

A Sample Answer

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Question One

(a)

The applicable procedure in relation to the racial harassment claim is the standard grievance procedure.

Neither of the dismissal and disciplinary procedures applies, because they are only relevant when the employer contemplates dismissing the employee; contemplates imposing relevant disciplinary action or has summarily dismissed the employee by reason of conduct – see reg 3(1) of the 2004 regs.

One of the grievance procedures applies whenever the employer complains about something that could form the basis of a complaint to the employment tribunal that falls within schedule 3 & 4. We know, from the notes attached to the test, that racial harassment is such a complaint.

Regulation 6(2) of the 2004 regs tells us that the standard grievance procedure will apply, unless the circumstances set out in 6(3) are present. Two of these – that the employment has ceased and that, before the employment ceased, the grievance procedure had not started – are met. The third, however, is that the parties have agreed in writing to use the modified procedure. This has not happened and so the modified grievance procedure does not apply.

(b) & (c)

In relation to (i) the claim for race discrimination related to the dismissal, and (ii) the claim for unfair dismissal, the applicable procedure is the standard dismissal and disciplinary procedure.

The standard dismissal procedure applies when the employer contemplates dismissing the employee – see reg 3(1) – unless the four circumstances set out at 3(2)(a-d) are met. They have not, because Adam was not dismissed immediately that his employer became aware of the misconduct. The misconduct occurred on 12th January and Adam was not dismissed until 16th.

Neither of the grievance procedures applies, because they do not apply to complaints in respect of dismissal – see reg 6(5).

Question Two

Since the racial harassment claim is one to which the standard grievance procedure applies – and therefore the requirement in paragraph 6 of Schedule 2 applies – Adam must set out his grievance in writing and sent it to his employer. He must then wait at least 28 days before presenting his claim to the employment tribunal. These requirements are set out in section 32(2) & (3) of the Employment Act 2002. If Adam does not comply with them, the tribunal will not have jurisdiction to consider the racial harassment claim – see s32(5).

Question Three

In considering this question we need to look at two things: first the deadline set out in the relevant statutes and second the possibility of an extension under the 2004 regulations.

The unfair dismissal claim and race discrimination arising from dismissal claim must be lodged on or before the 15th April. Both claims must be lodged before the end of three months starting with the date of termination / date of the act complained of respectively. This is set out at s111(2) Employment Rights Act 1996 and s68(1) of the Race Relations Act 1976. The extension of time in reg 15 of the 2004 regs does not apply, because Adam's disciplinary process was completed on the 23rd January, well within the normal time-limit – see reg 15(2).

The racial harassment claim must also be brought within three months of the acts complained of under s68. The last act of harassment must have been on, or shortly before, 8th December 2008, when Enid was promoted. So the claim would need to be presented on or before 7th March.

If, however, Adam sends his written grievance to his employer on or before the 7th March he will benefit from the three month extension of time – see reg 15(3). Then the deadline will be 7th June.