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Centre for Open and Lifelong Learning

FEEDBACK TUTORIAL LETTER

2ND SEMESTER 2020

ASSIGNMENT 2

LABOUR LAW 1B LAL112S



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Feedback tutorial on assignment 2

Greetings to you all. I hope everyone is ok under the circumstances. First of all, let me use this opportunity to thank most of you for submitting your assignment 2 on time. Having said this, I noticed a slight improvement when compared to assignment 1. At least several of you managed to score 50 and above. However, your overall performance is still lackluster to say the least.

Like in your assignment one, many of you repeated the same mistakes in assignment 2. Below is the summary of shortcomings that I discovered while marking your assignment 2.

1. Plagiarism

Like assignment 1, I observed that many of you cite sources without acknowledging their authors. Plagiarism remains a challenge for many of you. Please be advised, plagiarism is a serious academic offence which can attract a sanction from the University. I therefore urge you to acquaint yourselves with NUST's rules and regulations pertaining to academic referencing. Every source of information you use in answering your assignment questions should be properly referenced. Failure to do so, leaves me with no choice but to mark you a zero.

2. Using irrelevant sources from other countries to answer assignment questions

Although nothing prevents you from using any materials to answer your assignment questions, it is also important to note that such sources though persuasive are largely irrelevant in the Namibian context. Please consult relevant and locally sourced materials to argue your case in the assignment.

3. Academic dishonesty

I have also realized a growing and worrying trend of students copying each other's work. This is not only a serious academic offence, but an issue which borders on ethics. This type of behavior is no different from plagiarism. I wish to further inform you that I have the discretion to mark your work zero if I discover that students submitted an assignment that is exactly the same i.e word for word, mistake for mistake. Therefore, I urge you to refrain from this conduct.

4. Using your own personal convictions instead of relevant sections of the Labour Act to answer assignment questions



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In this assignment I observed that many of you based your answers on question 5.1 on your own religious and personal convictions. This is not only misplaced but also unethical. Remember this is an academic exercise and not a church service or a biblical study class. I therefore urge you to refrain from doing this in your future assignments.

Having said what I said above, I hereby wish you the best in your upcoming exams.
Below is the memo and guidelines for assignment 2.

Assignment 2

This assignment covers units 5,6,7,8 and 9

Upon completion of this unit you will be able to:

Determine the application field of the Social Security Act

Discuss in detail the Maternity Leave Benefit

Summarise the restrictions in respect of benefits payable in term of the Act

Determine the application field of the Employee's Compensation Act

Summarise the different benefits under the Employees Compensation Act

Discuss the constitutional protection against discrimination

Define the concept "discrimination".

Distinguish between fair and unfair discrimination in employment

Summarize the different situations where discrimination is allowed as provided for in the Labour Act 11 of 2007

Question 1

Briefly define the following terms

1.1 Employer (1)

1.2 Death benefit (1)

1.3 Temporal Total Disablement (1)

1.4 Fair discrimination (1)

1.5 Suitably qualified person (1)

- Students can use the definitions as found in the study guide or any other relevant source.



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Question 2

Either match or fill in the gaps below with a the correct phrase or word

- 2.1 Mediation (1)
- 2.2. Labour Commissioner. (1)
- 2.3. Arbitration (1)
- 2.4 Sick leave (1)
- 2.5. Article 10 (1)

Question 3

3.1 Timothy Pepsi Cola (employer) and Bakpro Diabolus (employee) are involved in a heated labour dispute in relation to the terms and conditions of their agreed contract of employment. Timothy is of the opinion that he is not obliged to pay Bakpro for the two weeks that he was on sick leave since the “no work, no pay principle” applies. They both decide to take their dispute for conciliation. Why do you think they chose this route among other options available to them? (9)

- Conciliation is a private and confidential process where the parties can freely explore options (1)
- The parties keep control of the process because they control the outcome. (1)
- The parties determine and shape the terms of any settlement. (1)
- The conciliation process is a relatively informal and flexible process. (1)
- The parties do not need legal representation. (1)
- In shaping the outcome of the process, the parties use their own notion of fairness rather having one imposed on them. (1)
- The process can assist to build relationships. (1)
- Conciliation is appropriate if the parties are unable to communicate effectively with each other. (1)
- The conciliation process is relatively inexpensive and quick. (1)



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Question 4

4.1 While working in an underground mine, Sitantwe Kwena is hit by a falling rock and sustains some serious injuries. He sustains a severe back injury which renders him incapable of walking on his own. As a result, the mining company that employed him decides to terminate his employment. Can he claim compensation as per the various labour related laws in the country? (6)

- Yes. This is called permanent disablement (1)
- Permanent disablement is a payment made in respect of any disabling anatomical defect or loss of function as a result of an injury on duty. (1)
- He can claim compensation for permanent disablement assessed at 30% or less, is paid in a lump sum, based on 15 times the employee's monthly earnings up to N\$ 3000 of such earnings. The lump sum payment in respect of 30% permanent disablement where the employee was earning N\$ 3 000 per month or more is therefore N\$ 45 000. (1)
- Where the degree of permanent disablement is less than 30% the lump sum is reduced proportionately. (1)
- If the degree of permanent disablement is more than 30%, compensation takes the form of a monthly pension, calculated on the employee's monthly earnings up to N\$ 5000 of such earnings. The pension for total disablement (100%) is the same as the periodical payments for temporary total disablement. If an employee's permanent disablement is more than 30% but less than 100%, a pro rata pension is paid. (1)
- The assessment of the degree of disablement is the function of the Commission. (1)



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Question 5

5.1 Jeffrey, a hard-working young man from Grootfontein saw an advertisement in the local daily for the position of school counsellor at a Roman Catholic High School. Jeffrey has the right qualifications as he recently graduated with a degree in Social Work from the University of Namibia. He applied for the job and was subsequently called for an interview. During the interview panel, he was asked as to his views on homosexuality. He told the panel that he supports gay rights wholeheartedly since he is living as a proud homosexual man since his teenage years. A week later, he received a letter from the school and letter stated that they could not employ him because of his sexuality. According to the school, homosexuality goes against the teachings of God.

Is the action of the school justified in this regard?
(8)

- No. This is tantamount to discrimination. (1)
- Article 10 of the Constitution prohibits discrimination. It provides as follows:
 - (1) All persons shall be equal before the law. (1)
 - (2) No person shall be discriminated against on the grounds of sex, race, ethnic origin, religion, creed or social or economic status. (1)
 - Section 5(2) of the Labour Act provides that a person must not discriminate in any employment decision directly or indirectly, or adopt any requirement or engage in any practice which has the effect of discrimination against any individual on one or more of the following:
 1. Race, colour or ethnic origin. (1)
 2. Sex, marital status or family responsibilities. (1)
 3. Religion, creed or political opinion. (1)
 4. Social or economic status. (1)
 5. Degree of physical or mental disability. (1)
 6. AIDS or HIV status or
 7. Previous, current or future pregnancy. (1)

5.2 Catherine von Blotnizz works in a mine at Oranjemund. She recently found out that she is pregnant. Her Company decides to restrict her to office work and proceeds to reduce her salary by a third until such a time she gives birth.

(6)

- Students can cite section 5 of the Labour Act to argue their case
- Students can also cite article 10 of the Namibian Constitution to argue their case



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- Students can also use the provisions of the Social Security Act on maternity issues to answer the question.

5.3 Judas Nakare is an aspiring chef. He is skilled in cooking and preparing various African cuisines. One day he saw an advert in the newspaper for a position of head chef. The main requirement was that that particular chef must have additional experience in preparing Asian food such as Sushi and Chinese noodles. He nevertheless applied but was not even called for an interview. He seeks an audience with the Labour Commissioner. He claims the advert discriminated against him. Can his claims succeed in this regard?

Angry, she comes to your Labour Consultancy firm for advice, how are you going to advise her in this situation?

(6)

In terms of the Labour Act, the following actions shall not be deemed as discrimination:

- To take affirmative action measures to ensure that racially disadvantaged persons, women or persons with disabilities enjoy equal employment opportunities and are equitably represented in the workforce of an employer.
- To select any person for purposes of employment or occupation according to reasonable criteria, including, but not limited to, the ability, capacity, productivity and conduct of that person or in respect of the operational requirements and needs of the particular work or occupation in the industry in question.
- For the purposes of proper work performance standards, it cannot be considered as unfair discrimination when an employer objectively selects the most suitable candidate for the position.
- To distinguish, exclude or prefer any individual on the basis of an inherent requirement of a job.
- In the case of a female employee who is pregnant, to temporarily reassign her duties or functions, other than her normal duties or functions, which are suitable to her pregnant condition, provided that the reassignment does not lead to reduction in remuneration or other benefits.
- In the case of a person with a disability, that person is, in consequence of the disability, incapable of performing the duties or functions connected to the employment or occupation in question or are so prohibited by law.