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KIRIRI WOMENS' UNIVERSITY OF SCIENCE AND TECHNOLOGY
UNIVERSITY EXAMINATION, 2023/2024 ACADEMIC YEAR
THIRD YEAR, SECOND SEMESTER EXAMINATION
FOR THE DEGREE OF BACHELOR OF SCIENCE
(BUSINESS ADMINISTRATION)

Date: 7th December, 2023
Time: 2.30pm –4.30pm

KGM 304 / KHR 409 - INDUSTRIAL RELATIONS

INSTRUCTIONS TO CANDIDATES

ANSWER QUESTION ONE (COMPULSORY) AND ANY OTHER TWO QUESTIONS

QUESTION ONE (30 MARKS)

DIFFERENTIATING SUMMARY DISMISSAL FROM CONSTRUCTIVE DISMISSAL: AN INDUSTRIAL RELATION ISSUE.

Industrial relations are the outcome of the practice of human resource management and employee relations. Industrial relation systems, theories and concepts describes industrial relations as a sub-system of the society. In addition, in industrial relations parties develop skills of adjusting to and cooperating with each other under different circumstances, socially, economically, technologically among other factors so as to promote harmonious industrial relations. Due to workplace issues, grievances and disputes employers and employees are encouraged to embrace social dialogue. However, this may not apply in a case of gross misconduct which may warrant summary dismissal. An employee can be summarily dismissed when the contract of employment is terminated without the requisite notice as per the terms of the contract or statutory provision as a result of a fundamental breach of contractual terms. Summary dismissal can only be lawful and justifiable if the conduct resulting in dismissal falls within the Act's definition of gross misconduct as stipulated in Section 44 of the Employment Act. However, the employee is allowed to challenge and dispute the facts, and reasons provided by the employer for the dismissal, as well as challenge the legality of the decision.

The termination of an employee has to be both substantively and procedurally fair, failure to which such termination will be considered as unlawful and unfair termination. In cases where the employee has been dismissed without just cause the employee may: present a complaint to the labour officer or institute a claim in the Employment and Labour Relations Court. Should a determination be made whether by the labour office or a court of law that the dismissal was unjustified, the employee should be compensated. While constructive dismissal occurs when an employee resigns because their employer's behavior has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was not truly voluntary, it is in effect a termination. The Employment Act, 2007 revised in 2021, does not make explicit reference to the term constructive dismissal unlike summary dismissal.

However, Section 45 of the Act provides that an employee may terminate their employment where the employer has breached a fundamental term of the employment contract. Section 49 of the Employment Act also provides for the following remedies: any loss arising between the date of dismissal and the date of expiry of the notice period which the employee would have been entitled to by virtue of the contract and, at the discretion of the court, the equivalent of a number of months wages not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.

Required;

- a) As discussed in the case study, industrial relations are the outcome of the practice of human resource management and employee relations. Explain three main factors of industrial relations. (3 marks)
- b) Explain the differentiate between summary dismissal and constructive dismissal as discussed in the case study. (6 marks)
- c) Using example from the above case study, highlight the fundamental breaches by the employer towards an employee that can lead to constructive dismissal and is contrary to the provisions of Section 45 of the Employment Act 2007 (Revised) 2021. (6 marks)
- d) Prepare six talking point on some of the remedies for constructive dismissal. The points identified should enhance compliance and promote harmonious industrial relations. (6 marks)
- e) As explained in the case study, industrial relation systems, theories and concepts describes industrial relations as a sub-system of the society. Explain three basic assumptions of industrial relations theory. (3 marks)
- f) A clear grievance policy can minimize cases of summary and constructive dismissal, disagreements and misunderstanding between employers and employees. State the six steps in grievance and dispute handling procedure. (6 marks)

QUESTION TWO (20 MARKS)

- a) Kenya has several hosts of institutions of social dialogue that has effectively stabilized industrial relations in Kenya. One of the host institutions is the National Labour Board. Explain the functions of the National Labour Board in Kenya. (8 marks)
- b) Discuss four key upward problem-solving approaches that can be adopted by organisations in promoting employee voice and communication. (8 marks)
- c) Explain the difference between International Labour Organisation Conventions and recommendations. (4 marks)

QUESTION THREE (20 MARKS)

- a) Discuss the factors that influence the success of collective bargaining in Kenya. (8 marks)
- b) Representative participation is key in maintaining harmonious employment relationship. Analyse the various forms of representation participation you can adopt in your organization. (8 marks)

- c) Every employer must have a disciplinary policy which should clarify both minor and major offences, and possible actions taken. However, this may not apply in case of gross misconduct which amounts to summary dismissal. Examine disciplinary procedure in an ideal situation. (4 marks)

QUESTION FOUR (20 MARKS)

- a) Using examples, analyse any FOUR agreed responsibilities of government, employers and workers as stated in the Industrial Relations Charter of 1984. (8 marks)
- b) Every worker deserves quality work and improved quality of life. This can be achieved through shifting focus to redefining work and implementing decent work policy and priority areas. Explain the priority areas. (8 marks)
- c) With reference to Section 44 of the Employment Act, explain any four offences that amounts to summary dismissal due to employees conduct. (4 marks)

QUESTION FIVE (20 MARKS)

- a) Through negotiations and advocacy, trade unions participate in public policy discourse which is a key role of the tripartite in industrial relations. Explain four key strategies for negotiating solutions to difficult public issues that affect workers. (8 marks)
- b) Industrial relations as a discipline takes the country context depending on the existing labour laws and organisation policies aligned to the international labour organisation. Provide a detailed explanation of the industrial relations framework in Kenya. (8 marks)
- c) Explain the difference between social dialogue and social protection. (4 marks)