

2.6 Module 11 Employment Law

2.6.1 Headline information about the module

Module title	Employment Law
Module NFQ level (only if an NFQ level can be demonstrated)	N/A
Module number/reference	Module 11
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	2
Semester (semester1/semester2 if applicable)	Semester 1 or Semester 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	5
List the teaching and learning modes	Full Time, Part Time
Entry requirements (statement of knowledge, skill and competence)	Learners to have successfully completed Stage 1 of the programme
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	One Semester, 12 weeks
Average (over the duration of the module) of the contact hours per week	2
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60						101			125
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution							100	100%		

2.6.2 Module aims and objectives

This Module introduces learners to a broad range of fundamental legal rights and duties essential to modern commercial practice in Ireland, including contractual restrictive covenants, employment equality and health and safety law. Learners are familiarized with the distinction between common law and statutory protections and the importance of this distinction. The Module also enables learners to understand the various legal fora enforcing employment law in Ireland, including more recently the Workplace Relations Commission, and the differences in jurisdiction between them. The scope and application of key employment legislation is examined in light of established and recent decisions, including dismissal law, redundancy, maternity and working time. Learners then analyse the variety of remedies available in a range of employment law disputes. Finally, the Module enables learners to apply the law to hypothetical, factual scenarios and to appreciate the role of employment law in commercial industry, including in relation to recruitment, promotion, dismissal and redundancy practices.

2.6.3 Minimum intended module learning outcomes

On successful completion of this module, learners can:

- (i) Analyse the fundamental principles underpinning Employment Law, including an understanding of the distinction between common law and statutory rights;
- (ii) Evaluate the key components of an employment contract;
- (iii) Discuss a range of employee rights legislation including equality in the workplace and health and safety;
- (iv) Analyse the criteria and obligations applicable to employers and employees in respect of important employment rights, including available remedies and the various mechanisms applicable to enforce those rights;
- (v) Investigate and discuss the nature of the various modes of dismissal;
- (vi) Conduct efficient and effective research on Employment Law; Apply Employment Law to factual scenarios.

2.6.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

In recent decades, the rights, duties and practices governing all aspects of the modern workplace have increased enormously. This has been reflected in the scope and increasing complexity of the legislation and regulation underpinning this area. All employment decisions, ranging from recruitment to retirement processes, must now be made with this reality in mind. A firm competence and understanding of Employment Law is, therefore, a strong advantage for learners across a range of industries and professions. The Module also offers learners the opportunity to integrate learning in a number of other key modules in a more focused and practical way, including Contract Law, Tort Law and Constitutional Law.

The Module encompasses both the common law and statutory legal framework, including the range of remedies and legal fora relevant to each. This module serves to directly underpin programme learning outcomes 1, 3, 6, 10.

2.6.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material is available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

2.6.6 Module content, organisation and structure

Employment Law is an elective module that is delivered over a 12-week period with two hours of direct contact for full time and part time learners per week. Learning outcomes have been articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

The topics covered in this Module are:

- Topic 1: Historical and Political background
- Topic 2: The Contract of Employment
- Topic 3: Restrictive Covenants
- Topic 4: Wrongful Dismissal and the Employment Injunction
- Topic 5: Unfair Dismissal
- Topic 6: Fair Dismissal
- Topic 7: Redundancy
- Topic 8: Employment Equality Acts 1998 – 2015
- Topic 9: Bullying and Harassment
- Topic 10: Health and Safety
- Topic 11: Protective Legislation
- Topic 12: Institutions and Officers

2.6.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Employment Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical employment law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic. The final two lectures consist of workshops seeking to directly enforce the module learning outcomes by engagement of practical application of Employment law to factual scenarios.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

2.6.8 Work-based learning and practice-placement

Employment Law is a class-based module and does not require work-based learning and practice placement.

2.6.9 E-learning

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners are also given access to Lynda.com as a resource for reference.

2.6.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

2.6.11 Reading lists and other information resources

Primary Reading:

Faulkner (2018), Essentials of Irish Labour Law. Dublin: Clarus Press.

Ryan (2017) Redmond on Dismissal. Dublin: Bloomsbury Professional

Murphy & Regan (2017), Employment Law. Dublin: Bloomsbury Professional

Meenan (2014) Employment Law. Dublin: Round Hall

Daly & Doherty (2010) Principles of Irish Employment Law. Dublin: Clarus Press

Secondary Reading:

Ryan, Cox and Corbett (2019) Employment Law in Ireland. Dublin: Clarus Press

Bolger, Bruton & Kimber (2012) Employment Equality Law. Dublin: Round Hall

Byrne (2001) Safety, Health and Welfare at Work in Ireland: A Guide. Dublin: NIFAST

Kilcommins, McLean, McDonagh, Mullally & Whelan (2004), Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination. Dublin: Department of Justice, Equality and Law Reform

2.6.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

2.6.13 Module summative assessment strategy

The Module is assessed through a written examination worth 100%. The examination consists of one compulsory question based on a case study which will be provided to the learners in advance of the examination date, in addition there will be a choice of two further questions from four questions provided with an equal choice of both essay and problem style questions. Essay style questions place emphasis on the learners' demonstrating their understanding of the fundamental principles of employment law, thereby assessing learning outcomes i, ii, iii and iv. Problem style questions enable learners to apply principles of employment law to a factual scenario, thereby assessing learning outcomes v and vi.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii,iii,iv,v, vi	100%

2.6.14 Sample assessment materials

Sample Examination

Learners must answer Question 1. 50 marks.

Answer any two of questions 2, 3, 4 or 5. 25 marks each.

Question 1 – THIS IS A COMPULSORY QUESTION

Learners are required to answer all parts;

- Outline Mr Wszotek's claims and the basis for these claims.
- Outline the submissions made by Moduslink & O'Reilly Recruitment Limited.
- Summarise the findings of the Tribunal.
- Discuss the purpose of the Employment Equality Acts and the role of employers with particular reference to the case at hand.

Sample Answer

- This dispute involved a number of claims by Mr Dariusz Wszotek that he was discriminated against in relation to access to employment, promotion, training, conditions of employment and discriminatory dismissal contrary to section 8 of the Employment Equality Acts by Moduslink and O'Reilly Recruitment Limited on the grounds of race contrary to section 6 of the Employment Equality Acts and that he was harassed in accordance with section 14A of the Acts.

The Complainant worked at Moduslink from October 2008 to March 2011. He claimed he was discriminated against by the Respondent in relation to selection for work and

that he was treated differently than Irish workers. He further claimed that he received verbal insults, he was given more difficult work than Irish workers, he was scapegoated and he was denied cigarette breaks. He also submitted that in March 2010 a co-worker said “fucking Polish” to him.

In relation to selection for work, the Complainant submitted there was a selection process every Friday for agency workers to be called back the following week. He submitted the Irish were called back first. Therefore he had less job security, was assigned less hours and was paid less than Irish workers. The Complainant submitted that this process continued until he left the Respondent’s employment.

The Complainant claimed that Irish workers were never denied cigarette breaks but he was never certain whether he would or would not be granted a break. On three occasions he was denied by Supervisor A and on three other occasions by Supervisor B.

- (b) The Respondent submitted that, in accordance with the time limits set out in the Employment Equality Acts, the first claim was submitted on 14 April 2011 and that all events related to this claim which took place before 13 October 2010 were out of time and there was no chain of events to bring them in time. The Respondent also submitted that they were not the correct Respondent as the Complainant was not employed by the Respondent, that he was employed by O’Reilly Recruitment at all times.

Notwithstanding these submissions the Respondent stated that they used agency staff as and when required. The level of usage depended on the needs of the business. During this period the Complainant worked a total of 52 weeks. On his initial assignment he would have received their standard induction programme, which includes a reference to their Bullying and Harassment & Grievance Procedures. The Respondent submitted that the Complainant worked without issue at a satisfactory or good level of performance. During his employment no matter that had been submitted as part of this claim was brought to the attention of the Respondent, either directly or through the agency. The respondent claimed that in March 2011 the Complainant was responsible for a serious quality failure. He had been spoken to on numerous occasions that he had to follow normal operating procedure. As a result of this quality failure, direction was given to the agency not to place the Complainant back on site. The direction was “Do not hire due to Quality Issues”. Two other workers were also deemed unsuitable arising from the same incident; one was Irish and the other Polish. The respondent submitted that from October 2010 to March 2011 twenty three agency workers were deemed not suitable for future assignments. Of these 12 were Irish and 11 other Nationalities.

- (c) The Tribunal found that the Complainant put forward no evidence in relation to promotion and training. However, his claims in relation to access to employment and conditions of employment refer to the actions of the respondent and therefore the

Equality Officer concluded that they were the correct respondent in accordance with section 8 of the Acts.

In the claim regarding the Friday selection of agency workers the Tribunal found the Complainant made no specific allegations and in these circumstances it was concluded that the Tribunal could not establish facts from which discrimination could be inferred. Furthermore, it was found that the Complainant had not established a prima facie claim of discrimination in relation to access to employment.

In relation to his claim regarding conditions of employment the Complainant gave examples of different treatment between Irish and non-Irish workers. The Tribunal found that the Complainant had made assertions rather than provided 'more concrete evidence' of the alleged discrimination and it was found that he had not established a prima facie claim of discrimination in relation to conditions of employment. In relation to the claims of harassment, the Tribunal was satisfied that the Complainant was aware of the respondent's Anti-Harassment/Bullying Policy and how he could raise a complaint, informally or formally and that the Respondent was unable to investigate his concerns as it was unaware of them. It was therefore satisfied that the Complainant had failed to establish a prima facie case of harassment.

- (d) The Employment Equality Acts set out to prevent discrimination against Employees, agency workers and applicants for employment.

The purpose of the Acts is to eliminate discrimination in relation to employment and to provide a framework of enforcement to achieve this aim.

It is important for every Employer to be aware that they are obliged to provide a work environment free from harassment and bullying.

Where an Employer fails to do this, they can be held liable for the effects of harassment or bullying on their Employees.

One of the most effective ways in which Organisations can promote a positive working environment and prevent the occurrence of bullying, harassment and sexual harassment is to have a Dignity at Work Policy in place.

It is worth noting based on the facts as outlined in this case, that this approach places a responsibility on each Employee to maintain and contribute toward an environment which respects the right to dignity of all individuals. The Equality Tribunal in making its decision in this case found that the Complainant was aware of the respondent's Anti-Harassment/Bullying Policy and, how he could raise a complaint, informally or formally, but had failed to do so. His claim of harassment in the workplace therefore failed.

Question 2

Davey works as a salesman for GreenCars a large Irish company specialising in manufacturing environmentally friendly vehicles. The company has been working hard on producing a synthetic fuel "SynthFuel" that will run a car for 5,000km per litre. It is going to revolutionise the motor industry and Davey has a number of orders in the pipeline already, even though production has not yet started. One day, Davey was dossing and went for a stroll down to the laboratory and found a piece of paper randomly on the floor. It was headed "Top Secret" and contained the formula for SynthFuel. Davey quickly stuffed the piece of paper in his pocket and walked out of the factory. He smiled as he thought to himself "No one ever swore me to secrecy and there is nothing in my contract about secrecy - GreenCar's lawyers are so stupid." Davey rushed home and contacted his brother Fitzy and told him the news. Fitzy is a scientist working for EnviroTransport, another environmentally conscious car manufacturer. It sells vehicles to NGOs and environmentally friendly "eco companies". Davey tells Fitzy to hand in his notice and start working for a new company Davey plans to set up as soon as possible. "Bring your apprentice Seamus with you, we will need to get started on this ASAP! And before you leave, download a list of EnviroTransport's clients. I will email them all the good news tomorrow. We will be making environmentally friendly cars cheaper and better than anyone else!"

Fitzy checked his contract to see his notice period and is concerned. Clause 2(b) states:

- *You shall not work or be engaged or interested in any business or commercial activity in Ireland and the United Kingdom and the U.S and Asia which competes or conflicts (or is likely to compete or conflict) with any business interest or commercial activity of EnviroTransport for a period of 36 months after the termination of your employment with EnviroTransport.,*
- *"You will not solicit or entice away or attempt or cause others to solicit or entice away from EnviroTransport any person who shall have been an employee, customer, or agent of EnviroTransport within 24 months after the termination of your employment with EnviroTransport.*

Advise Davey.

Sample Answer 2

The first aspect of the question refers to trade secrets. Students should refer to the Faccenda Chicken case and the test set out therein to ascertain whether or not the chemical compound in this question constitutes a trade secret.

In the absence of any express term in a contract of employment, the obligations of an employee in respect of the use and the disclosure of information are the subject of implied terms;

While the employment continues, the obligations protecting ALL the employer's information are included in the general implied common law term imposing a duty of good faith and confidentiality on an employee.

When the employment ceases, the general common law obligation not to use or disclose information covers only information that is of a sufficiently high degree of

confidentiality as to amount to a trade secret. The obligation does not continue to cover all of the information received prior to the termination.

Students should identify the fact that the contract does not appear to contain any clause in respect of trade secrets, but if it is a trade secret, then there is an implied term of confidentiality over that information.

Students should also identify the restrictive covenants, which are included in the contract. Students should identify that the two contract clauses are (a) a non-compete clause and (b) a non-solicitation of staff and clients' clause.

Students should set out the main principles that are applied in these cases, namely that for a restriction to be reasonably necessary it must not be drafted too widely. It will be for the employer, in the event of a clause being challenged, to show that the clause is justified and sufficiently narrow. Other important matters that should be highlighted are the breadth of the geographical area of any restriction and length of time of the post termination restriction must be justified. Regard will also be had to the type of interest being protected.

Students should note that the courts seem quite willing to enforce a non-solicitation clause for a period of 6 months to 12 months. Relevant cases include: Net Affinity v. Conaghan and Revemac Ltd. 2011 ELR 11, AIB v. Diamond (Unreported Clarke J High Court 14th of October 2011) and Hernandez v. Vodafone Ireland Ltd (Unreported High Court (Laffoy J.) 11/3/13)

Students can also refer to severance and the "Blue Pencil Test" and might advise that Courts will not re-write a covenant or introduce appropriate limitations if it is too broad to be enforceable (J A Mont (UK) Ltd v Mills (1993)).

Stronger students might address the remedies for breach of restrictive covenants i.e. an interlocutory injunction and the matters the Court will consider in such an application i.e. serious issue to be tried, balance of convenience etc.

Question 3

Answer both (a) and (b)

(a)

Marek moved to Cork from Poland three years ago. He has been employed as a security guard for the "Diamond" nightclub in Cork City for the past 18 months. He is the only non-Irish member of staff working for the night club. The nightclub employs eight other security guards who are all Irish nationals. At the end of last month, Marek is accidentally given another security guard's pay slip in the envelope that also contained his pay slip. He realises that he is earning €3.50 an hour less than the other security guard Tony, an Irish national, who only started to work for the Diamond nightclub in September of this year. He wants to know if he can be paid a different rate of pay for doing exactly the same type of work as another employee.

He has asked for your advice.

(b)

Gary has lived in Wicklow all of his life and is an avid gardener. Last year he was involved in a serious accident and is now left with a very bad limp. He can only walk short distances unaided. He works for a bank but is fed up of working indoors and wants a change of career. He decided that he will put his knowledge of gardening and horticulture to good use and applied for a job that was advertised online for a local park. The job requires the worker to give a one hour guided tour of the flowers in the park, twice per day. He was interviewed by Dominic who immediately noticed Gary's heavy limp and quizzed him on his fitness and mobility.

Dominic appears shocked and asks "how can you give a guided tour for an hour if you can only walk short distances because of your limp? I'm sorry but this just could never work!". He thanks him for interviewing and told him they would be in touch but not to hold his breath.

Gary got a letter of rejection in the post today and asks you for advice.

Sample Answer 3

This Question requires students to address the Employment Equality Act 1998-2015. Students are required to address the scope of the protection under the Act in terms of access to employment. Students are also required to explain the meaning of "discrimination", including "direct" and "indirect" discrimination. Students are required to identify the specific grounds of discrimination prohibited under the Act. Students should then address the burden of proof on employers and employees taking a case under the Employment Equality Act 1998-2015.

Students are then required to explain the remedies available and the requirements that must be satisfied in order to bring a claim under the Employment Equality Act 1998-2015. Relevant case-law includes: An Employee v A Credit Union DEC-E2012-190; Grant v South- Western Trains Limited; A Worker v Brookfield Leisure Limited.

Having set out the law, the student is then required to apply the law to the facts of the scenario to arrive at relevant conclusions. In this case, the two prospective workers have been discriminated against on the grounds of race and disability.

Students should give advice relating to the requirement of employers to provide reasonable accommodation to an employee with a disability, including the requirement to actually investigate whether or not it is possible to make reasonable accommodation for that employee. Section 16 of the Employment Equality Acts 1998-2015 requires an employer to "do all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment or facilities". In this case, it is clear that the employer did not investigate the possibility of providing the adapted desk for Barney. A relevant recent decision on this point is Nano Nagle School v Marie Daly [2015] IEHC 785.

Question 4

Michael was employed as a sales agent by Build Suppliers Ltd ('the Company'), a company specialising in supplying construction equipment to builders and developers. Michael commenced his employment with the Company in 2010 and performed well during the currency of his employment, constantly achieving and surpassing his sales target figures and expanding the presence of the Company in the Irish market. Michael is 1 of 10 Sales Agents employed by the Company; however, he is the longest serving sales agent and has the highest sales figures.

In January 2017, Thomas, commenced employment with the Company as a sales manager, responsible for the management of all 10 sales agents, including Michael. Since that date, Michael has had numerous problems with Thomas who has ignored him, unfairly berated him and given him unfavourable rosters. It is evident to Michael that Thomas does not like him and wants to get rid of him. Michael has tried to resolve the problem through the Company's grievance procedure by making a grievance to the Company's CEO, Patricia. To date, no steps have been taken by Patricia to address this grievance. Michael is of the view that Patricia and Thomas are good friends and Patricia does not want to upset Thomas.

Recently, Patricia approached Michael and informed him that, due to a downturn in business, they needed to make him redundant. Patricia did not explain how the Company had come to the decision that it was Michael's position that should be made redundant. Further, Michael was not given any notice of the risk of his position being made redundant prior to this and was not given any opportunity to make any representations in respect of same prior to this. Michael feels that the Company are not being truthful. Business in the Company seems to be at an all-time high and Michael is the longest serving sales agent with the highest sales figures.

Michael has never had any complaints about his work and has a clean disciplinary record. The Company is offering Michael 2 weeks per year extra on top of his statutory redundancy entitlements, so Michael is unsure whether he is required to take up this offer. Michael is unhappy about the situation and seeks your advice in relation to whether the Company is entitled to do this. He would also like you to clarify what his rights are if this is a redundancy situation. Advise Michael.

Sample Answer 4

This Question requires the student to identify both the statutory criteria that govern redundancy and the application of those criteria in the courts and employment tribunals under Irish law. In particular, students are required to set out (a) the meaning of redundancy and the circumstances that are recognised as redundancy situations under the Act 1967-2014: section 7(2); (b) the statutory lumpsum and the manner in which that is calculated; (c) how a worker qualifies for the lumpsum; (d) reckonable and non-reckonable service. Better students will also be able to identify the concepts of voluntary and collective redundancies.

Student should also address the issue of a valid selection for redundancy and generally identify the fair procedures and process required.

Better students will also be able to identify the overlap with the Unfair Dismissals Acts and claims for unfair selection for redundancy.

Relevant cases include: Johnston v Floorwise (UD 1826/2010); Hyde v Father Denis Kelleher as Nominee of the Sponsors of the Vermoy School's Project [2004] 15 ELR 145; O'Briain v National Rehabilitation Board & Ors [2002] 13 ELR 210; Lillis v Kiernan EAT 22 Jun 2004; Byrne v Trackline Crane Hire Ltd EAT 22 May 2003

Students should utilise the ILAC method in applying the facts of the case to the law in arriving at a conclusion.

Question 5

"The Unfair Dismissal Act Acts 1977-2007 set up a system of complaint by which the fairness of an employer's decision to dismiss an employee may be contested by that employee and adjudicated by an independent body. The Acts do not actually prevent the dismissal taking place. They allow the employee to challenge the fairness of the dismissal after it has happened."

FLAC, Unfair Dismissals Guide, March 2009.

In light of the above statement, explain the circumstances as set out in the Unfair Dismissals Acts 1977-2007 that can give rise to an unfair dismissal. You must support your answer with reference to the relevant legislation, case law and academic commentary.

Sample Answer 5

Students should identify the legislative basis of UD, namely Section 6(1) of the 1977 Act and the definition of UD under Section 1 of the Unfair Dismissals Act 1977.

Students should also address the Time Limits for Initiating an Action

Students should outline Grounds for Dismissal which are "Deemed Unfair" and note that Section 6(2) of the 1977 Act provides the grounds on which a dismissal will be deemed to be unfair.

Students should also discuss the Reasonableness of the Employer's Decision particularly in light of the case law on Fair Procedures. Appropriate headings would include

Knowledge of Disciplinary/Grievance Procedures

Investigation

Hearing

Warnings

Proportionate penalties

Stronger students will use appropriate reference to case law and academic commentary.

Case Study

Question 1 (Compulsory Question)

The Equality Tribunal

Decision No. DEC-E2014-002

Parties

Dariusz Wszotek (Represented by William Kelly B.L. instructed by O’Hanrahan & Co. Solicitors)

And

Moduslink (Represented by IBEC)

&

O’Reilly Recruitment Limited (Represented by IBEC)

Under the Employment Equality Acts

File reference: EE/2011/394, EE/2011/645, EE/2011/647 & EE/2011/648

Date of issue: 29th January 2014

Headnotes: Employment Equality Acts – sections 6 - promotion – training – conditions of employment
- harassment –race

Dispute

This dispute involves claims by Mr Dariusz Wszotek that he was discriminated against in relation to access to employment, promotion, training, conditions of employment and discriminatory dismissal contrary to section 8 of the Employment Equality Acts by Moduslink and O’Reilly Recruitment Limited on the grounds of race contrary to section 6 of the Employment Equality Acts and that he was harassed in accordance with section 14A of the Acts.

The Complainant referred claims under the Employment Equality Acts to the Equality Tribunal on 14th April 2011 and 12th September 2011. On 6th September 2013 in accordance with his powers under the Acts the Director delegated the complaint to the undersigned, Hugh Lonsdale, Equality Officer, for investigation and decision and for the exercise of other relevant functions under Part VII of the Acts, on which date my investigation commenced. In accordance with Section 79(1) of the Acts and as part of my investigation I proceeded to a hearing on 18 September 2013.

Preliminary Issues at Hearing

At the hearing the Complainant withdrew all complaints against O’Reilly Recruitment. He also withdrew his complaint of discriminatory dismissal against Moduslink. Therefore my investigation is into the Complainant’s allegations in relation to access to employment, promotion, training, conditions of employment and harassment against Moduslink.

Summary of the Complainants’ Case

The Complainant submits that he worked at Moduslink from October 2008 to 23rd March 2011. He submits he was discriminated against by the Respondent in relation to selection for work, also that he was treated differently than Irish workers, he received verbal insults, he was given more difficult work than Irish workers, he was scapegoated and he was denied cigarette breaks.

He submits that in March 2010 a co-worker said “fucking Polish” to him.

The Complainant submits there was a selection process every Friday for agency workers to be called back the following week. He submits the Irish were called back first. Therefore he had less job security, was assigned less hours and was paid less than Irish workers. At the hearing the Complainant stated that this process continued until he left the Respondent’s employment.

In May 2010 he was placing products in boxes when an Irish worker took his pallet instead of finding his own and he submits that this behaviour was tolerated in Moduslink.

In September 2010 the Complainant submits that his machine was not working and Supervisor B shouted at him for sitting down but nothing was said to an Irish worker who was in the same position.

In December 2010 another Irish worker tried to take products that the Complainant had partially prepared. The Complainant objected and the Irish worker became hostile. The Complainant submits the Irish Employee felt he had a right to take credit for his work.

On 24th March 2011 two new workers, one Irish and one Polish, and the Complainant were reprimanded for something that he did not do. He complained about the reprimand to his manager and he was not given any more work. He submits that O’Reilly Recruitment told him they had a report from Moduslink that they should give him no more work.

In relation to the uneven distribution of work he contends that three Irish workers were placed on a machine but only one Polish worker was placed on the same machine. Also, four Irish workers were allocated to a folding machine but only two Polish workers.

The Complainant submits that Irish workers were never denied cigarette breaks but he was never certain whether he would or would not be granted a break. On three occasions he was denied by Supervisor A and on three other occasions by Supervisor B.

Summary of the Respondent’s Case (Moduslink)

The Respondent submits that, in accordance with the time limits set out in the Employment Equality Acts, the first claim was submitted on 14th April 2011 and that all events related to this claim which took place before 13th October 2010 are out of time and there is no chain of events to bring them in time. They further submit that the Complainant has made no submission regarding access to employment, promotion, and training.

The Respondent also submits that they are not the correct Respondent as the Complainant was not employed by the Respondent, that he was employed by O’Reilly Recruitment at all times.

Notwithstanding these submissions the Respondent states that they use agency staff as and when required. The level of usage depends on the needs of the business. The Complainant was assigned to work for them between October 2008 and March 2011, depending on their operational requirements.

During this period he worked a total of 52 weeks. On his initial assignment he would have received their standard induction programme, which includes a reference to their Bullying and Harassment & Grievance Procedures.

The Respondent submits that the Complainant worked without issue at a satisfactory or good level of performance. During his employment no matter that has been submitted as part of this claim was brought to the attention of the Respondent, either directly or through the agency. The Respondent submits that in March 2011 the Complainant was responsible for a serious quality failure. He had been spoken to on numerous occasions that he had to follow normal operating procedure. As a result of this quality failure direction was given to the agency not to place the Complainant back on site. The direction was "Do not hire due to Quality Issues". Two other workers were also deemed unsuitable arising from the same incident; one was Irish and the other Polish.

The Respondent submits that from 23rd October 2010 to 23rd March 2011 twenty three agency workers were deemed not suitable for future assignments. Of these 12 were Irish and 11 other Nationalities.

Findings and Conclusions of the Equality Officer

The Respondent claims they are not the correct Respondent as the Complainant was supplied to them through an employment agency. Section 8 of the Employment Equality Acts states:

(1) In relation to—

(a) access to employment,

(b) conditions of employment,

(c) training or experience for or in relation to employment,

(d) promotion or re-grading, or

(e) classification of posts,

An Employer shall not discriminate against an Employee or prospective Employee and a provider of agency work shall not discriminate against an agency worker.

(2) For the purposes of this Act, neither an Employer nor a provider of agency work shall be taken to discriminate against an agency worker unless (on one of the discriminatory grounds) that agency worker is treated less favourably than another agency worker is, has been or would be treated. (emphasis added)

The Complainant put forward no evidence in relation to promotion and training. However, his claims in relation to access to employment and conditions of employment refer to the actions of the Respondent and I therefore conclude that they are the correct Respondent in accordance with section 8 of the Acts. Furthermore, in relation to the claim of harassment section 14A refers to harassment "at a place where the Employee is employed .. by a person who is employed at that place by the same Employer" The allegations by the Complainant refer to the actions of staff of the Respondent and, again, I conclude that they are the correct Respondent.

Therefore, I have to decide if the Complainant suffered discriminatory treatment on the grounds of his race in relation to access to employment, conditions of employment and if he was harassed. In reaching my decision I have taken into account all of the submissions, oral and written, made to me in the course of my investigation as well as the evidence presented at the hearing.

The claim in relation to access to employment relates to the Respondent's selection criteria for agency staff. The Complainant contends that Irish workers were given preference over non-Irish staff, regardless of capability. The Respondent contends that the Complainant's allegations are out of time and very general with no specific allegations that they can or should respond to. They contend that the Complainant attended an initial induction course and provided evidence that the induction day included a presentation on the 'Review Process – Temp Staff' which set out that 'Where temporary Employees are required to be laid off due to decrease in capacity/business requirements: Selection will be based on:

- Time & Attendance
- Flexibility with regard to hours/duties/overtime/shift etc
- Attitude to team leaders/supervisors/other team members
- Performance
- Quality & attention
- Ability to follow instruction'

The Respondent contends they are an equal opportunities Employer and the Friday selection was based on the criteria set out in the induction day.

Section 85A (1) of the Employment Equality Acts, 1998 – 2007 states: "Where in any proceedings facts are established by or on behalf of a Complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the Respondent to prove the contrary." This means that the Complainant must establish primary facts upon which the claim of discrimination is grounded and then the burden of proof passes to the Respondent. Further, in Determination EDA0917 [2010] 21 E.L.R, Arturs Valpeters v Melbury Developments Ltd the Labour Court, whilst examining the circumstances in which the probative burden of proof operates held as follows:-

"Section 85A of the Acts provides for the allocation of the probative burden in cases within its ambit. This requires that the Complainant must first establish facts from which discrimination may be inferred. What those facts are will vary from case to case and there is no closed category of facts which can be relied upon. All that is required is that they be of sufficient significance to raise a presumption of discrimination. However they must be established as facts on credible evidence. Mere speculation or assertions, unsupported by evidence, cannot be elevated to a factual basis upon which an inference of discrimination can be drawn. Section 85A places the burden of establishing the primary facts fairly and squarely on the Complainant and the language of this provision admits of no exceptions to that evidential rule.

In this case it was submitted that the Complainant was treated badly by the Respondent and the Court was invited to infer that he was so treated because of his race. Such an inference could only be drawn if there was evidence of some weight from which it could be concluded that persons of a different

race or nationality were or would be treated more favourably. All that has been proffered in support of that contention is a mere assertion unsupported by any evidence."

In this claim regarding the Friday selection of agency workers the Complainant has made no specific allegations and in these circumstances I conclude that he cannot establish facts from which discrimination could be inferred. I find that the Complainant has not established a prima facie claim of discrimination in relation to access to employment.

In relation to his claim regarding conditions of employment the Complainant gave examples of different treatment between Irish and non-Irish workers in relation to the speed and staffing of machines, that he was not always allowed cigarette breaks, that fans and chairs were taken by Irish workers. The Respondent contends that the speed and staffing of machines were set for specific products and they were unaware of any difficulties regarding the other allegations. Again the Complainant had made assertions rather than provide 'more concrete evidence' of the alleged discrimination and I find that he has not established a prima facie claim of discrimination in relation to conditions of employment.

The Complainant referred to a number of incidents which he claims amount to harassment. Section 14A(2) gives an Employer a defence against harassment if it can prove that it took such reasonable steps as are practicable to prevent the harassment. From the direct evidence given at the hearing I am satisfied that the Complainant was aware of the Respondent's Anti-Harassment/Bullying Policy and how he could raise a complaint, informally or formally. The Complainant confirmed that he did not raise any of the issues with a member of management and said he did not do this because he was afraid he would lose his job. However, there is no evidence that the Respondent would not have investigated the allegations in accordance with their procedures, but they were unable to do so as they were unaware of them. I am therefore satisfied that the Respondent can rely on the defence in section 14A (2) of the Acts and find that the Complainant has failed to establish a prima facie case of harassment.

Decision of the Equality Officer.

I have concluded my investigation of this complaint and hereby make the following decision in accordance with Section 79(6) of the Employment Equality Acts:

that the Complainant has failed to establish a prima facie case of discrimination in relation to access to employment, that the Complainant has failed to establish a prima facie case of discrimination in relation to conditions of employment, and that the Complainant has failed to establish a prima facie case of harassment.

Hugh Lonsdale
Equality Officer
29th January 2014