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KIRIRI WOMEN'S UNIVERSITY OF SCIENCE AND TECHNOLOGY
UNIVERSITY EXAMINATION, 2024/2025 ACADEMIC YEAR
FIRST YEAR, SECOND SEMESTER EXAMINATION
FOR THE DIPLOMA IN HUMAN RESOURCE MANAGEMENT
DHR 1110: LABOUR LAW

Date: 9TH APRIL 2024
Time: 2:30PM-4:30PM

INSTRUCTIONS TO CANDIDATES

ANSWER QUESTION ONE (COMPULSORY) AND ANY OTHER TWO QUESTIONS

QUESTION ONE (30 MARKS)

THE CONTRACT OF EMPLOYMENT AND AN INDEPENDENT CONTRACTOR.

Where there is a contract of employment, there is the relationship of employer and employee. There is an agreement on terms and conditions of employment. This relationship imposes certain rights and duties on each party. To determine the nature of the relationship, you can ask the following questions. First, *what does the contract say?* Does the contract call the worker an employee? If the employer does not want it to be construed as a contract of service, he should state in the contract that it is a contract for services or that the worker is an independent contractor and shall be personally liable to third parties for any damage or injury arising out of work. Second, does the contract read like a contract of employment? If the contract includes not only wages, but other details regarding holidays, superannuation, pension, sick benefits, injury benefits and hours of work, then contract is to undertake sound particular task, then it is a contract for service. Lastly, what measure of contract is exercised over the work? The greater the amount of direct control exercised over the person rendering the services by the person contracting them, the stronger the grounds for considering it to be a contract of service. Conversely the greater the probability that the services rendered are of a professional nature and that the contract is not one of personal service. However, control in itself can never be the sole deciding factor. If the services are not rendered as agreed, the contracts can be terminated.

Required:

- a) Demonstrate understanding of a contract of service as explained in the Employment Act 2007. (6 Marks)
- b) Differentiate between a contract of employment and an independent contractor. (6 Marks)
- c) In an employment relationship, independent contractors are personally liable for any damage or injury arising out of work. However, if the accident occurs at the workplace when the contractor is an *occupier*, the employer should be liable. Highlight the responsibility of the independent contractor like any other worker, as stated in Section 13 of Occupational Safety and Health Act 2007. (6 Marks)
- d) Certain common law and statutory rights depend upon an employee being dismissed. Explain certain ways in which employment can be terminated other than simply by dismissal. (6 Marks)
- e) The independent contractor will be liable for any injury or accident as explained in the case study. With reference to Section 21 of Work Injury Benefit Act 2007, explain the role of the employer in the event of a fatal accident involving the independent contractor. (6 Marks)

QUESTION TWO (20 MARKS)

- a) You have been engaged as a HR in an organization that has experienced high labour turnover, due to poor terms of engagements. Explain any four types of contracts under which you intend to engage the new employees. **(8 Marks)**
- b) Discuss the provision of Article 41 of Constitution of Kenya 2010. **(8 Marks)**
- c) Justify that labour law is a body of legal rules that regulates employment relationship. **(4 Marks)**

QUESTION THREE (20 MARKS)

- a) According to the provisions of the Fair Administrative Action Act of 2022, the administrator is required to provide reasons for the action taken, especially where an administrative action is likely to adversely affect the rights or fundamental freedom of any person. Discuss. **(8 Marks)**
- b) Human Resource Management students at the institution you work for wanted to know how they will be applying the labour laws in their work. Provide a clear explanation of application of labour laws. **(8 Marks)**
- c) Clearly state how you will ensure compliance in regard to the provision of Employment Act Section 10(5). **(4 Marks)**

QUESTION FOUR (20 MARKS)

- a) Using the table provided, explain the following leave entitlement with the corresponding sections as provided for in the Employment Act 2007 Revised 2022. **(8 Marks)**

Leave entitlement	Sections and provisions in Employment Act
Annual leave	
Sick leave	
Maternity leave	
Paternity leave	

- b) Discuss the proactive measures you intend to put in place so as to prevent illegal industrial action in organisations. **(8 Marks)**
- c) The International Labour Standards emphasizes on regulation of wages. Specifically, Convention 100 on Equal Remuneration. Explain the principle of equal remuneration for men and women workers for work of equal value. **(4 Marks)**

QUESTION FIVE (20 MARKS)

- a) Section 96 of Occupational Safety and Health requires an employer to issue “a permit to work” to an employee who is likely to be exposed to hazardous work processes. Using practical examples, clarify what should be included in this kind of notice – “permit to work”. **(8 Marks)**
- b) Explain the functions of wages council in Kenya as stipulated in Section 44 of the Labour Institution Act 2007. **(8 Marks)**
- c) In XYZ company, an employee’s contract of service expired and was not renewed by the employer. However, the employee continued to work since there was no notification and issuance of a new contract. The employee later resigned after two months. Advise the HR on how she will manage employee separation process and management of employee’s dues. **(4 Marks)**