# 5OS01 Specialist employment law

# Learner Assessment

# Email 1 (AC 1.1)

**Email Response to Fellow People Management Officer**

***Subject***: Employment regulation is the cornerstone of society and is a very important part of the national economy.

Dear [Colleague's Name],

I appreciate you for pointing out the time consumed handling problems touched on employment regulations. I agree with your desire to direct further efforts toward improving the employment experience but can only remind you that exact compliance with employment law is the crucial component of that goal. Permit me to give an assessment of the goals and objectives of employment regulation to describe its significance.

1. Protecting Employees and Employers

Employment regulations are generally in place so that it is equally spare for employees and to which employers can look to for guidance (Baker, French & Ali, 2021). Organizations require this protection in order to promote equity, security and effectiveness of the workplace. For instance, limits in time worked, wage rates, or anti discrimination legislation, assist the rights of employees and shield employers from various legal and image expenses.

2. Active treatment for Equal Opportunities

The other regulations are an Equality Act 2010 whereby discrimination of a person in the workplace is prohibited based on age, gender, or race (Ocloo et al., 2021). By enforcing such laws, the NHS Trust promotes student diversity which on its own positively impacts employee satisfaction and thus, engagement –all of which may lead to employment experience.

3. Covers Health and Safety/Staff and Students

The Occupational Health and Safety Act of 1974 and other statutes guarantee that all workers operate in a secure setting. This saves employees from getting to the hospital or workplaces getting attacked by armed robbers and also curbs truancy, increases morale and productivity at the workplace.

4. Managing risks and Conflicts

Employees relations act contain provisions of handling complaints, discipline, and redundancy issues (Setty & Dobson, 2023). Compliance with these frameworks guarantees that such issues are fairly and openly resolved and that the chances of expensive tribunals are minimized while maintaining organizational workforce confidence.

You can also let me know of any particular issues you deal with and I will be ready to provide more advice.

Kind regards,

[Your Name]

People Management Department

## Email 2 (AC 1.2)

**Email Response to Senior Manager**

Subject: Status of European Court of Justice (ECJ) Judgments Post-Brexit

Dear [Manager's Name],

Many thanks for your letter about the state of play for Judgments of the European Court of Justice now that the United Kingdom has left the EU in 2020. This is definitely a gray zone in a way, and I will be more than glad to explain better.

1. Legal Consequences of the Judgments of the ECJ Pre Brexit

Failure by the ECJ before 31 January 2020, the Brexit implementation date, means its decisions still have to be followed to the extent that they are incorporated in retained EU law by the European Union (Withdrawal) Act 2018 (Küskü, Aracı & Özbilgin, 2021). This avoids uncertainties in legal interpretation and statistical certainty especially in areas where EU law has been incorporated into UK law including employment law.

2. Interpretation of Decisions of the European Court of Justice after Brexit

However, pre-Brexit ECJ case-law remains as 'good law'; and since the end of the Brexit transition period on 31 December 2020 it is not for domestic courts to follow new judgments delivered by the Court (Anderson-Gough et al., 2022). However, the UK courts have left the said rulings as mere persuasive authorities that the court may consider where the particular circumstances relate to the case being determined.

3. Role of the UK Supreme Court

In fact, according to section II of the A cupcakes case, the Supreme Court has power to decide not to follow the retained ECJ decision but only in exceptional circumstances, or as Kacker puts it, in some circumstances, the Court of Appeal also has this discretion. This makes it possible for the UK law to develop on its own and outside EU influence but legal security where needed is observed.

4. Example for Illustration

An example in this regard is the Working Time Directive (Council Directive 2003/88/EC) and judgments handed by the ECJ in relation thereto. The ECJ decision in CJEU v. In the case of the flexible workplace, Tyco Integrated Security (2015) affirmed that time the employees use in commuting to and from work, if they do not have a fixed workplace, is working time (Miller,

2021). This judgment is still good in the UK because it was given prior to Brexit and deals with retained EU legislation on working time.

Kind regards,

[Your Name]

People Management Department

## Email 3 (AC 2.1)

**Email Response to Colleague**

***Subject***: Guidance on Occupational Requirements and Gender-Specific Recruitment

Dear [Colleague's Name],

Thank you for your message on occupational necessity and when may labour be operated wholly for saying that a certain job must absolutely be done by a man or a woman. This is an important topic stipulated under Equality Act 2010 that aims at banning discrimination in recruitment including the allow limited circumscription for certain jobs.

Discrimination Law: General Principles

In sections Discussion: UK, under the Equality Act 2010 discrimination of the employee is prohibited by the acts in the selection and recruitment processes, where sex is regarded as a protected feature (Minow, 2021). Nevertheless, there is the so-called occupational requirement (OR) and it can be used where there is an objective reason for doing that. This must be:

Proportionate: The requirement formulated thus is that the requirement has to be a reasonable and proportionate means for achieving a proper purpose.

Specific to the Role: The justification allowed occupies only the central or core tasks of the position and cannot go beyond the core tasks.

Certain types of medical-normative requirements related to the sex of the employee can be admissible

An employer may require that a certain job is done by a man or woman if it is materia to the job requirements. For example:

Genuine Service Requirements: The women's refuge center may need a female counselor as clients are abused women hence the counselor needs to fit into that background (Minow, 2021).

When A Gender-specific Requirement is Not Permissible

Where the gender requirement can be established not to be necessary for the position, it is most probable that the practice constitutes discrimination. For example:

It is submitted that granting that only females can come up for the position of an administrative position with no commendable cause would be unfair under the Equality Act.

Practical Steps

When considering an OR, always ensure:

It is evident and well supported by documentation.

What is done here is that the decision goes to the HR or legal desk for approval.

Comparable alternatives to achieve the legitimate aim which does not impede gender are also discussed (Kulińska, 2020).

If you want me to illustrate these principles with a real-life situation I'd be glad to do so.

Kind regards,

[Your Name]

People Management Department

## Email 4 (AC 2.2)

**Email Response to Nurse Manager**

***Subject***: Consideration of Equal Pay in Upgrading HCAs

Dear [Manager's Name],

Dear officials, I would like to thank you for the request to upgrade two Health Care Assistants (HCAs) from the A grade to the B grade. At the same time, the idea to use excess funds to incentivize selected team members seems quite noble and, at the same time, logical; nevertheless, one has to bear in mind the topic of equal pay under the Equality Act 2010 (Miščević & Purić, 2024).

Legal Framework for Equal Pay

The legal requirement to equal remuneration of male and female employees for performing 'equal work' was introduced by The Equality Act 2010 in the UK. Equal work includes:

Like Work: Employment positions that involve similar or relatively similar activities.

Work Rated as Equivalent: Evening jobs which assume the same evaluation rating on a job evaluation plan.

Work of Equal Value: Positions in organizations where skills, mental and physical demands, and decision-making content and complexity are similar.

Discrimination Risk Outcome

Since 80 percent of the HCAs in the Trust are women, it would be unlawful for them not to justify the upgrading of two male HCAs to a new higher grade in accordance with the equal pay provisions. HCAs of one sex might argue that they are not treated fairly unless it can be proven that the new grade positions entail extended duties or the standards defining the A-grade place the HCA in a different category to the other workers (Nic Shuibhne, 2021).

Steps to Ensure Compliance

To proceed fairly and legally, I recommend the following steps:

Document Role Differences: Make sure that A grade involves the two HCAs in very different roles from the roles they perform on the B grade.

Job Evaluation: The final examination involves using a structured job evaluation scheme to determine whether the upgraded positions qualify for B grade. This keeps it clear and consistent with other methods and other research.

Recommendation

They are in turn advised against supporting the upgrade in its current state, while they follow the steps above in this analysis (Simoncini & Martinico, 2021). This is helpful to the Trust because terrible legal complications possibly arise but fairness and equity are observed.

If you require help with the job evaluation or any other clarification simply let me know.

Kind regards,

[Your Name]

People Management Department

# Email 5 (AC 3.1)

**Email Response to Colleague**

***Subject***: Advice on Potential Constructive Dismissal Claim

Dear [Colleague's Name],

I appreciate your initiating me to this matter. It would therefore be correct to state that a constructive dismissal complaint can arise out of a variation in working hours claim especially where the change is grossly inoperative of the contract or where it violates the conventional duty of trust and confidence. On the following pages, I will detail the main factors and time horizons for such claims:

Conditions under Which Constructive Dismissal can Be Claimed

In constructive dismissal the employee resigns due to the actions of the employer that is a repudiation of the contract of employment and renders its further performance impossible (Kahn, 2024). Changes to working hours can form the basis of a claim if:

Breach of Contract: These are made without the employee's consent or without adequate consultation in violation of the contract's express terms.

Unreasonable Implementation: It is arbitrary or inconsistent or unfair as a mode of working or managing change or as a method of giving or imposing change.

For instance, reassigning a radiographer to unsociable hours when they had not agreed to the change could be a.represents a breach, especially where changes in working patterns have been implemented and are not. It sums up the legal position on breach under both contract and as a possible legal remedy (Suksi, 2021).

Timelines for Making a Claim

According to the Employment Rights Act 1996, a former employee has three months less one working day from the date on which the effective resignation takes effect to present a claim to the Employment Tribunal (Pansara, 2021). If this period has elapsed, the claim is said to be out of time; however, each state is flexible as it allows special circumstances.

Preventative Measures

To mitigate the risk of such claims in the future, I recommend:

Making certain that substantial changes to terms are discussed and agreed with the employees and preferably in writing.

Making available reasonable accommodations or financial remedy if changes being made are unfair to employees.

Maintaining clinical notes to represent agreement with legal requirements for consultations (Heshmati, Honkaniemi & Juárez, 2023).

Kind regards,

[Your Name]

People Management Department

# Email 6 (AC 3.2)

**Email Response to Senior Manager**

***Subject***: Legal Requirements for Redundancy Process

Dear [Manager's Name],

You have provided me with the details of your proposed reorganisation in your directorate, thank you. Attaining efficiency is not bad, but since we need to follow the legal procedures regarding redundancies to avoid cases of bias and to safeguard the interests of the Trust against possible lawsuits, this process is critical. The key obligation as per the Companies Act 2013 are mentioned below:

Definition of Redundancy

According to the Employment Rights Act 1996 redundancy occurs where an employee is dismissed due to a disappearance of a job that they were required to do, and this seems to fit your case (Doucet & McKay, 2020). But the process has to be done legally.

Consultation Requirements

Collective Consultation

Depending on the number of proposed dismissals, the employer may be legally obliged to consult employee representatives or trade unions: if that total 20 or more redundancies are proposed within a 90-day period.

This has to be done at least 30 days before dismissals where the redundancy is between 20 and 99 employees or 45 days where more than 100 employees are proposed for redundancy.

Individual Consultation

All the employees affected in some method including the victims of redundancy must be consulted separately. Inability to consult adequately leads to unfair dismissal claims.

Selection Criteria

It is legally impermissible to choose employees for redundancy on the basis of their poor performance if this cannot be objectively evidenced with reference to specified, objective, measurable and agreed standards (Van Niel et al., 2020). Selection criteria should be:

Objective: In relation to quantifiable criteria such as extracurricular activities, academic achievements, and class attendance.

Fair and Non-Discriminatory: There are also some forms of criteria you should avoid because they could have an indirect adverse effect on protected groups defined in the Equality Act 2010 (Rocha, 2021).

General Possibly Consequential Penalties for Non-Compliance

Should the Trust fail to obey these steps, it may be subjected to unfair dismissal or failure to consult claims, and will entail massive monetary and image losses for the Sun Trust.

Next Steps

I suggest having a meeting in which to plan the most compliant redundancy process indicating when consultation will take place and when selection criteria are to be set. We want to give you options where we can support you in this let me know.

Kind regards,

[Your Name]

People Management Department

## Email 7 (AC 3.3)

**Email Response to Chief Executive Officer**

***Subject***: Employee Rights Under TUPE in a Potential Merger

Dear [CEO's Name],

Thank you for letting me know about the possible outsourcing of operations of a pharmacy. One must also bear in mind that TUPE rights of employees shall be very influential in the process at hand. Here is the synopsis of the whole videos to make it more understandable for you:

Applicability of TUPE

TUPE regulations come into force in cases of transfer of business or service provision to another business (Duffy, Van Esch & Yousef, 2020). Thus, in this case integration of the pharmacy operations with a centralised service situated at our Trust would automatically be a service transfer which would, in turn, mean that TUPE protection will apply in relation to employees that will be transferred.

Employee Rights Under TUPE

Automated systems of transferring employment.

It must also be noted that employees working in the pharmacy services that are being transferred to the new centralised operation will become employees of that operation on transfer.

Employee's rights in relation to the terms and conditions of employment are the right to pay, annual leave, and periods of service must not be altered after transfer (Bergemann & Riphahn, 2023).

Protection from Dismissal

It is unlawful to dismiss an employee because of the transfer unless there is adequate reason that the staffing changes due to the transfer is an economic, technical, or organisational efficiency issue (ETO).

Any dismissal without such a reason is regarded as automatically unfair.

Information and Consultation

Both Trusts are under statutory obligation to notify the employees or appropriate representative of employees (such as Trade Union) of the transfer and any future changes.

The consequences of not consulting include compensation claims, up to 13 weeks' pay per the employee.

Changes to Employment Terms

Subsequent alterations in terms of employment following the transfer are particularly limited and there are allowed only where the alteration is for the employee's advantage or where substantiated by an ETO reason (Brenøe et al., 2020).

Next Steps

To ensure compliance, I recommend:

Identifying target workers might be affected by the merger.

Communicating with employee representatives to explain the plan in an effort to transfer them.

Kind regards,

[Your Name]

People Management Department

## Email 8 (AC 4.1)

**Email Response to Colleague**

***Subject***: Regulatory Requirements for Calculating Holiday Pay for Casual Nurse Bank Staff

Dear [Colleague's Name],

It is therefore necessary to ensure that casual nurse bank's stakeholders', receive fair and lawful holiday pay calculation to avoid staff/ union blatant breach of employment law. Below are general considerations that act as the requirement that you need to fulfill in relation to regulation.

Entitlement to Holiday Pay

As per the WTR all employees have the statutory right to 5.6 weeks paid annual leave per year which includes casual and bank workers, and depending on their working patterns, part-time workers and those that are irregular are also included (Ginja, Karimi & Xiao, 2023). This includes four weeks as stipulated by EU law and an additional 1.6 weeks as provided for under the British legislations.

Calculation of Holiday Pay

Reference Period

Employees covered by the standard Conditions have to be paid, for the days on which they are not working but are required to take 'rest': One-half of one week's pay for each 'rest' day; where the worker concerned has irregular hours, the amount 'They must be paid' has to be determined on the basis of the average weekly pay in the most recent 52 weeks in which the worker was engaged (exempting weeks were there)

This is in accordance with the changes that the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 brought.

Overtime and other extra wages pay

All distinctly measurable contractual entitlements that are necessarily inextricable from performance of the work must be incorporated into the holiday pay calculation.

Accrual Basis

For casual employees, holiday pay is calculated at 12.07% of the hours worked, which is a percentage of the annual leave right that is assumed as 5.6 weeks for full-time employees in one year, out of 46.4 weeks' total working time.

Practical Steps

To ensure compliance:

Record Keeping: Each casual worker should keep record of the time he worked accompanied with the pay he received.

Clear Communication: This means that when a member of the nurse bank works through a bank holiday he/she should be paid according to their contractual rate of pay plus the normal amount that would ordinarily have been paid for bank holidays (Baker, French, E., & Ali, 2021).

Moreover, the staff in the nurse bank should be aware of the manner in which bank holidays are accrued.

Regular Reviews: The payroll systems should be reviewed periodically to check on the new set of regulations on payroll.

If you would like any further information or any help in relation to any of the measures set out above please let me know. I'm happy to assist further.

Kind regards,

[Your Name]

People Management Department

# Email 9 (AC 4.2)

**Email Response to Staff Member**

***Subject***: Differences Between Maternity Leave and Shared Parental Leave

Dear [Staff Member's Name],

Thank you so much for your query as to how maternity leave works in tandem with shared parental leave. I understand entirely that which one best will work for your family may be the most important thing to figure out, therefore, here are the distinctions that could be useful guidance:

Maternity Leave

Statutory rights for female workers giving birth

The chief characteristics include the following.

Length of Leave

Maternity leave lasts for up to 52 weeks total, comprising 26 weeks of statutory maternity leave and 26 weeks of statutory additional maternity leave.

You must take at least two weeks of maternity leave after the baby's birth (or four weeks if you work in a factory).

Pay While on Leave

Statutory Maternity Pay (SMP) is paid for as many as 39 weeks, and it is shared as:

First six weeks: 90% of average weekly earnings (AWE)

Next 33 weeks: £172.48 per week (or 90% of your AWE if lower)

The remaining weeks are unpaid unless your employer offers enhanced maternity pay.

Eligibility

You must have been employed for at least 26 weeks by the 15th week before your baby's due date and earn at least £123 per week on average.

Sole Responsibility

Maternity leave is for the mother alone and cannot be shared with the partner.

Shared Parental Leave (SPL)

Shared parental leave enables both parents to share some time off after the birth of the baby (Ocloo et al., 2021). Key differences are:

Duration of Leave

SPL can be shared between the two parents for up to 50 weeks (less any maternity leave already taken). This includes 37 weeks of statutory pay if eligible.

The leave is taken in blocks, and both parents can take it simultaneously or consecutively.

Pay During Leave

Statutory Shared Parental Pay (ShPP) is paid at the same rate as SMP, £172.48 per week or 90% of your average weekly earnings (whichever is lower) (Setty & Dobson, 2023).

Eligibility

Both parents must meet eligibility criteria, including having been employed for at least 26 weeks by the 15th week before the birth and earning at least £123 per week.

Which Option is Best?

Maternity leave has more generous paid leave in the first few weeks of birth, whereas shared parental leave allows both parents to share the leave and prepare for childcare (Setty & Dobson, 2023). If you and your partner want to spend time off with the baby, SPL might be more suitable for you.

I would appreciate it if you let me know if you have any further questions.

Thank you,

[Your Name]

People Management Department

## Email 10 (AC 4.3)

**Email Response to Colleague**

***Subject***: Guidance on Flexible Working Request

Dear [Colleague's Name],

It has been great to receive your notification of this flexible working request. I realize that such requests may affect the ability of the team handling the services rendered to it; however, one has to look at the matters from the legal perspective as well as the functionality aspect of the services.

Legal Right to request flexible working

Set by the Employment Rights Act 1996 with modifications from the Children and Families Act 2014 more employees have the legal right to ask for flexible working when they have served the employer for 26 weeks (Kulińska, 2020). This includes requests for remote working, shift swapping, or change of shift.

Managing a flexible working request

Consideration of the Request

Employer, you have to extend fairness in handling any request as you will be carrying out the requests on behalf of the employee. Where the right to request extended or flexible working is a statutory one, the same cannot be said of actually having to agree to it.

Refusal Criteria

If you decide to refuse the request, you must provide a valid business reason, such as:

The effects on service quality, as, as you've pointed out

Who is to bear the incremental costs

Impersonal communication has an overall negative impact on performance or business productivity.

This blocked reorganisation of work to allow for moving employees between positions.

Procedure for Refusal

The employee has to be notified of the decision within three months of making the request.

If you would like to decline that request, make sure that it is documented properly, and the employee will be allowed to provide another solution, or suggest the conditions can be adjusted in some way.

Possible Consequences of Organisations' Failure to Allow Flexible Working

Although there is no legal requirement to do so, freely rejecting flexible working requests without adequate organisational reasons could lead to indirectly discriminating against the Trust especially when women or carers (etc.) are most likely affected (Miller, 2021).

If you need help with coming up with other reasons in response to this request, feel free to contact me.

Kind regards,

[Your Name]

People Management Department

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