higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LABOUR RELATIONS N5

15 JUNE 2016

This marking guideline consists of 12 pages.

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SECTION A

QUESTION 1

1.1 True
1.2 True
1.3 True
1.4 True
1.5 False
1.6 False
1.7 True
1.8 True
1.9 False
1.10 True

(10 x 1) **[10]**

QUESTION 2

2.1 I
2.2 F
2.3 G
2.4 A
2.5 B
2.6 J
2.7 D
2.8 C
2.9 H
2.10 E

(10 x 1) **[10]**

QUESTION 3

3.1 Employee
3.2 Employer
3.3 Trade union
3.4 Socialism
3.5 State
3.6 Substantive
3.7 Workplace forums
3.8 Dismissal
3.9 Severance pay
3.10 Misconduct

(10 x 1) **[10]**

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QUESTION 4

4.1 Employee/worker
4.2 Fixed term contract
4.3 Industrial revolution
4.4 Decentralised
4.5 Community of interest
4.6 Collective bargaining
4.7 Night work
4.8 Secondary strike
4.9 Basic Conditions of Employment Act
4.10 Family responsibility leave

(10 x 1) **[10]**

TOTAL SECTION A: 40

SECTION B

Candidates must answer any four questions in this section.

QUESTION 5

5.1
- The shop steward has the role of employee and the role of shop steward.
- He should step out of the one role before taking on the other role.
- As an employee he needs to ask permission to leave the workplace in order to fulfil his/her role as shop steward.
- He will be permitted to leave his post on short notice if a workplace matter requires his attention.
- The supervisor must understand that the employee has to fill another role and that permission to carry out this role should not be unreasonably withheld. (Any 4 x 2) (8)

5.2 5.2.1 State as legislator
- The state provides various acts to regulate the workplace relationship, e.g. the LRA makes provision for aspects like freedom of association and for protection against unfair dismissals.
- Government promulgates laws to control both the individual and collective rights of the employee.
- It may by legislation, establish collective bargaining machinery and may prescribe statutory procedures to be followed.
- The government directly enacts legislation to complement common law.
- The BCEA and Health and Safety legislation are the most important pieces of legislation in this category.
- The BCEA prescribes maximum working hours, regulates meal intervals and various kinds of leave.
- The OHSA provides for safety and safety regulations in the workplace. (Any 3 x 2)

5.2.2 State as conciliator

- The state provides for the establishment of processes like conciliation and mediation.
- Bodies (institutions) like the CCMA have been established for conciliation, mediation and arbitration.
- The government may also, in certain instances, intervene in disputes itself.
- May act itself as mediator of conciliator.
- In some cases these processes will be compulsory
- The purpose is to ensure peace and stability. (Any 3 x 2)

5.2.3 The role of the police

- The police has no direct role to play within the labour relationship.
- They are not supposed to side with either party .
- They are there to protect the public and prevent public disturbances.
- They are called in to intervene when either party causes a public disturbance – usually when employees and their unions infringe on the rights of other individuals.
- They may not interfere on private property unless requested to do so, and only then if the activity is criminal. (Any 3 x 2)

(3 x 6) (18)

5.3

- State – secondary partner
- Employer – primary partner
- Employee – primary partner (3 x 2) (6)

5.4 The right:

- To control
- To supervise
- To discipline
- To decision-making
- To dismiss employees
- To strategic planning
- To close a plant
- Of merging
- To transfer employees
- To promote employees
- To join an employer organisation
- To a lock-out
- To recruit employees
- To appoint employees
- The induction of new employees
- To train employees
- To allocate tasks
- To retrench employees
- To restructure plant

- To increase salaries
- To establish hours of work
- To grant or refuse leave of absence
- To determine overtime
- To give lawful instructions
- To ensure that affirmative action directives are implemented
- To do job grading and performance appraisals (Any 8 x 1) (8)

[40]

QUESTION 6

6.1
- Misconduct of the employee
- Incapacity of the employee
- Operational requirements of the business/Retrenchments (3 x 1) (3)

6.2
- To resolve disputes through conciliation, mediation and arbitration
- To provide training in aspects such as: the establishment of workplace forums, disputes and grievances, disciplinary procedures, dismissals and affirmative action
- To assist in the establishment of workplace forums
- To limit industrial action such as strikes
- To decide which service will be regarded as essential
- To compile and publish information about its activities
- To do research into labour-related aspects
- To establish picketing rules
- To consider applications for accreditation and subsidy by bargaining councils and private agencies
- To provide support for Essential Services Committee (Any 7 x 2) (14)

6.3 One week
- In the first four weeks of employment (If the employee has been employed for 6 months or less)

Two weeks
- If the employee has been employed for more than 6 months, but less than one year

Four weeks (30 days)
- If the employee has been employed for more than one year
- Or in the case of a farm worker or domestic worker who has been employed for more than 4 weeks
- The notice period can be varied by a collective agreement
- Notice must be given in writing
- Notice must not be given when the employee is on leave, sick leave or maternity leave (Any 9 x 1) (9)

6.4
- A pregnant employee is entitled to 4 months' unpaid maternity leave.
- Maternity leave may begin up to 4 weeks before the expected date of birth.
- Maternity leave may be agreed otherwise if so required on account of the health of the employee.
- The employer may not require an employee to return to work before 6 weeks after the birth of the child.
- Should the employee wish (elect) to return within 6 weeks, a medical doctor or midwife must certify that she is fit to do so.
- Should the employee have a stillborn child or miscarriage in the third trimester of pregnancy, she can remain on maternity leave for 6 weeks.
- This period can be lengthened should the doctor certify that this is necessary for her health. (7 x 2) (14)

[40]

QUESTION 7

7.1

INDIVIDUALISM	COMMUNITY OF INTEREST
• Freedom of the individual • Freedom to make own choices • Propagation of individualism and protection • Support of a democratic majority government • Legislation protects all parties • Conflict is unavoidable or is accommodated by special procedures • Individual has own farm, business, etc. • Every person takes responsibility for him/herself • Privacy is very important • Believing that one is entitled to one's own opinion • Education is important to uplift oneself • The need of the individual is most important • Creates order	• Legislation makes provision for all parties OR • Individual interests are subordinate to the interest of society • Community possession or action OR • The government exercises control over the community • All parties have the same benefits • Individual interests are subordinate to the interest of the society • Legislation protects society or the community through provisions in the governing system OR • Conflict is not tolerated • Community possession • The group is responsible for keeping the people in the group together and safe • Important to belong to a group • Opinions are formed by the group and agreed upon • Education is for the advantage of the whole group • The needs of the group are the most important • Group internally sanctions thereby ensuring the group acts correctly

(Any 10 x 1) (10)

7.2 **DUE TO THREE DIFFERENT VIEWPOINTS ON THIS QUESTION, THE ANSWER IS DIVIDED IN THREE PARTS TO COVER THE THREE TEXTBOOKS IN USE.**

VIEWPOINT ONE

- Employees want protection and assistance, and trade unions offer this to them
- Trade unions also have their own political, economic and social aims
- Trade unions' conduct in the course of collective bargaining and decision making is determined mainly by political considerations, e.g. by how much political mileage can they get from their actions
- Employees differ considerably in their political views, not only with their employers, but also with one another
- Trade unions also have to deal with these internal conflicts
- Trade union leaders who are elected, rather than appointed, are under pressure to comply with the broad variety of political requirements of their members
- If leaders ignore these interests, they may lose the next internal election of the trade union
- Trade unions are eager to support political parties in elections because of the benefit they get when their political party wins the election
- The political party can design legislation to benefit employees and the trade union
- On the other hand political parties are eager to promise trade unions specific benefits before elections. One hand washes the other.

VIEWPOINT 2

- Trade unions' conduct in collective bargaining is mainly controlled by political considerations
- Workers have major differences (or internal differences) with employers and with each other
- Differences could be between young members who prefer higher salaries and older members who prefer fringe benefits
- Also differences between male and female workers and trained and untrained workers
- Trade union leaders must deal with these conflicts and possible sources of dissatisfaction
- If not, they could lose the next general election
- Therefore trade unions rather use political than economic aspects to establish a framework to resolve disputes

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VIEWPOINT THREE

- The union movement usually becomes involved in issues like job security, health and safety, etc.
- Democracy in the political sphere is extended to the industrial sphere and this is achieved by allowing workers a greater say in decision making at work
- Efforts to improve the quality of work life is regarded as an important issue because it affects the personal lives of the population
- Economically participation improves productivity and industrial relations
- Trade union decision making and the activities that follow is seen as political since trade unions engage in collective bargaining with employers
- Their tone of negotiations is political since they engage to ensure equality and fairness to all
- The reason for collective bargaining is that the objectives and goals of employers and workers are not similar
- Trade unions also deal with internal differences between younger and older members, male and female members, etc.
- Trade unions must be seen as strong, committed, knowledgeable and in control by union members to be re-elected into their positions
- Trade unions often use political tactics and reasons during negotiation, since these factors are attention grabbers

(Any 7 x 2) (14)

7.3 STRUCTURES

- Bargaining Councils
- CCMA
- Statutory Councils
- Shop Steward Committees
- Health and Safety Committees
- Labour Courts

IN-COMPANY PROCEDURES

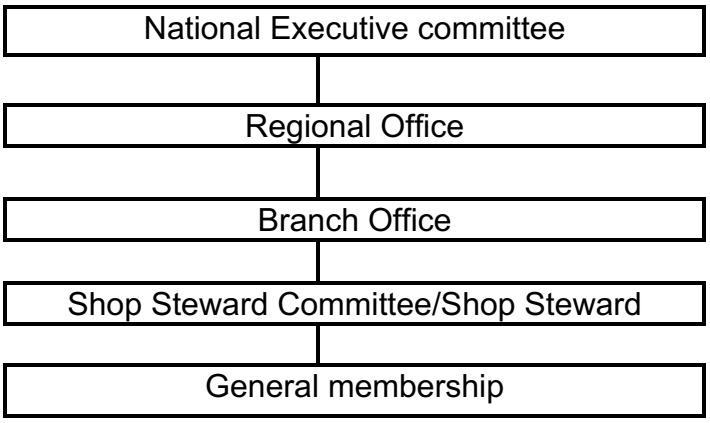
- Disciplinary procedures
- Grievance procedures
- Retrenchment procedures
- Dispute procedures
- Appeal procedures

PROCESSES
Collective bargaining
Mediation
Arbitration
Industrial action
Strikes
Lockouts
Work stoppages (Any 16 x 1) (16)

[40]

QUESTION 8

8.1



(5 x 1) (5)

8.2
- Termination by agreement
- Termination on notice
- Supervening impossibility
- Insolvency of the employer
- Redundancy
- Retrenchment
- Summary termination
- Effluxion of time
- Completion of the task
- Dismissal
- Constructive dismissal
- Conduct or capacity of the employee
- A result of disciplinary action
- The employee took part in an unprotected strike (Any 5 x 1) (5)

8.3 8.3.1
- Economic development
- Social justice
- Labour peace
- Democratisation of the workplace (4 x 1) (4)

8.3.2
- To give effect in section 27 to certain fundamental rights of the Constitution
- To respect the International Labour Organisation
- To provide a framework for promoting collective bargaining
- To promote employee participation in decision making in the workplace
- To provide for the resolution of labour disputes (5 x 2) (10)

8.4
- The primary strike is a protected strike
- The secondary employer receives 7 days' notice of the planned participation
- There is a reasonable relationship between the employers concerned

(3 x 2) (6)

8.5
- Freedom of association was always part of labour relations in South Africa, and still is.
- It forms one of the main pillars of collective labour relations.
- Every employee is free to associate, i.e. join a trade union and to take part in its activities.
- In the past not all employees were protected by law.
- Everybody in South Africa had the right to belong to a trade union, but only certain trade unions had the right to strike.
- If an employer dismisses employees because they belong to a trade union, then that employer is guilty of an offence.
- Statutory freedom of association was never formally forbidden in South Africa.
- But black workers were not protected by law before 1992.
- According to the LRA (66/1995) freedom of association makes provision for employers and employees.
- That means an employer may not dismiss an employee because he belongs to a trade union.
- Freedom of association refers to the right to gather for a legal common reason/cause or purpose without interference by the government.
- Any employer is free to join an employer organisation and to join in its activities.
- Every person in South Africa has the right to freedom of association.

(Any 5 x 2) (10)
[40]

QUESTION 9

9.1
- Negotiating collective agreements with labour unions
- Assisting members in dispute resolution
- Assisting members in industrial relations
- Providing training for members
- Giving legal aid and advice to companies
- Represent the interests of the members when dealing with unions within bargaining councils
- Strengthening the bargaining power of employers
- To supply expertise in handling unrest and disputes within the company
- To handle disputes on national level
- To help members in day-to-day industrial relations
- To represent the industry's views to government or public
- Ensure similarity of remuneration, benefits and working conditions
- Represent the interests of members with government and other agencies
- Assist one another with information
- Set guidelines for new members on policies and procedures
- Assist one another by acting as mediators for one another in the case of disputes
- Collectively organise training and development and manage the funds for these activities

(Any 5 x 2) (10)

9.2
- The employer investigates the grounds for dismissal.
- The employer must notify the employee about the allegations.
- The form and language must be easily understandable.
- The employee must have an opportunity to state his/her case.
- The employee must have reasonable time to prepare a response.
- The employee must be assisted by a trade union representative or fellow employee.
- The decision must be communicated to the employee in writing.
- If dismissed the employer must give the employee a reason and remind him or her of the right to lodge an appeal. (8 x 2) (16)

9.3
- The nature of the job
- The period of absence
- The seriousness of the illness or injury
- A temporary replacement (4 x 1) (4)

9.4
- Rights and duties
- Wages
- Working conditions
- Fringe benefits
- Overtime
- Leave (Any 5 x 1) (5)

9.5
9.5.1 Capitalism

9.5.2 Socialism

9.5.3 Socialism

9.5.4 Socialism

9.5.5 Capitalism

(5 x 1) (5)
[40]

TOTAL SECTION B: 160
GRAND TOTAL: 200

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