

Chapter 11: Statutory rights

Question 1

Sarah and Terry are employed by a local authority. Their contracts of employment provide that they are entitled to 40 days annual leave per year to include all statutory holidays.

Terry works full-time in the social work team and in recent months has been feeling increasingly exhausted by the demands of his job. He has worked for the local authority for over 20 years but is finding that the workload is increasing. Part of Terry's role involves providing overnight support at a residential home for vulnerable adults. This requires Terry staying overnight at the home although he has a separate bedroom where he can sleep while 'on call'. On occasions, as Terry lives near the home, he stays in his own home unless he is called out. During a recent catch-up with his line manager, Terry explains that he feels over-worked and is worried that he is nearing burn-out as he does not feel that he is having much time off. He routinely works Monday-Friday, followed by overnights at the home. His line manager expresses surprise as she has a record of recent activity at the home and can see that Terry has only had to deal with incidents overnight on a couple of occasions in the last month. In addition, some of the care workers at the home have told Terry's line manager that he actually stays at home most of the time when is on-call and so the care workers tend to deal with any incidents that arise rather than calling Terry.

Sarah is a manager in the libraries and information services team. She has been absent from work on long-term sick leave for over one year. Her sick pay has been exhausted and she is waiting to hear from HR whether she has been successful in her application for retirement on the grounds of ill health. Meanwhile, she has asked if she could take some holiday. Her line manager is surprised and emails Sarah to say that she is not sure why she needs a holiday given that she has been off work for more than twelve months.

Advise Sarah and Terry.

Commentary

Terry's dilemma relates to the definition of working time under the Working Time Regulations and how on-call time is treated. It is important that you demonstrate to the examiner that you are aware of the CJEU jurisprudence in this area. For Sarah, her concern relates to the interaction of the annual leave provisions in the Working Time Regulations with her absence on sick leave. Her scenario is complicated by the fact that the examiner has told you that she has been off for over one year so her annual leave crosses two leave years. There is a clear line of authority on the different aspects of the interaction between sick leave and annual leave so a clear and detailed understanding of the ratios of cases such as *Schulte* is needed here.

Question 2

To what extent do the statutory protections regarding work-life balance provide adequate protection for those in work?

Commentary

This is a wide question so spend some time thinking about what you would like to include in your answer. It would be tempting to focus only on family-friendly rights such as the right to request flexible working under the Flexible Working Regulations, rights to shared parental leave and maternity leave, and the right to take time off work to deal with dependents. However, there is a lot more to say under this question. It would also be relevant to discuss the rights to rest breaks and annual leave under the Working Time Regulations for example. The key thing to remember in a question like this is not to lose sight of what the examiner is asking you. Providing a run-through of the various statutory protections will not score high marks. What will be rewarded, however, is critical analysis of some of these protections.

Question 3

Jack is a nurse and Mila is a junior doctor in a hospital accident and emergency department. Jack has over twenty years of experience working in emergency medicine. During one busy night shift, Jack overhears the senior doctor, Nick, tell Mila that she needs to take less time with patients and that those who should not be in the hospital need to be discharged quickly.

Mila treats Derek, an elderly man complaining of pain in his chest. Derek has been drinking and Mila tells him that it is probably indigestion or heartburn and that he should go home and call his doctor in the morning. Jack thinks that Derek looks an odd colour and tells Mila that it might be worth running a heart scan but Mila ignores him and discharges Derek. Just before the shift finishes, paramedics rush Derek in to the hospital as he has suffered a suspected heart attack. Despite her best efforts, Mila is unable to revive Derek who sadly dies.

When Jack checks Derek's notes, it looks as though there is a page missing. A short while later, a page has been added in which Mila has recorded that Derek presented with stomach pain and indigestion. There is no mention of Derek's complaint of chest pain or Jack's suggestion that a heart scan should be ordered.

The following day Jack tells Nick of his concerns that Mila has lied in Derek's medical record. He also explains that this is not the first time that Mila's conduct has caused concerns. Nick tells Jack to 'leave it with him'. The following week Jack is called to a meeting with HR. Believing this to be about Mila, he is shocked to learn that Mila has raised a complaint about Jack and said that he is generally unsupportive. She has accused him of bullying and this has been supported by Nick. The HR manager explains that there is a 'zero tolerance' policy of bullying and that if Jack agrees to be dismissed immediately without a fuss, he will be paid his notice and given a good reference.

It is now some weeks since Jack has been dismissed. Today he has met his former colleague, Cathy, for lunch. Cathy, who is also a nurse, tells Jack that Mila and Nick have been having an affair for some time and that Jack was naive to take his concerns about Mila to Nick.

Advise Jack on any protection he may have regarding whistle-blowing.

Commentary

In this question the examiner has expressly directed you to consider the law on whistle-blowing, which requires detailed knowledge of the relevant provisions under the Employment Rights Act 1996. You should begin by exploring whether there is a qualifying disclosure under section 43B, followed by whether such a disclosure is protected by virtue of to whom it has been disclosed. If the reason or principal reason for Jack's dismissal is that he has made a protected disclosure, his dismissal will be automatically unfair under section 103A.