

SAMPLE QUESTIONS for EMPLOYMENT LAW EXAMS

CASE 1

Data Masters is a large privately held company that conducts business in multiple locations in the Greater Toronto Area. Its annual payroll is \$12 million.

Data Masters recently lost a significant customer and has taken 2 cost-saving measures: it eliminated a non-essential position, and it decided to temporarily lay off the employees in the data service department at the company's Dundas Square location. The department employed 60 people whose lengths of service ranged from 2 to 4 years.

Evan is the employee whose position has been eliminated. He was asked to leave immediately and was assured that Data Masters would meet all requirements of the Employment Standards Act, 2000. He has also been advised that he may be eligible for severance pay under the Act.

Evan had been employed continuously by Data Masters for 12 years, receiving an annual salary of \$40,000 and 2 weeks' annual vacation. He also participated in a comprehensive benefits plan that included short- and long-term disability benefits, health and dental coverage, and life insurance. The benefits plan is provided by a third-party insurance company. Data Masters pays 100% of the premiums associated with the plan.

Data Masters employs 10 people in Evan's role; Evan is the only one whose position was eliminated.

Questions S1 to S5 refer to Case 1

1. How many weeks of termination pay in lieu of notice is Evan entitled to according to the *Employment Standards Act, 2000*?
 - a. 8 weeks
 - b. 12 weeks
 - c. 20 weeks

2. Evan contacts the HR department to ask whether he will have access to benefits in the weeks after his termination. What should he be told?
 - a. His benefits will be terminated on his last day of work.
 - b. His benefits will be continued during his termination pay period under the *Employment Standards Act, 2000*.
 - c. His benefits will be terminated 15 days after his last day of work.

3. Is Evan entitled to severance pay under the *Employment Standards Act, 2000*?
 - a. Yes, because he was employed for more than 5 years in a company whose payroll is greater than \$2.5 million.
 - b. Yes, because he was employed for more than 10 years in a non-supervisory role.
 - c. Yes, because he was employed for more than 10 years in a company whose payroll is greater than \$5 million.

4. Data Masters is considering laying off all 60 employees in the data service department at the Dundas Square location for 24 weeks and then recalling them during the busier period of the year. Tristan, the director of HR, provides a word of caution about the plan. What warning should he give?
 - a. Seasonal layoffs are acceptable only in agriculture-related businesses.
 - b. As long as the company can demonstrate through clear evidence that there is a financial reason for the layoff, a 24-week layoff is acceptable.
 - c. Data Masters will have to continue the employees' benefits if it wishes to conduct a 24-week layoff.

5. Bill, Data Masters' operations manager, has heard that with the layoffs and Evan's termination, employees are worried about their futures with the company. Bill heard a rumour that Kim, an accounting clerk who occasionally works with the data service department at Dundas Square, contacted a trade union to see if it could provide the laid-off workers with some protection from losing their jobs. Kim has been asking co-workers during lunch if they would be interested in joining the union. Kim is an excellent employee, with no discipline on her file, although she showed up for work 10 minutes late a couple of days ago because of car trouble. Bill is concerned that a trade union will organize the employees. He would like to terminate Kim's employment for cause. He asks Tristan, the HR director, for advice. What should Tristan advise Bill about his plan?
 - a. Given that Kim works closely with the data service department, Bill should take the position that her termination falls under the restructuring of the department and would be justified.
 - b. Kim should be terminated without cause and the company should argue that being 10 minutes late is a breach of policy and justified the termination (albeit without just cause).
 - c. If any part of the decision to terminate Kim is based on her having spoken with a union and asking employees to join the union, this would be an unfair labour practice under the *Labour Relations Act, 1995*.

Morgan has been employed by Consigna Inc. for the past 12 years as director of business development. Although she is generally happy at Consigna, she was recently passed over for a promotion she believes she deserved and is considering leaving Consigna to pursue another opportunity.

Morgan receives a call from Tom, senior vice president of manufacturing for Green Thumb Organics, a manufacturer and distributor of health products. Green Thumb is a large organization with offices throughout the world; it is seeking a director of business development.

Morgan meets Tom to discuss the potential position. Tom explains that Green Thumb has secured a \$15 million investment from a firm in the United States to launch a new product and that Morgan would be in charge of the entire marketing campaign.

Morgan accepts the position with Green Thumb and Tom asks her to start work in 2 weeks. They verbally agree on the job duties and salary and shake hands. Morgan gives 2 weeks' notice at Consigna.

Shortly after Morgan starts working at Green Thumb, she receives an email from Tom. He explains that he should have asked Morgan to sign a contract. He sends her a contract that outlines the conditions of employment they had discussed. It also contains a provision that limits Morgan's entitlement on termination without just cause to the minimum amounts and entitlements set out in the *Employment Standards Act, 2000*. Morgan signs it. Three months after she started, Morgan is told she will be terminated without cause. When she asks for an explanation, she is told that the new product is being cancelled. When Morgan asks Tom what happened to the investors, he says they had told him a few days before he hired her that they were not certain about signing the agreement and they "would be looking into other options."

Questions S6 to S10 refer to Case 2

6. Which of the following accurately describes Morgan's termination entitlement?
 - a. Morgan's entitlement is limited to the minimum amounts and terms set out in the *Employment Standards Act, 2000*, because her written contract provides only the minimum entitlements.
 - b. Morgan's entitlement is limited to the minimum amounts and terms set out in the *Employment Standards Act, 2000*, regardless of the contract she signed.
 - c. Morgan is entitled to reasonable notice of termination under common law.

7. Morgan is angry that Tom had implied that the investment funding had been finalized. She consults a lawyer to determine whether she has a right to legal action. Which of the following claims would be most appropriate in Morgan's situation?
 - a. Inducement
 - b. Constructive dismissal
 - c. Negligent misrepresentation

8. Morgan informs the vice president of HR, Natalie, during the termination meeting that one of her co-workers sexually harassed her. Morgan said she did not report it sooner because she was new to Green Thumb and was worried she would be fired. What should Natalie do first?
 - a. Since the complaint was first raised in the termination meeting, Natalie should put the complaint in a file and refer to it if any current employee of Green Thumb makes a similar complaint against the co-worker.
 - b. Obtain further information from Morgan about her allegations and then investigate whether the sexual harassment took place.
 - c. Immediately put the accused co-worker on probation for 3 months and inform him that this is because of an interpersonal conflict he had with a co-worker that was recently brought to the company's attention.

9. Tom's manager is not happy with the way Tom handled Morgan's hiring. Specifically, he is concerned that Morgan was not provided with Green Thumb's standard employment contract before her first day of work. Which form of discipline presents the least legal risk for Green Thumb?
 - a. Advise Tom that he will not receive his usual annual 15% bonus this year.
 - b. Maintain Tom's pay and benefits, but demote him to a position of lesser responsibility that has no supervisory duties.
 - c. Send Tom a written warning outlining the company's concerns, send him to mandatory HR training on policy compliance, and inform him that if he does not show improvement he will be disciplined further.

10. Tom's manager advises him of the disciplinary measures. Tom does not take the news well. He says that he has been under a lot of stress lately and that the disciplinary actions are unfair. He leaves and returns a few minutes later with a letter of resignation. He packs up his belongings, leaves his keys, and storms out of the office. The next day, Tom calls his manager and apologizes, saying that he discussed the resignation with his spouse and he would like to withdraw his resignation and return to work. Tom's manager does not wish to accept the withdrawal because he is concerned about Tom's behaviour. Tom's manager consults Natalie in HR for advice. What should she advise?
 - a. Tom's resignation is legally binding.
 - b. Tom's resignation would likely not be upheld in a law court.
 - c. Tom's manager should request a psychological assessment prior to allowing Tom to return to work.

CASE 3

Pups & Kits Inc. is a company that manufactures dog and cat food in Sudbury, Ontario. The company advertises in a trade publication for a day shift manager. Five employees working on the production line would report to the successful candidate, who would be independently responsible for supervising their work, including their schedules, discipline, overtime, vacation scheduling, and bonus eligibility. The day shift manager would occasionally perform the same work as the workers who report to him or her, but this would happen only rarely. Matias applies for the position and completes the company's standard application form. One of the questions is, "Have you ever been convicted of a criminal offence for which a pardon has not been granted?" Matias answers "no" and certifies, by his signature, that this information is accurate and complete.

An interview is scheduled for Matias with Donna, the manager of HR. The interview goes well and Pups & Kits makes an offer of employment to Matias. The offer requires that Matias consent to the company conducting a criminal records check. Matias consents. However, the criminal records check will not be completed before Matias starts work for the company; the process can take up to 4 months. Matias is expected to start work in 10 days.

The offer of employment contains a comprehensive termination provision: "The company may terminate your employment, at any time and without notice, for just cause. In the absence of just cause, the company may terminate your employment on 72 hours' notice or base salary in lieu of such notice, which will represent the entire, complete, and total obligation owed to you by the company and you will have no claims or further entitlements against the company."

Certain hourly employees participate in the company's time off in lieu of overtime banking program. All hours the employee works in excess of 44 hours in a week are put into the bank at straight time. This has been the company's policy for many years and employees are not asked to agree to this, in writing or otherwise. As a salaried employee, Matias does not participate in the company's overtime banking program.

Questions S11 to S14 refer to Case 3

11. Four months after Matias starts working at the company, Donna receives the results of his criminal background check. It reveals that 5 years before being hired, Matias had been convicted of a criminal offence for which a pardon had not been granted. Following receipt of this information, the plant manager approached Donna to ask for her recommendation. What should Donna advise?
- Terminate Matias's employment for just cause because he was convicted of a criminal offence.
 - Terminate Matias's employment for just cause because he falsified his employment application.
 - Contact the police to obtain further details about the crime for which Matias was convicted before addressing the matter with him and planning a course of action.

12. Although he has a criminal record, Matias has been a good employee for his 4 months of employment. The plant manager understands that it is necessary to terminate Matias's employment, but he would like to do so without just cause and he would like to rely on the termination provision in the employment letter, which Matias agreed to, and pay him 72 hours' pay in lieu of notice. The plant manager asks Donna for advice. What should Donna advise about the enforceability of the termination without just cause portion of contract?
- The clause is legally enforceable because the company gave him ample time to consider the contract and he agreed to it by signing and returning it to the company.
 - The clause is legally enforceable because it complies with the minimum requirements in the *Employment Standards Act, 2000*.
 - The clause is not enforceable because it does not comply with the minimum requirements in the *Employment Standards Act, 2000*.
13. Donna is reviewing the company's time off in lieu of pay overtime banking program. What concerns may she have, if any?
- There are no concerns with the program. It complies with the *Employment Standards Act, 2000*.
 - The program does not comply with the Employment Standards Act, 2000 because the banking of hours should be at 1.5 times the overtime hours worked, not at straight time.
 - The program should be amended to allow the employer to unilaterally require employees to participate in the banking program as a condition of their employment or continued employment.
14. Following his termination, Matias contacts Donna and claims that he was wrongfully denied overtime pay. He says he is eligible to receive overtime pay under the *Employment Standards Act, 2000*. On what basis might Donna argue that Matias is not eligible for overtime pay?
- Matias is a salaried employee and as such is not eligible for overtime.
 - Matias is a manager and his title exempts him from overtime.
 - Matias's work is supervisory or managerial in character and he performs non-supervisory duties on an exceptional basis.

Answer Key

1. **Correct answer is A:** The *Employment Standards Act, 2000*, provides that an employee with 3 months or more of continuous service is entitled to receive 1 week of notice (or pay in lieu of such notice) to a maximum of 8 weeks wages.
2. **Correct answer is B:** The *Employment Standards Act, 2000*, requires that the employer not reduce the employee's wage rate or alter any other term or condition of employment and, further that it continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period under the *Employment Standards Act, 2000*.
3. **Correct answer is A:** Section 64(1) of the *Employment Standards Act, 2000*.
4. **Correct answer is C:** Section 56(2) of the ESA defines a temporary layoff as one of not more than 13 weeks in any period of 20 consecutive weeks. Although it is possible to have a temporary layoff of more than 13 weeks, this could require the employer to continue "substantial payments" to the employee, or provide benefits. A layoff of more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks, needs the employer to continue some form of benefits continuation which includes pension plan contributions.
5. **Correct answer is C:** The *Labour Relations Act, 1995*, provides that it would be an unfair labour practice to terminate her employment if any part of that decision was based on anti-union motive/animus. Here the timing of the termination and the reasons would support a finding of unfair labour practice.
6. **Correct answer is C:** The employer must provide fresh consideration to alter the terms of the employment contract. There is no fresh consideration being provided to Morgan on the facts of this scenario. Therefore the oral employment contract would govern (a contract which was silent on her benefits under the ESA which entitles her to benefits available at common law).
7. **Correct answer is C:** The facts outline in the question support the five (5) elements that are necessary to prove a claim of negligent misrepresentation. Five general requirements: (1) there must be a duty of care based on a "special relationship" between the representor and the representee; (2) the representation in question must be untrue, inaccurate, or misleading; (3) the representor must have acted negligently in making said misrepresentation; (4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and (5) the reliance must have been detrimental to the representee in the sense that damages resulted.
8. **Correct answer is B:** The Tribunal's jurisprudence has confirmed that employers have a duty to take "reasonable steps" to address and investigate allegations of harassment or discrimination.
9. **Correct answer is C:** This would achieve the objectives of outlining the Company's performance concerns while continuing Tom in Green Thumbs employ. There would be no legal risk to the Company in this scenario.
10. **Correct answer is B:** The resignation was tendered in the heat of the moment and was quickly withdrawn. It is unlikely that the resignation will be found to be legally enforceable. There was also no acceptance of the resignation.

11. **Correct answer is B:** Matias falsified his application for employment and this has been found to be just cause for termination. Based on the contextual approach, Matias' employment should be terminated for just cause.
12. **Correct answer is C:** The clause fails to comply with the minimum requirements of the *Employment Standards Act, 2000*, regarding termination pay and benefits continuation.
13. **Correct answer is B:** The *Employment Standards Act, 2000*, requires that overtime must be paid. A bank is possible with the written agreement of the employee. If an employee has agreed to bank overtime hours, he or she must be given 1½ hours of paid time off work for each hour of overtime worked.
14. **Correct answer is C** The Company would maintain that Matias' job duties exempt him on the basis set out in this answer.