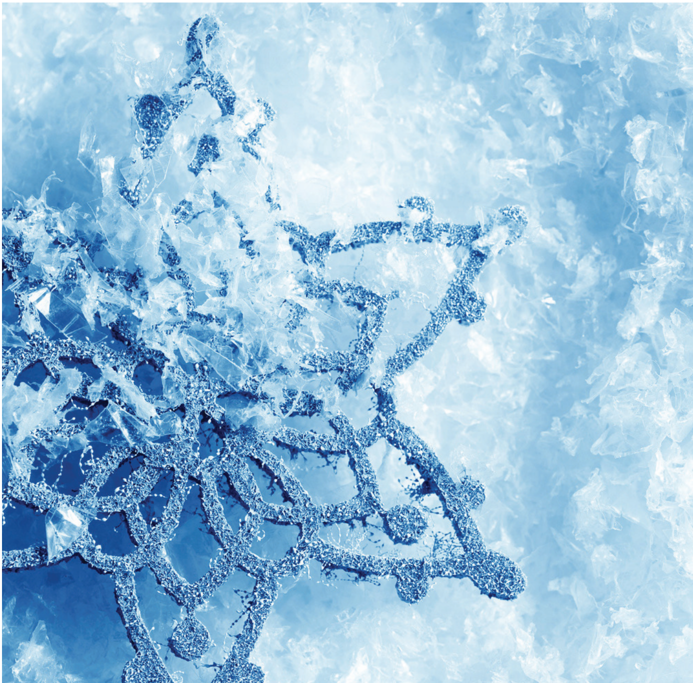
Christmas*Quiz - Answers*



QUESTION 1 – C

The Agency Workers Regulations 2010 apply as the temps, who are employed by a recruitment agency, have been assigned to Downtown Abbey for the purpose of carrying out temporary work.

The Regulations provide that from day one of their assignment, the temps should be treated no less favourably than other comparable workers. It is not until the temps have reached a 12 week qualifying period that they will be entitled to the same basic working and employment conditions that they would get if employed direct by the hirer.

QUESTION 2 – D

Regardless of whether Downtown Abbey has a social media policy in place, it would be best practice for Mr Mothschild to investigate the matter informally, before following usual disciplinary procedures. He should certainly not jump to any decision to dismiss the employee, as he could face a claim for unfair dismissal.

The matter should not be ignored, as Downtown Abbey could be held vicariously liable for potential charges of harassment from the colleagues who were the subject of the facebook post.

QUESTION 3 - A

The default retirement age was abolished in April 2011, so it is no longer legal to retire employees at 65, or at any set age at all. Any action to retire an employee could be considered as age related discrimination if unjustified.

The Employment Equality (Age) Regulations 2006 have been repealed and no longer govern new age related claims. Age related discrimination claims now fall under The Equality Act 2010.

The Equality Act 2010 provides that where the decision to retire an employee can be objectively justified, it will not be discriminatory. To prove objective justification, the treatment or provision, criterion or practice (PCP) should be "a proportionate means of achieving a legitimate aim". Whilst Downtown Abbey have a business need to have someone working that can physically cope with the volume of trees that need felling, it is unlikely that the decision to retire Mt Titchbog is proportionate. The work he is doing is for a temporary period only and it is only Mr Mothchild's opinion that Mr Titchbog is unable to do the work required of him. The bar for proving objective justification is high and unlikely to have been reached in this case.

QUESTION 4 – A

Treating an employee less favourably because she associates with a disabled person is direct disability discrimination. Less favourable treatment can be "because of" a disability under section 13 of the Equality Act 2010, whether it is the victim or a person associated with them who is disabled.

QUESTION 5 – B

Mr Mothschild should try to obtain a medical diagnosis before making any decisions regarding the employee's employment. This will help him approach discussions with the employee with regard to a possible return to work, and should inform him of any reasonable adjustments that can be made to working conditions.

Before taking any decision to dismiss the employee, Mr Mothschild should follow a fair procedure, which should include meetings with the employee to establish how she is feeling, a possible return to work or redeployment and whether the employer can make any reasonable adjustments. Only when this process is exhausted should the employee be invited to a dismissal hearing. The employee should be allowed to appeal.

In this case, the employee's sickness has made her incapable from coming into work, therefore the fair reason for dismissal is a capability reason. It is not a conduct reason, as the employee has provided fit notes, and has acted reasonably.

QUESTION 6 – A

The Transfer of Undertakings (Protection of Employment) Regulations 2006 or TUPE applies to this situation, as it is a service provision change. Activities will cease to be carried out by a contractor on a client's behalf and will be carried out instead by the client on his own behalf.

Applying the regulations, Amelia Smythe's contract of employment will be automatically transferred to Downtown Abbey and her terms and conditions of employment should remain unchanged. Any subsequent contractual change will be void if the reason for the change is the transfer itself, or a reason connected with the transfer which is not an economic, technical or organisational reason entailing changes in the workforce (an ETO reason).

QUESTION 7 – B

Under current UK law there is no requirement for employers to contribute to a pension scheme for employees, although this is changing in 2012.

The current position is that employers are required to ensure that employees are given access to a stakeholder pension scheme. The employer has to arrange for the employee's contributions to be deducted and paid into the scheme, but does not have to contribute itself. There are a few exceptions to provision of access to a scheme, such as where an employer has five or less employees.

Reforms are being implemented under the Pensions Act 2008, and are set to commence from 1 October 2012, and phased in over a period of four years. Employers will be allocated a 'staging date' at which time they will be obliged to automatically enrol 'jobholders' in a workplace pension scheme that meets certain qualifying criteria. Mandatory minimum employer pension contributions will also have to be made, of at least 3% of the jobholder's 'qualifying earnings'.

QUESTION 8 – B

It is likely that the man wearing the turban is doing so not out of personal choice, but because he is following a mandatory religious requirement. As his religion dictates that he should wear the turban, any request for him to remove it in order for him to comply with the dress code could be indirect discrimination.

Mr Mothschild should consider allowing an exception to this rule in these circumstances. A blanket ban on the wearing of turbans is highly unlikely to be objectively justifiable. The aim of having all of the singers looking the same is unlikely to be seen as legitimate, or proportionate in the circumstances.

QUESTION 9 – D

As Mr Sewell was open about his sexual orientation, it would be very hard for him to establish a direct discrimination claim based upon these facts.

In Grant v HM Land Registry [2011] EWCA Civ 769 the Court of Appeal considered whether a gay employee who had 'come out' to his colleagues at the Lytham office, had been subjected to direct sexual orientation discrimination and harassment when he was 'outed' by his line manager when he moved to the Coventry office. The fact that he was open about his sexuality with other colleagues defeated his discrimination claim. There was no suggestion that Mr Grant required or even requested his colleagues to keep his sexual orientation a secret. His colleagues would have been justified in assuming that he would have no objection to such a revelation. At any time, one of the Lytham employees, when talking to a colleague in Coventry, could have innocently revealed that Mr Grant was gay.

QUESTION 10 – D

A 2011 case, Hughes v The Corps of Commissionaires Management Ltd, dealt with similar facts.

In the case the Court of Appeal found that the employer had not breached their obligations under the Working Time Regulations 1998, in requiring the security guard to remain on call to the public during his rest breaks. It is Regulation 12 that entitles the employee to an uninterrupted rest break of 20 minutes, when working more than a 6 hour day. However, Regulation 21 says that where the employee is engaged in security and surveillance activities requiring a permanent presence, the employer is not required to provide such a rest break. The employee should, however, get an 'equivalent period of compensatory rest' under Regulation 24, and so allowing him to re start his break would be an adequate way of providing this.