment are conditions that an employer and employee agree upon for a job. (www.investopedia.com, 2018) Employers are required by law to provide their employees with a written statement containing the terms and conditions of employment within two months of starting work.

The terms of employment include working hours, salary or wages pay rate, entitled annual leave, employee's job description, company benefits, disciplinary and dismissal procedures and any relevant information regarding the employment.

The principal terms are the essential conditions of the employment, such as salary or wages pay rate and employees job description. While other written terms are things that are not as essential but still necessary such as the company benefits.

1.2 Implied duties are expected responsibilities that aren't directly expressed in a contract or written statement. An employer has the following implied duties to their employees:

- To provide work for the employees to do.
- To provide all the necessary equipment required for the job to be carried out.
- Pay their employees on time and adequately.
- To provide necessary training for the job.
- Provide good working conditions

1.3 An employee has the following implied duties of care to their employers:

- To carry out their job competently.
- To attend work and be punctual.
- Keep company secrets confidential (This can also be explicitly expressed in an employment contract).
- Take care of the businesses property.
- To not compete with the business they are working for.

2.1 The key features of employment law as it relates to equality of opportunity for employees and prospective employees are:

Equality Act 2010

This law states that it is against the law to discriminate against anyone because of these protected characteristics: age, disability, race, sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief.

However there are some exceptions that may apply in certain employments. For example if a protected characteristic shall make it impossible for an employee to carry out the job.

Discrimination can be either direct or indirect. Indirect discrimination is when an organisation has policies that put people with protected characteristics at a disadvantage, for instance in the case of *Government Legal Services v Brookes*. In this case, Government Legal services were found to be guilty of indirect discrimination when they refused to make reasonable adjustments to a psychometric test to meet the needs of Miss Brookes who has Asperger syndrome (*The Government Legal Service v Brookes* , 2017).

Direct discrimination is when an individual is treated different because of their or their relatives protected characteristics, for example in the case of *Dove v Brown & Newirth Ltd*. Brown & Newirth Ltd were found to be guilty of unfair dismissal due to age discrimination when they dismissed Mr Dove because of his age (*Mr A Dove v Brown & Newirth Limited*, 2015).

National Minimum Wage 1998

This law states that all workers above 16 years must be paid the national minimum wage. The national minimum wage differs for different age groups and apprentices. It helps to prevent employers exploiting employees by paying them below the cost of living. (LAWRITE Employment Law Guide)

Employment Rights Act 1996

This act joins all laws relating to employment rights. It covers the following areas of employment. (www.legislation.gov.uk, 2018)

- Employment particulars
- Protection of wages
- Zero hours workers
- Guarantee payments
- Sunday working for shop and betting workers
- Protected disclosures
- Protection from suffering detriment in employment
- Protection for applicants for employment etc. in the health service
- Time off work
- Study and training
- Suspension from work
- Flexible working
- Termination of employment
- Unfair dismissal
- Redundancy payments etc.

- Insolvency of employers

2.2 Below are some of the importance of anti-discrimination employment law and the consequences of not abiding by them.

The importance:

It helps to ensure that the most qualified candidates get the job and that the best employees get promotions. Which in turn helps organisations develop and grow. It enables employees to be more productive as they work in a harassment and discrimination free environment; which also helps to promote team work and better communication in organisations. The diversity created in businesses also attracts a diverse customer base that enables them to widen their market and not discriminate their customers.

Consequences:

Organisations could lose a lot of money settling harassment and discrimination complaints, for example in the case of *Dove v Brown & Newirth Limited*, Brown & Newirth Limited had to pay Mr Dove £63,390.95 (*Mr A Dove v Brown & Newirth Limited*, 2015).

Attending cases is also time consuming and organisations lose valuable time.

Not abiding by anti-discrimination law could also create bad publicity that could cause a loss of customers and good employees.

3.1 Some reasons for lawful and unlawful dismissal enshrined in current employment law.

An employee can lawfully be dismissed for some of the following reasons:

- Their contract has come to an end
- They have breached their contract
- Misconduct at work
- The employee was dishonest during the application. Which renders the contract void.
- Where the continued employment of the employee would result in the employer breaking the law. For example in the case of illegal immigrants.
- Redundancy

Even if an employer has good reason for dismissing an employee, they still have to follow appropriate disciplinary and dismissal procedures.

Unlawful dismissal can either be unfair dismissal or wrongful dismissal. Wrongful dismissal is when an employer doesn't follow the appropriate dismissal procedures while unfair dismissal is when an employee is dismissed for an unfair reason. Some unfair reasons for dismissal include:

- Dismissal for trying to enforce ones statutory rights, such as minimum wage, working hour's directive and any rights under the employment law 2010.
- Dismissal for maternity related reasons.
- Dismissal for being absent on Jury service.
- Dismissal because of a spent conviction.
- Dismissal for transfer of business to new owners (TUPE).
- Dismissal for taking part in legal industrial action that lasted 12 weeks or less.
- Dismissal for joining a trade union.
- Dismissal for whistleblowing (exposing wrongdoing in the workplace).
- Being forced to retire (LAWRITE Employment Law Guide).

Constructive dismissal is also considered to be unfair dismissal.

Constructive dismissal is when an employer's behaviour makes an employee leave their job against their will. For example if an employer demotes an employee for no reason or introduces unnecessary conditions that an employee cannot meet.

3.2 These are the differences between voluntary, involuntary redundancy and mutually agreed severance.

Redundancy is when an employer dismisses employees because their job no longer exists.

Voluntary redundancy is when an employer gives employees the option to put themselves up for redundancy while with involuntary redundancy employees are selected by the employer for redundancy.

On the other hand a mutually agreed severance is an agreement between an employee and employer to resign for a severance package. Unlike a redundancy in a mutually agreed severance the job may still exist.

4.1 The Employment Tribunals are an independent judicial body established to resolve disputes between employers and employees over employment rights. The tribunal will hear claims about employment matters such as unfair dismissal, discrimination, wages and redundancy payments (acas.org.uk, n.d.).

The employment tribunal has the responsibility to hear cases and resolve them impartially. However cases that may involve criminal acts or breach of contract may have to be passed on to a court.

4.2 Employment tribunals differ from normal courts of law in several ways.

Employment tribunals are substantially cheaper than a court, and significantly faster. They are also less formal as people do not need a lawyer and usually represent themselves. The time limit for taking a claim to a tribunal is also shorter than that of a court and employment tribunals specialise in employment law while courts are more general and have more judicial power.

Conclusion

Employment law helps protect employees and employers in the work place, by helping to prevent discrimination and providing clear guidelines on how dismissals and redundancies should be done. An employment tribunal is the judicial body responsible for resolving employment disputes and it differs from a court in many ways.

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