

Chapter 9: Equality

Question 1

Development of the legal framework regarding age discrimination has highlighted the tensions that exist between balancing individual interests with business needs, and the differences between age and other protected characteristics.

Discuss.

Commentary

This question is asking you to analyse two related issues: the different legal framework for age discrimination in contrast to other forms of discrimination and the matter of justification, which is the key difference with direct age discrimination.

A comprehensive answer to this question would explore briefly the history of age as a protected characteristic beginning with the Employment Equality (Age Discrimination) Regulations 2006 leading to the Equality Act 2010. The critical issue to discuss is the possibility under section 13(2) of the Equality Act to justify direct age discrimination where the employer can show that there was a proportionate means of achieving a legitimate aim. This is different from other forms of discrimination where justification is usually only available for indirect discrimination. An examiner will expect you to understand the policy and labour market issues in this area and to show that you are aware of the possible tensions that can arise. The issue of retirement ages to encourage staff turnover is one such issue. You should be familiar with the Supreme Court's judgment in *Seldon*, which is highly relevant. As the legislative framework on age discrimination stems from the EU Framework Directive, you will also need to show a good grasp of relevant CJEU judgments in this area.

Question 2

Zoe and Wanjiru work as graphic designers. They are the only two women in their design team. The team work in an open plan environment and there is usually a lot of good-natured joking amongst the group. On occasions recently, Wanjiru feels that the joking has crossed the line and become offensive. A few weeks ago, the men in the team had looked up all employee profiles on the staff intranet and were rating the women's looks on a scale of '1-10'. A few days later, one of the men circulated an email that contained a picture of a topless woman. When Wanjiru said that she thought this was inappropriate, she heard the men sniggering together about Wanjiru being 'pre-menstrual'.

Wanjiru has lodged a grievance with HR about the behaviour of the men in the department. Since the men have heard about this, they have been furious with her and refused to work with her. It has also come to light that Zoe will be supporting Wanjiru in her grievance and she, too, has been ignored by the men. One of Zoe's colleagues told her that he thought 'she was one of them but clearly not'. Zoe explained that she was not taking sides but this has made no difference. Both she and Wanjiru now find the working atmosphere to be difficult.

Advise HR on the possible claims that Zoe and Wanjiru may have.

Commentary

This question concerns discriminatory treatment and particularly harassment. You should show a solid understanding of section 26(1) of the Equality Act 2010, which deals with harassment related to a protected characteristic (this would likely cover the joking and rating of women's looks) but harassment of a sexual nature under section 26(2) may also be caught in relation to the email. The subsequent behaviour towards Wanjiru and Zoe after the grievance may be caught by section 27 of the Equality Act as it is likely to amount to victimisation and you will be expected to understand the relevant case law in this area, particularly the meaning of 'detriment' and causation.

Question 3

Megan has worked for her employer for eight years in its marketing department. A large part of her role involves copy-editing, which requires excellent attention to detail when reviewing large amounts of text and often working to tight deadlines. She has always enjoyed excellent appraisals and is a respected member of her team.

Last summer, while on holiday, Megan became ill with a bug and has felt run down since then. Initially her doctor thought that she had picked up a virus and would soon improve but she has steadily got worse. Some days she is unable to leave the house and she generally feels very tired and unable to do much. After a series of tests and specialist referrals, Megan has now been diagnosed as having chronic fatigue syndrome. Megan's boss has been supportive while she is on sick leave and suggested that she returns on a phased basis beginning with three days per week. Megan is concerned that she will be unable to do her job even on a phased return. She has explained to her boss that her condition is quite unpredictable and she feels that three days per week will be too much initially. Megan's boss told her that while she is sympathetic, ultimately there is a job to be done and if Megan is unable to come back to work at least three days per week, she will need to consider her options. When Megan asked what her boss meant by this, she told her 'ultimately I may need to let you go'.

Advise Megan.

Commentary

Although it would not be irrelevant to discuss the law on unfair dismissal briefly here if Megan were to be dismissed, the main point of this question is whether Megan is likely to be a person with a disability, whether her employer should make reasonable adjustments to her role, and whether the employer's conduct amounts to discrimination.