

Chapter 5: Continuity

Question 1

Noor is a tutor at a local further education college. She is engaged on an hourly-paid basis, which means that she is paid only for the contact hours she has with students and for any hours she spends in preparing lessons and marking assignments. Her contract with the college says that there is no obligation on the college to provide her with teaching as the amount of teaching is dependent on how many students register for a course and this is difficult to predict in advance. There is also no obligation on Noor to accept any work that is offered to her but, as she is keen to make a good impression with the college because she would like to work there permanently, she has never refused any teaching hours in the three years she has worked there. An opportunity has arisen for tutors to take a short sabbatical in order to undertake further study of their own. Noor is keen to apply for the sabbatical scheme but has been told that this is only available to employees with three years continuous service.

Paulina also tutors at the college. She is part of its Polish-language community team, which provides English language tuition to the local Polish community and Polish lessons to others as part of the college's life-long learning programme. She has worked at the college for ten years on a 'term-time' basis, which means she has a break each summer for six weeks over part of July and August. The college has decided that the Polish classes on the life-long learning programme will now be delivered by hourly-paid tutors to allow the community team to focus on providing English classes to the Polish community. As a result, one role in Paulina's team of five tutors will be redundant. Paulina has been told that redundancy pay will be paid to those with more than two years' continuous service but is unsure whether this will apply to her.

Advise Noor and Paulina.

Commentary

This question concerns continuity of employment and how periods of employment are calculated. In Noor's case, she is on a zero hours contract and so for her to be able to apply for sabbatical, she will need to show that there was an overarching 'umbrella' contract governing her role or that the breaks between hours of teaching do not break her service. This is difficult to do. For Paulina, her case is different in that she is employed term-time. It will be important to discuss sections 210-212 of the Employment Rights Act 1996. The cases of *Prater*, *Ford*, and *Flack* are also highly relevant.

Question 2

The complex rules on continuity of employment are no longer fit for modern patterns of working and put many already vulnerable workers at a further disadvantage.

Discuss.

Commentary

In this question the examiner is alluding to the emergence of the gig economy characterised by more flexible forms of work such as zero hours contracts. The use of the term 'vulnerable' workers is highlighting to you that many workers are engaged on zero hours contracts not through choice but because of the sectors in which they work or because they may be unable to find permanent roles. The examiner is inviting you to reflect on the implications of this shift in the employment landscape and to reflect on the fact that many of the benefits of employment protection are only available to those who are employees with two years' service. The problem with many modern patterns of work is that often workers will not be able to show that they are employees due to a lack of control and/or mutuality of obligation and, even if they could show that they are employees, breaks between assignments may amount to a break in continuous service so that an employee can never reach two years' continuous service as the clock is always being 're-set' to zero.