



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE

JUNE EXAMINATION

LABOUR RELATIONS N5

15 JUNE 2016

This marking guideline consists of 12 pages.

SECTION A**QUESTION 1**

- 1.1 True
- 1.2 True
- 1.3 True
- 1.4 True
- 1.5 False
- 1.6 False
- 1.7 True
- 1.8 True
- 1.9 False
- 1.10 True

(10 x 1) [10]

QUESTION 2

- 2.1 I
- 2.2 F
- 2.3 G
- 2.4 A
- 2.5 B
- 2.6 J
- 2.7 D
- 2.8 C
- 2.9 H
- 2.10 E

(10 x 1) [10]

QUESTION 3

- 3.1 Employee
- 3.2 Employer
- 3.3 Trade union
- 3.4 Socialism
- 3.5 State
- 3.6 Substantive
- 3.7 Workplace forums
- 3.8 Dismissal
- 3.9 Severance pay
- 3.10 Misconduct

(10 x 1) [10]

QUESTION 4

- 4.1 Employee/worker
- 4.2 Fixed term contract
- 4.3 Industrial revolution
- 4.4 Decentralised
- 4.5 Community of interest
- 4.6 Collective bargaining
- 4.7 Night work
- 4.8 Secondary strike
- 4.9 Basic Conditions of Employment Act
- 4.10 Family responsibility leave

(10 x 1) [10]

TOTAL SECTION A: 40**SECTION B**

Candidates must answer any four questions in this section.

QUESTION 5

- 5.1
- The shop steward has the role of employee and the role of shop steward.
 - He should step out of the one role before taking on the other role.
 - As an employee he needs to ask permission to leave the workplace in order to fulfil his/her role as shop steward.
 - He will be permitted to leave his post on short notice if a workplace matter requires his attention.
 - The supervisor must understand that the employee has to fill another role and that permission to carry out this role should not be unreasonably withheld.

(Any 4 x 2) (8)

- 5.2
- 5.2.1 State as legislator
- The state provides various acts to regulate the workplace relationship, e.g. the LRA makes provision for aspects like freedom of association and for protection against unfair dismissals.
 - Government promulgates laws to control both the individual and collective rights of the employee.
 - It may by legislation, establish collective bargaining machinery and may prescribe statutory procedures to be followed.
 - The government directly enacts legislation to complement common law.
 - The BCEA and Health and Safety legislation are the most important pieces of legislation in this category.
 - The BCEA prescribes maximum working hours, regulates meal intervals and various kinds of leave.
 - The OHS Act provides for safety and safety regulations in the workplace.

(Any 3 x 2)

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- 5.2.2 State as conciliator
- The state provides for the establishment of processes like conciliation and mediation.
 - Bodies (institutions) like the CCMA have been established for conciliation, mediation and arbitration.
 - The government may also, in certain instances, intervene in disputes itself.
 - May act itself as mediator of conciliator.
 - In some cases these processes will be compulsory
 - The purpose is to ensure peace and stability. (Any 3 x 2)
- 5.2.3 The role of the police
- The police has no direct role to play within the labour relationship.
 - They are not supposed to side with either party .
 - They are there to protect the public and prevent public disturbances.
 - They are called in to intervene when either party causes a public disturbance – usually when employees and their unions infringe on the rights of other individuals.
 - They may not interfere on private property unless requested to do so, and only then if the activity is criminal. (Any 3 x 2)
- (3 x 6) (18)
- 5.3
- State – secondary partner
 - Employer – primary partner
 - Employee – primary partner (3 x 2) (6)
- 5.4 The right:
- To control
 - To supervise
 - To discipline
 - To decision-making
 - To dismiss employees
 - To strategic planning
 - To close a plant
 - Of merging
 - To transfer employees
 - To promote employees
 - To join an employer organisation
 - To a lock-out
 - To recruit employees
 - To appoint employees
 - The induction of new employees
 - To train employees
 - To allocate tasks
 - To retrench employees
 - To restructure plant

- To increase salaries
 - To establish hours of work
 - To grant or refuse leave of absence
 - To determine overtime
 - To give lawful instructions
 - To ensure that affirmative action directives are implemented
 - To do job grading and performance appraisals
- (Any 8 x 1) (8)
[40]

QUESTION 6

- 6.1
- Misconduct of the employee
 - Incapacity of the employee
 - Operational requirements of the business/Retrenchments
- (3 x 1) (3)
- 6.2
- To resolve disputes through conciliation, mediation and arbitration
 - To provide training in aspects such as: the establishment of workplace forums, disputes and grievances, disciplinary procedures, dismissals and affirmative action
 - To assist in the establishment of workplace forums
 - To limit industrial action such as strikes
 - To decide which service will be regarded as essential
 - To compile and publish information about its activities
 - To do research into labour-related aspects
 - To establish picketing rules
 - To consider applications for accreditation and subsidy by bargaining councils and private agencies
 - To provide support for Essential Services Committee
- (Any 7 x 2) (14)
- 6.3
- One week
- In the first four weeks of employment (If the employee has been employed for 6 months or less)
- Two weeks
- If the employee has been employed for more than 6 months, but less than one year
- Four weeks (30 days)
- If the employee has been employed for more than one year
 - Or in the case of a farm worker or domestic worker who has been employed for more than 4 weeks
 - The notice period can be varied by a collective agreement
 - Notice must be given in writing
 - Notice must not be given when the employee is on leave, sick leave or maternity leave
- (Any 9 x 1) (9)

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- 6.4
- A pregnant employee is entitled to 4 months' unpaid maternity leave.
 - Maternity leave may begin up to 4 weeks before the expected date of birth.
 - Maternity leave may be agreed otherwise if so required on account of the health of the employee.
 - The employer may not require an employee to return to work before 6 weeks after the birth of the child.
 - Should the employee wish (elect) to return within 6 weeks, a medical doctor or midwife must certify that she is fit to do so.
 - Should the employee have a stillborn child or miscarriage in the third trimester of pregnancy, she can remain on maternity leave for 6 weeks.
 - This period can be lengthened should the doctor certify that this is necessary for her health.

(7 x 2)

(14)
[40]

QUESTION 7

7.1

INDIVIDUALISM	COMMUNITY OF INTEREST
<ul style="list-style-type: none"> • Freedom of the individual • Freedom to make own choices • Propagation of individualism and protection • Support of a democratic majority government • Legislation protects all parties • Conflict is unavoidable or is accommodated by special procedures • Individual has own farm, business, etc. • Every person takes responsibility for him/herself • Privacy is very important • Believing that one is entitled to one's own opinion • Education is important to uplift oneself • The need of the individual is most important • Creates order 	<ul style="list-style-type: none"> • Legislation makes provision for all parties <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Individual interests are subordinate to the interest of society • Community possession or action <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • The government exercises control over the community • All parties have the same benefits • Individual interests are subordinate to the interest of the society • Legislation protects society or the community through provisions in the governing system <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Conflict is not tolerated • Community possession • The group is responsible for keeping the people in the group together and safe • Important to belong to a group • Opinions are formed by the group and agreed upon • Education is for the advantage of the whole group • The needs of the group are the most important • Group internally sanctions thereby ensuring the group acts correctly

(Any 10 x 1) (10)

7.2 DUE TO THREE DIFFERENT VIEWPOINTS ON THIS QUESTION, THE ANSWER IS DIVIDED IN THREE PARTS TO COVER THE THREE TEXTBOOKS IN USE.

VIEWPOINT ONE

- Employees want protection and assistance, and trade unions offer this to them
- Trade unions also have their own political, economic and social aims
- Trade unions' conduct in the course of collective bargaining and decision making is determined mainly by political considerations, e.g. by how much political mileage can they get from their actions
- Employees differ considerably in their political views, not only with their employers, but also with one another
- Trade unions also have to deal with these internal conflicts
- Trade union leaders who are elected, rather than appointed, are under pressure to comply with the broad variety of political requirements of their members
- If leaders ignore these interests, they may lose the next internal election of the trade union
- Trade unions are eager to support political parties in elections because of the benefit they get when their political party wins the election
- The political party can design legislation to benefit employees and the trade union
- On the other hand political parties are eager to promise trade unions specific benefits before elections. One hand washes the other.

VIEWPOINT 2

- Trade unions' conduct in collective bargaining is mainly controlled by political considerations
- Workers have major differences (or internal differences) with employers and with each other
- Differences could be between young members who prefer higher salaries and older members who prefer fringe benefits
- Also differences between male and female workers and trained and untrained workers
- Trade union leaders must deal with these conflicts and possible sources of dissatisfaction
- If not, they could lose the next general election
- Therefore trade unions rather use political than economic aspects to establish a framework to resolve disputes

VIEWPOINT THREE

- The union movement usually becomes involved in issues like job security, health and safety, etc.
- Democracy in the political sphere is extended to the industrial sphere and this is achieved by allowing workers a greater say in decision making at work
- Efforts to improve the quality of work life is regarded as an important issue because it affects the personal lives of the population
- Economically participation improves productivity and industrial relations
- Trade union decision making and the activities that follow is seen as political since trade unions engage in collective bargaining with employers
- Their tone of negotiations is political since they engage to ensure equality and fairness to all
- The reason for collective bargaining is that the objectives and goals of employers and workers are not similar
- Trade unions also deal with internal differences between younger and older members, male and female members, etc.
- Trade unions must be seen as strong, committed, knowledgeable and in control by union members to be re-elected into their positions
- Trade unions often use political tactics and reasons during negotiation, since these factors are attention grabbers

(Any 7 x 2) (14)

7.3 STRUCTURES

- Bargaining Councils
- CCMA
- Statutory Councils
- Shop Steward Committees
- Health and Safety Committees
- Labour Courts

IN-COMPANY PROCEDURES

- Disciplinary procedures
- Grievance procedures
- Retrenchment procedures
- Dispute procedures
- Appeal procedures

PROCESSES

Collective bargaining

Mediation

Arbitration

Industrial action

Strikes

Lockouts

Work stoppages

(Any 16 x 1) (16)
[40]

QUESTION 8

- 8.1
- ```

graph TD
 A[National Executive committee] --- B[Regional Office]
 B --- C[Branch Office]
 C --- D[Shop Steward Committee/Shop Steward]
 D --- E[General membership]

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- (5 x 1) (5)
- 8.2
- Termination by agreement
  - Termination on notice
  - Supervening impossibility
  - Insolvency of the employer
  - Redundancy
  - Retrenchment
  - Summary termination
  - Effluxion of time
  - Completion of the task
  - Dismissal
  - Constructive dismissal
  - Conduct or capacity of the employee
  - A result of disciplinary action
  - The employee took part in an unprotected strike
- (Any 5 x 1) (5)
- 8.3
- 8.3.1
- Economic development
  - Social justice
  - Labour peace
  - Democratisation of the workplace
- (4 x 1) (4)
- 8.3.2
- To give effect in section 27 to certain fundamental rights of the Constitution
  - To respect the International Labour Organisation
  - To provide a framework for promoting collective bargaining
  - To promote employee participation in decision making in the workplace
  - To provide for the resolution of labour disputes
- (5 x 2) (10)
- 8.4
- The primary strike is a protected strike
  - The secondary employer receives 7 days' notice of the planned participation
  - There is a reasonable relationship between the employers concerned
- (3 x 2) (6)

## LABOUR RELATIONS N5

- 8.5
- Freedom of association was always part of labour relations in South Africa, and still is.
  - It forms one of the main pillars of collective labour relations.
  - Every employee is free to associate, i.e. join a trade union and to take part in its activities.
  - In the past not all employees were protected by law.
  - Everybody in South Africa had the right to belong to a trade union, but only certain trade unions had the right to strike.
  - If an employer dismisses employees because they belong to a trade union, then that employer is guilty of an offence.
  - Statutory freedom of association was never formally forbidden in South Africa.
  - But black workers were not protected by law before 1992.
  - According to the LRA (66/1995) freedom of association makes provision for employers and employees.
  - That means an employer may not dismiss an employee because he belongs to a trade union.
  - Freedom of association refers to the right to gather for a legal common reason/cause or purpose without interference by the government.
  - Any employer is free to join an employer organisation and to join in its activities.
  - Every person in South Africa has the right to freedom of association.

(Any 5 x 2)

(10)  
[40]**QUESTION 9**

- 9.1
- Negotiating collective agreements with labour unions
  - Assisting members in dispute resolution
  - Assisting members in industrial relations
  - Providing training for members
  - Giving legal aid and advice to companies
  - Represent the interests of the members when dealing with unions within bargaining councils
  - Strengthening the bargaining power of employers
  - To supply expertise in handling unrest and disputes within the company
  - To handle disputes on national level
  - To help members in day-to-day industrial relations
  - To represent the industry's views to government or public
  - Ensure similarity of remuneration, benefits and working conditions
  - Represent the interests of members with government and other agencies
  - Assist one another with information
  - Set guidelines for new members on policies and procedures
  - Assist one another by acting as mediators for one another in the case of disputes
  - Collectively organise training and development and manage the funds for these activities

(Any 5 x 2)

(10)

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |             |             |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|
| 9.2                     | <ul style="list-style-type: none"> <li>• The employer investigates the grounds for dismissal.</li> <li>• The employer must notify the employee about the allegations.</li> <li>• The form and language must be easily understandable.</li> <li>• The employee must have an opportunity to state his/her case.</li> <li>• The employee must have reasonable time to prepare a response.</li> <li>• The employee must be assisted by a trade union representative or fellow employee.</li> <li>• The decision must be communicated to the employee in writing.</li> <li>• If dismissed the employer must give the employee a reason and remind him or her of the right to lodge an appeal.</li> </ul> | (8 x 2)     | (16)        |
| 9.3                     | <ul style="list-style-type: none"> <li>• The nature of the job</li> <li>• The period of absence</li> <li>• The seriousness of the illness or injury</li> <li>• A temporary replacement</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (4 x 1)     | (4)         |
| 9.4                     | <ul style="list-style-type: none"> <li>• Rights and duties</li> <li>• Wages</li> <li>• Working conditions</li> <li>• Fringe benefits</li> <li>• Overtime</li> <li>• Leave</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | (Any 5 x 1) | (5)         |
| 9.5                     | 9.5.1      Capitalism                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |             |             |
|                         | 9.5.2      Socialism                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |             |             |
|                         | 9.5.3      Socialism                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |             |             |
|                         | 9.5.4      Socialism                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |             |             |
|                         | 9.5.5      Capitalism                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | (5 x 1)     | (5)         |
|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |             | <b>[40]</b> |
| <b>TOTAL SECTION B:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |             | <b>160</b>  |
| <b>GRAND TOTAL:</b>     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |             | <b>200</b>  |