

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

INDUSTRIAL LAW

Time: Three Hours This paper consists of **six** questions.

Candidates are required to attempt any **four** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Lee and her fellow employees are employed by Haijin Foods Pty Ltd.

Haijin Foods Pty Ltd is a constitutional corporation.

The employees (including Lee) are currently covered by a modern award.

In July 2013, Haijin Foods Pty Ltd approaches the employees including Lee and it is proposed by them that the employees and Haijin Foods Pty Ltd enter into an enterprise agreement. However, it is also proposed that the agreement will not apply to those employees who clean the factory but will apply to all other employees.

Haijin Foods Pty Ltd does not provide all employees with a notice of the employee's representation rights prior to commencing negotiating a proposed enterprise agreement.

Haijin Foods Pty Ltd proposes to the employees that the agreement will reflect their current terms of employment with the exception of:

- (a) The agreement will provide for a 12% salary increase made up of four increases of 3% from 1 July in each year of the agreements operation;
- (b) The agreement will increase the weekly number of hours from 38 hours to 40 hours per week (the modern award provides for a 38 hour week);
- (c) Reduces the casual loading from 25% to 20%;
- (d) The agreement will provide the employees with 3 weeks' annual leave;
- (e) The agreement will provide for 8 days sick leave per year which may accumulate for 3 years;
- (f) The agreement will provide for 2 days' paid compassionate leave;
- (g) The agreement will provide for a 30 minute unpaid meal break each day;
- (h) The agreement will provide that employees will be paid monthly in arrears; and
- (i) The agreement will have a term, which will expire on 30 September 2017.

Lee is concerned about the proposed agreement and seeks your advice.

Lee is also concerned that if she does not support the agreement, Haijin Foods Pty Ltd may terminate her employment.

Lee is also concerned because she has sought the assistance of her union in the negotiations, but has been told by Haijin Foods Pty Ltd that she cannot involve them in the negotiating of the proposed agreement.

Lee is also concerned about whether she will continue to enjoy the conditions in her modern award if the enterprise agreement was made and approved by Fair Work Australia.

Advise Lee.

(20 marks)

(Question 2 follows)

Question 2

The Fair Work Act provides for statutory minimum conditions of employment.

Discuss.

(20 marks)

Question 3

“The common law in determining who is an employee still places considerable emphasis on the concept of control.”

Discuss.

(20 marks)

Question 4

The Fair Work Act ensures that both employers and employees have equal power when they commence bargaining for an enterprise agreement.

Discuss.

(20 marks)

Question 5

The Fair Work Act guarantees employees a right to take industrial action.

Discuss.

(20 marks)

(Question 6 follows)

Question 6

Corrie is employed by Tynan Engineering Pty Ltd ("Tynan Engineering") as an accountant.

Tynan employs more than 50 employees.

Corrie's employment is not covered by a Modern Award or enterprise agreement.

Corrie is paid a salary of \$75,000 per year plus \$10,000 per year in superannuation. Corrie works in Sydney.

When Corrie first started to work for Tynan Engineering 12 years ago, she was employed as an accounts clerk. At this time she was provided with a written contract of employment that enabled either her or Tynan Engineering to terminate her contract with two weeks' notice or payment in lieu of notice.

Corrie's role has changed significantly in the last 12 years.

Corrie is directed by head office of Tynan Engineering to insert into the accounts a number of invoices for a business other than Tynan Engineering and then to pay those accounts on behalf of Tynan Engineering Pty Ltd.

Unknown to her superiors, Corrie refuses to make the changes sought to the accounts and to pay the invoices as directed since she does not believe that this direction was legal.

Tynan Engineering is in a difficult financial position and decides to terminate Corrie's employment for reasons of redundancy.

Guy, Tynan Engineering's State Manager, calls Corrie into the office and he informs Corrie that her employment is terminated for reasons of redundancy with two weeks' payment in lieu of notice. Corrie is also paid her outstanding annual leave and long service leave by Tynan Engineering.

Corrie is not paid any redundancy pay.

Following the termination of Corrie's employment, Tynan Engineering discovers that Corrie had made a false claim for 2 hours overtime of which Guy had been aware (but other Managers of Tynan had not been aware) prior to the decision to make Corrie redundant but had not acted on this matter since he believed it either to be trivial or an honest mistake by Corrie.

Corrie comes to you for advice. Corrie admits making a false claim for overtime but claims she had previously worked such overtime and not submitted a claim.

Advise Corrie

(20 marks)

END OF PAPER