



Qualifying Test:

00386: Fee Paid Legal Chairman of the
Employment Tribunal (England and Wales)

00387: Salaried Legal Chairman of the Employment
Tribunal (England and Wales)

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**QUALIFYING TEST
FOR
FEE PAID LEGAL CHAIRMAN OF THE EMPLOYMENT
TRIBUNAL (ENGLAND AND WALES)
AND
SALARIED LEGAL CHAIRMAN OF THE EMPLOYMENT
TRIBUNAL
(ENGLAND AND WALES)**

CANDIDATE BRIEF

Candidates are reminded that the legislation will be the Employment Rights (Increase of Limits) Order 2008 and the legislation that is current at 1 January 2009 except that, for the purposes of the test, it is to be assumed that the Employment Act 2002 and the Dispute Resolution Regulations 2004 have been repealed.

QUALIFYING TEST (to be completed by all candidates)

You have 1 hour to complete this test. There are 17 questions to answer including multiple choice questions. You must write your answers on the answer sheet, giving the question number.

The following breakdown of marks available for each question is:

- Q1: 4 marks
- Q2: 6 marks
- Q3: 3 marks
- Q4: 4 marks
- Q5: 12 marks
- Q6 – Q15: 1 mark each
- Q16: 9 marks
- Q17: 2 marks

Total = 50 marks

REFERENCES

Employment Rights Act 1996 Sections 1 - 27, 86 -98, 108, 111 -132, 135 - 165, 166 - 170, 182 - 190. 210 - 229 and 230 – 235.

The Employment Rights (Increase of Limits) Order 2008.

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QUALIFYING TEST

(TO BE COMPLETED BY ALL CANDIDATES)

Question 1 (worth 4 marks)

(Please answer YES or NO for each statement with the question number on the answer sheet)

Can any of the following claimants, all of whom started work for their present employer on 1 March 2008, bring a complaint of unfair dismissal or constructive unfair dismissal?

- 1.1 Fred who was dismissed on 4 April 2009.
- 1.2 Campbell who was dismissed on 29 February 2009.
- 1.3 Mary who was entitled to one month's notice under her contract but was dismissed summarily on 4 February 2009.
- 1.4 Seema who was dismissed on 9 February 2009 when she asked to be allowed to take additional maternity leave.

Question 2 (worth 6 marks)

(Please answer with the question number on the answer sheet)

- 2.1 Osmond, who had four years' continuous employment, was dismissed with 4 weeks' notice which expired on 4 April 2009. What would be the last date on which he could present a complaint of unfair dismissal?
- 2.2 If Osmond has been dismissed without notice on 4 April 2009, what would be the last date on which he could present a complaint of unfair dismissal?
- 2.3 If Osmond presented his claim after the time limit had expired, using the statutory language as accurately as possible of what must he persuade the Tribunal?

Question 3 (worth 3 marks)

(Please answer YES or NO for each statement with the question number on the answer sheet)

Each of the following claimants has succeeded in an unfair dismissal claim. Are they entitled to a basic award of compensation?

- 3.1 Aziz who commenced employment on the 4th May 2008 and was dismissed for alleged misconduct on 9th February 2009.

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- 3.2 Brenda who had 7 years' service and was aged 67 when dismissed.
- 3.3 Conrad who was given a full redundancy payment and notice pay.

Question 4 (worth 4 marks)

(Please write the question number with your answer on the answer sheet)

Sam was born on the 4th July 1953. He started work for United Statins Ltd on the 6th May 1992 and was dismissed for alleged incompetence; his notice expiring on the 14th April 2008. He was earning, £475 a week gross, £400 a week net. He has been receiving £78.90 per week Job Seeker's Allowance whilst unemployed and by the date of the hearing on 5th November 2008, had not found other work despite trying hard. He is confident he will find equally well paid work in another 3 months and the Tribunal thinks this is realistic.

If Sam had been dismissed on 14th April 2008 without notice explain briefly how, if at all, that would have affected the basic award?

Question 5 (worth 12 marks)

(Please write the question number with your answer on the answer sheet)

Frank is a sole trader. He employs two employees, Gita and Harold. They have worked for Frank for 2 years and 18 months respectively. Frank has not provided them with a letter of appointment or a written contract of employment. Instead, a week ago, he issued them with a standard document he purchased from a legal stationers. Frank has completed the document to the best of his ability, but not every section has been completed. Gita and Harold have not signed the document. They are not happy that it accurately reflects their understanding of their terms and conditions of employment, particularly in relation to pay and hours of work. They complain to an Employment Tribunal.

In bullet form, what are the issues that are likely to arise at the Employment Tribunal and what powers has the Tribunal?

Question 6 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment:

- (a) during the first week of employment
- (b) within two months of the employment beginning
- (c) after 13 weeks' service

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- (d) on the first anniversary of appointment.

Question 7 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

A written statement of particulars of employment may refer the employee to another document that is reasonably accessible to the employee in respect of:

- (a) holiday pay
- (b) hours of work
- (c) job title or description
- (d) sick pay

Question 8 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

Where there is any change in the particulars required to be given in a written statement of particulars of employment, the employer shall give to the employee a written statement containing particulars of the change:

- (a) when the change is agreed
- (b) before the change comes into effect
- (c) not later than one month after the change
- (d) when next up-dating and reissuing the original written statement.

Question 9 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

A person has the right to be given by an employer a written itemised pay statement at or before any payment of wages or salary is made if that person:

- (a) is a worker
- (b) is an employee, regardless of length of service
- (c) is an employee with at least one month's service
- (d) is an employee who requests such a pay statement.

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Question 10 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

Usually an itemised pay statement must contain particulars of:

- (a) gross pay and net pay only
- (b) gross pay, income tax and national insurance deductions, and net pay only
- (c) gross pay, fixed deductions and net pay only
- (d) gross pay, fixed and variable deductions, net pay, and the amount and method of any part-payments only.

Question 11 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

If an Employment Tribunal finds that an employer has made deductions without giving written particulars of the deductions made, the Employment Tribunal:

- (a) may award such compensation as it considers equitable
- (b) shall order the employer to provide written particulars of the deductions
- (c) may order the employer to pay to the employee a sum not exceeding the total amount of the deductions
- (d) shall declare that the employer may not make such deductions in future.

Question 12 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

Subject to the statutory limit payable in respect of any one week, a former employee of an insolvent employer may apply to the Secretary of State for payment from the National Insurance Fund of unpaid holiday pay:

- (a) of any amount due at any time before the appropriate date
- (b) of an amount not exceeding six weeks to which entitlement arose during the 12 months before the appropriate date

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- (c) of an amount not exceeding 12 weeks to which entitlement arose during the six months before the appropriate date
- (d) of an amount not exceeding six weeks to which entitlement arose during the six months before the appropriate date.

Question 13 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

In the last question above, in relation to holiday pay the 'appropriate date' means:

- (a) the date on which the employer became insolvent
- (b) the date of the termination of the employee's employment
- (c) the date of the Tribunal's award
- (d) the latest of (a), (b) and (c).

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Question 14 (worth 1 mark)

(Indicate with the question number, one of the options (a) - (d) on the answer sheet)

A person who has applied to the Secretary of State for an insolvency payment from the National Insurance Fund may present a complaint to an Employment Tribunal in respect of the Secretary of State's decision upon that application:

- (a) before the end of the period of three months beginning with the date on which the decision of the Secretary of State on the application was communicated to the applicant
- (b) as (a), or within such further period as the Tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period
- (c) as (a), or within such further period as the Tribunal considers reasonable in all the circumstances
- (d) as (a) or, in respect of a complaint which is out of time, where the Tribunal considers it otherwise just and equitable to consider the complaint.

Question 15 Redundancy payments (worth 1 mark)

(Indicate with the question number, one of the options (a) - (e) on the answer sheet)

What period of continuous employment is required before an entitlement to a redundancy payment arises? Is it:

- (a) none – entitlement arises from the start of the employment.
- (b) 6 months
- (c) one year
- (d) two years
- (e) three years

Question 16 The amount of the redundancy payment (worth 9 marks)

(Please write the question number with your answer on the answer sheet)

On the following information, what is the entitlement and what factors are taken into account?

- 16.1 Date of birth – 09 / 02 / 62
Employment began – 16 / 03 / 01
Employment ended – 27 / 10 / 08

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Pay - £400 per week gross, £300 net

- 16.2 Date of birth – 09 / 02 / 40
Employment began – 16 / 03 / 92
Employment ended – 9 / 01 / 09
Pay - £6 per hour gross, £ 5.30 net, 20 hour week

16.3 Would your calculation of 16.2 be different if the claimant had been dismissed without notice? Please state your reasons.

Question 17 (worth 2 marks)

(Please write the question number with your answer on the answer sheet)

For each of the following, is the employee Shanaz entitled to a statutory redundancy payment? You must give reasons for your decision.

- 17.1 The employer announces that it is closing the business in the next three months or so. Shanaz looks for and finds another job meantime.
- 17.2 In a redundancy exercise, the employer offers early retirement. Shanaz accepts.

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