

Legal Profession Admission Board

March 2023

Industrial Law

Examiner's comments

Questions

1. In this question the student would need to consider the following:

What was decided by the High Court in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *WorkPac Pty Ltd v Rossato* [2021] HCA 23 and how those decisions changed the law in respect to identifying employees and contractors and determination of rights/obligations under contracts of employment.

2. In this question the student would need to consider the following:

- a) access by Jimmy to unfair dismissal under the Fair Work Act 2009 (Cth) (the "FWA");
- b) process under FWA for unfair dismissal;
- c) remedies under FWA for unfair dismissal;
- d) notice and redundancy entitlements under the FWA;
- e) whether a possible adverse action claim;
- f) whether breach of FWA failing to pay notice;
- g) whether breach of FWA failing to pay redundancy;
- h) How to recover; and
- i) Penalties.

3. In this question the student would need to consider the following:

- a) the express terms of Lisa's employment;
- b) implied terms of Lisa's employment;
- c) whether Concord Club can rely on conduct of Lisa not known by it at the time of dismissal to justify dismissal;
- d) duty to obey lawful and reasonable directions;
- e) whether Lisa has breached obligation of good faith;
- f) can Lisa be dismissed summarily;
- g) what is reasonable notice;
- h) remedies for breach by either Lisa or Concord Club;
- i) access to unfair dismissal under FWA;
- j) process under FWA for unfair dismissal;
- k) remedies under FWA for unfair dismissal;
- l) whether access to unlawful dismissal under FWA in relation to notice; and
- m) costs

4. In this question the student would need to consider the following:

What terms are implied by the Common Law into contracts of employment and their effect on employers and employees.

Coverage of the FWA and in particular who are not covered and when certain parts of the Act take effect

National Employment Standards
Maximum Weekly Hours
Requests for flexible work arrangements
Parental Leave
Annual Leave
Personal/Carer's and Compassionate Leave
Community Service Leave
Long Service leave
Public Holidays
Notice of termination and redundancy payments
Minimum wages
Equal Remuneration
Agreements
Awards
Allowable matters in awards
Role of the FWA
Role of Courts

Other Statutory provisions anti-discrimination/OHS/Workers Comp

5. In this question the student would need to consider the following:
- a) the range of actions for which could be commenced where there is industrial action under statute and common law;
 - b) remedies available in such actions;
 - c) access to statutory remedies;
 - d) access to common law remedies;
 - e) costs;
 - f) who may commence proceedings;
 - g) what is protected action;
 - h) when is protected action available; and
 - i) what needs to be done in order for action to be protected

6. In this question the student would need to consider the following:

When are penalties imposed
Potential penalties
Principles for assessing penalties
Serious contraventions

A Britt

7 June 2023