higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

LABOUR RELATIONS N5

9 June 2021

This marking guideline consists of 8 pages.

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SECTION A

QUESTION 1

1.1 A
1.2 B
1.3 D
1.4 C
1.5 D
1.6 A
1.7 A
1.8 B
1.9 B
1.10 C
1.11 E
1.12 A
1.13 C
1.14 D
1.15 C
1.16 A
1.17 D
1.18 E
1.19 B
1.20 B

(20 × 1) **[20]**

QUESTION 2

2.1 False
2.2 True
2.3 True
2.4 True
2.5 False

(5 × 1) **[5]**

QUESTION 3

3.1 E
3.2 G
3.3 A
3.4 I
3.5 J
3.6 B
3.7 D
3.8 C
3.9 F
3.10 H

(10 × 1) **[10]**

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QUESTION 4

4.1 Common
4.2 Constitution
4.3 Precedent
4.4 Capitalistic
4.5 Society

(5 × 1) **[5]**
[40]

TOTAL SECTION A: 40

SECTION B

QUESTION 5

5.1 5.1.1

- The parties to the dispute are members of the bargaining council and the dispute has been dealt with by this council.
- The strike notice must be given to the employer.
- Employees have the right to strike and employers can lock out employees.
- If a council or commissioner has certified that the dispute has not been resolved within 30 days, the bargaining council or the CCMA must arbitrate the dispute on the request of the employees or the employees may refer the dispute to the Labour Court.
- At least 48 hours before the strike will start, a written notice must be sent to the employer and any employer's organisation that the employer has joined.
- If the issue that caused the dispute is linked to a collective agreement, notice must be given to the bargaining council.
- If the employer is government, the employees must give seven days' written notice before they strike. (Any 5 × 2) (10)

5.1.2

- Low basic pay
- Long working hours and lack of rest time
- Problematic contracts and no pay when under training (3)

5.1.3 The labour dispute is also impacting heavily on the drivers involved due to the 'no work, no pay' rule.

The answer to this question lies in the common-law obligations of both employer and employee. As the employer, when you enter into an employment relationship, you have a common-law obligation to pay the person the wage/salary that was agreed to.

The employee, by virtue of the agreement, has a common-law obligation to place his/her services at your disposal. In the event of protest action, the inability of the employee to place his/her services at your disposal is through no fault of his/her own, and you are therefore obliged to uphold your obligation in terms of payment. (2)

5.1.4
- Risk of losing wages
- Local businesses suffer
- Employer is not forced to pay employees
- Employer must still carry on with payment in kind (accommodation and food)
- May recover monetary value in civil proceedings
- May not dismiss employees in a protected strike (Any 4 × 2) (8)

5.1.5
- Conciliation
- Mediation
- Adjudication (3 × 1) (3)

5.1.6
- Poor conditions of the trade union
- Divorce of employees from owners
- Poor working conditions and wages
- Mass production and division of labour
- Heavy discipline
- Labour became a commodity
- Economic insecurity and dependence
- Development of the class system

(Any 7 plus a reasonable description × 2) (14)
[40]

QUESTION 6

6.1
- To protect individuals through collective strength
- To maximise wages and employment of members
- To establish a joint rule-making system
- To express aspirations and reviews of members
- To represent the interests of members
- To develop individuals outside immediate limits of their jobs (Any 5 × 2) (10)

6.2
- For negotiations and agreements on matters such as salaries and service conditions
- To prevent or resolve disputes
- Administration of legislation
- Management of micro mechanisms, machinery and institutions
- Management of micro structures and procedures (Any 4 × 2) (8)

6.3
- To ensure democracy at the workplace
- To resolve grievances
- To improve physical working conditions and safety
- To establish collective bargaining mechanisms
- To enforce legislation and agreements (5 × 2) (10)

6.4 If an employee does not adhere to the dress code in the workplace because of his/her religion, culture or gender and is then dismissed for failing to do so, such dismissal may be regarded as automatically unfair in terms of Section 187 (1) (f) of the Labour Relations Act. (2)

6.5

OPERATIONAL DISMISSAL	MISCONDUCT DISMISSAL
• E.g. employer not making profit • Due to economic, technological, structural or similar needs of the employer • Poor work performance • Incapacity due to ill health • Restructuring at the workplace	• Gross dishonesty or wilful damage to the property of the employer • Wilful endangering of the safety of others • Physical assault on the employer, a fellow employee, client or customer • Stealing • Gross insubordination

(5 × 2) (10)
[40]

QUESTION 7

7.1
- Employees doing their jobs on the agreed days and times
- Employees carrying out all reasonable work instructions
- Employees acting in good faith
- Employees following workplace rules and policies
- Employees reporting any dishonest or unlawful behaviour in the workplace to the employer
- Employees adhering to the code of conduct (6 × 2) (12)

7.2

MINOR TRANSGRESSIONS	SERIOUS TRANSGRESSIONS	VERY SERIOUS TRANSGRESSIONS
Late for duty	Absence	Refusal to carry out legitimate instructions
Taking longer breaks than allowed	Loss of or damage to property of company or any of its clients through negligence	Theft
Petty negligence	Fake disease	Assault or violence
	Sleeping on duty	Dishonesty
	Unruly behaviour	Misuse of alcohol while on duty

	Minor transgression	**Serious transgressions**	**Very serious transgressions**
1st transgression	Verbal warning	First or final written warning	Final written warning or dismissal
2nd	First written warning	Final written warning	Dismissal
3rd	Final written warning	Dismissal with notice	
4th	Dismissal with notice		

(Any 5 × 2) (10)

7.3
- To resolve the labour dispute through conciliation
- To resolve the labour dispute through arbitration
- To help establish a workplace forum
- To put together information
- To give advice and legal help
- To become involved in dispute prevention (Any 4 × 2) (8)

7.4
- The code states that a dismissal is unfair if it is not done for a fair reason and through a fair procedure.
- The employer must prove that the reason and procedure for dismissal were fair.
- The three grounds for legitimate termination of employment are conduct (behaviour), capacity and operational requirements. (3 × 2) (6)

7.5
- The workplace rule is a reasonable rule.
- The employee definitely knew or really should have known about the rule.
- The rule is always meant to be followed and the employer always asks the employee to follow it.
- Is there a suitable punishment for breaking the rule? (4 × 1) (4)

[40]

QUESTION 8

8.1 8.1.1 A lockout is a temporary work stoppage or denial of employment initiated by the management of a company during a labour dispute. It is usually implemented by simply refusing to admit employees onto company premises and may include changing locks and hiring security guards for the premises.

8.1.2 A secondary strike (also known as solidarity action, a secondary boycott or a sympathy strike) is industrial action by a trade union in support of a strike initiated by workers in a separate corporation, but often the same enterprise, group of companies, or connected company.

8.1.3 Picketing is a form of protest in which people congregate outside a place of work or location where an event is taking place. Often, this is done in an attempt to dissuade others from going in, but it can also be done to draw public attention to a cause.

Picketers normally endeavour to be non-violent. Picketing can have a number of aims, but it is generally done to put pressure on the party targeted to meet particular demands and/or cease operations.

8.1.4 A strike is a work stoppage undertaken in support of a bargaining position or in protest of some aspect of a previous agreement or proposed agreement between labour and management. A strike usually takes place in response to employee grievances.

(4 × 4) (16)

8.2
- To administer, supervise and enforce agreements
- To perform dispute resolution functions
- To enter into collective agreements
- To establish and administer funds to be used for resolving disputes
- To regulate picketing rules by collective agreement
- To endeavour to maintain and enhance industrial peace and to promote sound relations between the parties
- To endeavour to prevent disputes from arising by negotiation and conclusion of agreements (Any 6 × 2) (12)

8.3 A closed-shop agreement is an agreement where all employees working in a specific workplace or sector have joined a majority or sufficiently representative trade union. The aim of such agreement is negotiation on benefits and wages for all employees by the unions, and not only for their members. (4)

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8.4
- Additional pressure on the rand
- Workers are losing wages
- Loss of production
- Less job creation
- Retrenchments or layoffs (Any 4 × 2) (8)

[40]

QUESTION 9

9.1
- A shop steward is chosen through a process called an election.
- Two fellow union members must decide that you would be a good shop steward and they then nominate you by filling out a form.
- Your name will appear on the election ballot.
- People vote by show of hands or ballot.
- You will be elected on a ratio of one steward for fifty union members and one per department.
- The number depends on the size of the company. (6)

9.2
- Effective communicators
- Ability to make objective judgements
- Able to make fast decisions
- Committed, diligent and fair-minded
- Knowledgeable in trade union, employee and management affairs
- Good at conflict management
- Educated in labour law and policy
- Good at multitasking
- Able to balance many different views
- Patient and honest (10 × 1) (10)

9.3
- To represent and help employees during the grievance
- To demand fair treatment in the workplace
- To report unruly behaviour to management
- To demand protection from victimisation
- To discuss the workers' interest with management
- To fight against injustice and cruelty in the workplace (6 × 2) (12)

9.4
- Class system
- Divorce of workers from owners
- Conditions of the working class
- Poor working conditions and wages
- Mass production and division of labour
- Independence of discipline
- Economic insecurity and dependence (Any 6 × 2) (12)

[40]

TOTAL SECTION B: 160
GRAND TOTAL: 200

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