FEEDBACK TUTORIAL LETTER

2nd SEMESTER 2019

Assignment 2

Labour Law 1B
(LAL112S)
Feedback tutorial for assignment 2. Labour Law 1B

Thank you all for submitting your assignments on time. Most of you performed better than in assignment one. I can only attribute this to the fact that you read and understood your assignment questions before attempting to answer them.

Below are my comments and/or observations pertaining to your first assignment.

1. Plagiarism

Like in assignment 1, I have noticed that many of you still struggle to properly refer to your sources of info. Plagiarism is a serious academic offence and may incur some severe penalties. Please acknowledge all your sources of info you used in the assignment. You are further requested to acquaint yourself with NUST’s rules and regulations pertaining to plagiarism.

2. Over-reliance on the study guide.

Please use other materials to answer your assignment questions. The study guide as the name implies, is a guide and does not contain all the necessary information for the subject. You are therefore requested to consult as much materials from the library and the internet as possible.

3. Using South African Labour related laws and policies in making your arguments

I have also noticed that some of you over-relied on South African law to make your arguments. The Protected Disclosure Act is not a Namibia piece of legislation, rather it is a South African law. Although this is entirely not wrong, you are nevertheless still required and overwhelmingly expected to use Namibian labour related laws and policies in your assignments. After all, all the case studies used in your assignments relate to the Namibian situation.

Having said this, I can only wish you the best in your upcoming exams.

Assignment 2

Question 1

Define the following terms:

1.1 Occupational detriment

1.2 Legitimate job requirement

1.3 Arbitration tribunal
1.4 Permanent Disablement

1.5 Work of equal value

[10]

Question 2

Give a word or phrase (or complete the sentence), in the context of the common law, case law and the relevant labour legislation, whichever is applicable:

2.1 Defect (1)

2.2 Dispute of right (1)

2.3 Employment Equity Commission (1).

2.4 Private arbitration (1)

2.5 Equal employment opportunities (1)

[5]

Question 3

Jack Steward and Sons Brickmaking Inc owns a brickmaking company in Okahandja and employees about 125 brick makers. The company is the biggest supplier of bricks to residents of the town. In an effort to meet the demands of his clients, he instructed all his workers to start working on a rotational basis on Sundays from 07:30 to 16:00. Workers had no issues with working on Sundays as this meant claiming for overtime. However, they were only willing to work from 07:30 to 12:30 and as a result they declared a dispute.

3.1 The Trade Union and the management of Jack Steward and Sons Brickmaking Inc entered into negotiations, but after about a month of negotiations the parties reached a deadlock. The Trade Union representing the workers wants to embark upon a strike action. However, hoping they could still reach a compromise with the employer, they decided to refer the dispute for conciliation. Define the term “Conciliation” and briefly explain the process of referral of a dispute to the Labour Commissioner. (10)

3.2 Briefly describe the merits of a conciliation (5)
Question 4

4.1 Namakau is 6 months pregnant and employed as a janitor at a local Law firm. She is not aware of her maternity benefits. In fact, she was informed by the Manager of the said law firm that she has limited maternity benefits since she is just a janitor. She comes to your Labour consultancy “J and K Labour Consultants” for advice. How are you going to advise her? (9)

4.2 in terms of the Labour Act, briefly define the term “Employee”. (2)

Question 5

5.1 Kobus Jaco van Rensburg is a white Namibian male and a recent Engineering graduate from the University of Namibia. On 01 April 2019, he applied for an advertised position of a Junior Engineer at the Ministry of Works and Transport. Three weeks later, he was called for an interview. Three days later, the Human Resource office informed him that although he passed the interview, they could not give him the job because of his race and gender.

Can Kobus seek redress by claiming racial discrimination in this regard? (6)

5.2 With at least one example, briefly explain the concept of Employment decision? (3)

Assignment 2 memo

Question 1

Define the following terms:

1.1 Occupational detriment

Occupational detriment means to protect employees that bring illegal practices to the fore from victimisation (1) or other prejudicial treatment by the employer. (1)

1.2 Legitimate job requirement

A “Legitimate job requirement” refers to genuine and objectively verifiable qualities needed for the successful execution of duties (1) for example, language requirements, distinctive technical skills, particular management experience etc (1)

1.3 Arbitration tribunal
An Arbitration tribunal operates under the auspices of the Labour Commissioner and have jurisdiction (1) to hear and determine any dispute or other matter arising from the interpretation of the Labour Act of 2007. (1)

1.4 Permanent Disablement

Permanent Disablement are payments made in respect of any disabling anatomical defect (1) or loss of function as a result of an injury on duty. (1)

1.5 Employment Barrier

An “employment barrier” is defined as any rule, practice or condition, other than a legitimate job requirement, (1) which adversely affects persons who are members of a designated group more than it affects persons who are not members of such designated group. (1)

[10]

Question 2

Give a word or phrase (or complete the sentence), in the context of the common law, case law and the relevant labour legislation, whichever is applicable:

2.1 Defect

2.2 Dispute of right

2.3 Employment Equity Commission

2.4 Private arbitration

2.5 Equal employment opportunities

[5]

Question 3

Jack Steward and Sons Brickmaking Inc owns a brickmaking company in Okahandja and employees about 125 brick makers. The company is the biggest supplier of bricks to residents of the town. In an effort to meet the demands of his clients, he instructed all his workers to start working on a rotational basis on Sundays from 07:30 to 16:00. Workers had no issues with working on Sundays as this meant
claiming for overtime. However, they were only willing to work from 07:30 to 12:30 and as a result they declared a dispute. (10)

3.1. Conciliation in terms of the Labour Act 11 of 2007 includes:

- Mediating a dispute; (1)
- Conducting a fact finding-exercise; (1)
- Making an advisory award if it will enhance the prospects of settlement or (1)
- The parties to the dispute agree. (1)

Conciliation is therefore a process in which an independent third party helps the parties to a dispute to try to reach a settlement. (1)

- Any party to a dispute may refer the dispute to the Labour Commissioner or any labour office; (1)
- The party who refers the dispute must satisfy the Labour Commissioners that a copy of the referral has been served on all other parties to the dispute; (1)
- The Labour Commissioner, if satisfied that the parties have taken all reasonable steps to resolve or settle the dispute, must
  - Refer the dispute to a conciliator to attempt to resolve the dispute through conciliation. (1)
  - Determine the place, date and time of the first conciliation meeting and (1)
  - Inform the parties to the dispute of the details. (1)

3.2 Briefly describes the merits of a conciliation (5)

- Conciliation is a private and confidential process where the parties can freely explore options;
- The parties keep control of the process because they control the outcome;
- The parties determine and shape the terms of any settlement;
- The conciliation process is a relatively informal and flexible process;
- The parties do not need legal representation;
- In shaping the outcome of the process the parties use their own notion of fairness rather than having one imposed on them;
- The process can assist to build relationships;
- Conciliation is appropriate if the parties are unable to communicate effectively;
- The conciliation process is relatively inexpensive and quick.
Students may cite any 5 of the above. Each bullet point attracts 1 mark.

Question 4

4.1 Namakau is 6 months pregnant and employed as a janitor at a local Law firm. She is not aware of her maternity benefits. In fact, she was informed by the Manager of the said law firm that she has limited maternity benefits since she is just a janitor. She comes to your Labour consultancy “J and K Labour Consultants” for advice. How are you going to advise her? (9)

Maternity leave benefits shall be payable to a female member in respect of:

Four (4) weeks before the expected date of her confinement and eight (8) weeks after the actual date of her confinement. (1) A medical practitioner must certify the expected date of her confinement in writing. (1)

If the actual date and the expected date differ, the benefit will be paid for only 12 weeks in total.

(a) If the child dies within two (2) weeks after the actual date of confinement, the benefit will be payable in respect of a further period of four (4) weeks only, reckoned from the date of death. (1)

(b) If a female dies while receiving maternity leave benefits, such benefits shall be payable to the person in whose care the child is left or placed or any other person who is considered by the Commission to be a fit and proper person to administer the benefits on behalf of the child. (1)

(c) No maternity benefits shall be payable to a female member who resumes her employment or takes up any other employment during her maternity leave. (1)

- Maternity benefits to female employees will equal 100% of basic remuneration up to a ceiling determined from time to time by the Social Security Commission for a maximum of 12 weeks, with a minimum and a maximum per month, determined by the Social Security Commission. (1)
- All Claims must be submitted to the Commission, not later than 7 days before the expected date of birth. Such claims must be submitted on Form 13. The form is available from the Social Security Commission’s office. (1)
- Birth certificates or death certificates, if the child was stillborn or has died within two weeks, must be submitted within 7 days after actual date of confinement on the prescribed Form 14. The Form is also available at the office of the Social Security Commission. (1)
- The Commission shall not pay the final maternity benefits due, unless a declaration regarding employment status (Form 15) has been submitted. Such claims should reach the...
office of the Social Security Commission not later than 7 days before actual resumption of duty. (1)

4.2 in terms of the Labour Act, briefly define the term “Employee”. (2)

Any person younger than 65 years who is employed (1) by or working for any employer for more than two days in any week, and who is receiving remuneration. (1)

Question 5

5.1 Kobus Jaco van Rensburg is a white Namibian male and a recent Engineering graduate from the University of Namibia. On 01 April 2019, he applied for an advertised position of a Junior Engineer at the Ministry of Works and Transport. Three weeks later, he was called for an interview. Three days later, the Human Resource office informed him that although he passed the interview, they could not give him the job because of his race and gender.

Can Kobus seek redress by claiming racial discrimination in this regard? (6)

In terms of the Labour Act 11 of 2007 the action of the Ministry of Works and Transport amounts to fair discrimination. (1). 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. (1). It is also a complete defence to an allegation of discrimination without justification if the employer acted in accordance with an affirmative action plan approved by the Employment Equity Commission in terms of the Affirmative Action (Employment) Act. (1)

- 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 (1) or in respect of the operational requirements and needs of the particular work or occupation in the industry in question. (1)

- Moreover 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. (1)

5.2 With at least one example, briefly explain the concept of Employment decision? (3)

The concept of employment decision is defined in section 5(1) (b) of the Labour Act and includes:
• Access to vocational guidance, training and placement services; (1)
• Access to employment and to a particular occupation or job; (1)
• Access to and the provision of benefits, facilities and services. (1)