Instructions:
Answer question ONE (Compulsory) and any other TWO questions

Question 1

a) When is an employee entitled to compensation?

b) What are the limitations/expectations? (30 marks)

Question 2

Occupational Safety and Health Act (2007):

a) State and explain the various health general provisions under this Act (10 marks)

b) Under this Act, explain the duties of an employee (10 marks)

Question 3

Labour Institutions Act (2007):

a) State and explain the composition of industrial court established under this Act. (10 marks)

b) Explain the meaning of remuneration under this Act (10 marks)

Question 4

Labour Relations Act (2007):

a) What are the consequences of an employee participating in a strike or lock-out not in compliance with this Act (5 marks)

b) Define a “unionisable employee” (1 mark)

c) With regard to freedom of association, list any FIVE rights of an employee under this Act. (10 marks)

Question 5

Employment Act (2007):

a) List and explain any FIVE provisions with regard to protection of children from child labour worst forms of child labour (10 marks)

b) Describe fully what is entailed in employment particulars (10 marks)
MARKING SCHEME


- Employee involved in an accident resulting into disablement or death is subject to provisions of Work Injury Benefit Act, entitled to benefits under this Act.
- Employer is liable to pay compensation as per Act to employee injured while at work.
- Employee’s not entitled to compensation if an accident, not resulting in serious disablement or death, is caused by the deliberate and willful misconduct of the employee.
- An accident or disease resulting in serious disablement or death of an employee is declined to have risen out of and in the course of employment if the accident was due to an act done by the employee for the purpose of, in the interests of or in connection with, the business of the employer despite the fact that the employee was, at the time of the accident acting:
  a) In contravention of any law or any instructions by or on behalf of his employer; or
  b) Without any instructions from his employer.

- As per the Act, the conveyance of an employee to and from the employee’s place of employment for the purpose of the employee’s employment by a vehicle provided by the employer, id deemed to be in the course of employee’s employment.
- For purposes of this section, an injury shall only be deemed to result in serious disablement if the employee suffers a degree of permanent disablement of 40% or more.
- Accidents during training for or performance of emergency services, or occupational accident or contracts an occupational disease (with the consent of the employer) it is deemed to have arisen out of and in the course of the employee’s employment.

**Question 2 (a) Cleanliness: Part VI of Occupational Safety & Health Act (2007)**

Every workplace shall be kept in a clean state and free from effluvia from any drainage, sanitary convenience or nuisance and without prejudice to generality of sub sec (1)

(i) Accumulation of dirt & refuse shall be removed daily by a suitable method from the floors and benches of workrooms and from the stain cases and passages.

(ii) The floors of every workroom shall be cleaned at least once in every week by washing or, it is effective and suitable, by sweeping or any other method.

(iii) All inside walls and partitions and all ceiling or tops of rooms, and all walls, sides and tops of passages and stain case shall:-

  a) Smooth impervious surface at least once in every 12 months be washed with hot water and soap or cleaned by any other suitable method.
  b) Painted with oil paint or varnished at least once every 5 years, or as the Director deems necessary and at least once in every 12 months be washed with hot water and soap or cleaned by other suitable method.
  c) White washed or colour washed shall be repeated at least once in 12 months.

The minister may exempt any class or description of workplaces and order that the above provisions shall not apply to them.
An occupier who contravenes this section commits an offence.

- Ventilation
- Lighting
- Drainage of floors
- Sanitary conveniences

**Question 2 (b) Part II Section 13 Duties of an Employee: Occupational Safety & Health Act (2007)**

Every employee shall while at the workplace:
- Ensure his own safety and health of the other person affected by his acts or omissions at the workplace
- Co-operate with his employer and any other person in discharge of any duty.
- Always wear or use any protective equipment or clothing to prevent risks to his safety and health.
- Comply with safety and health procedures, requirements and instructions given by person having authority over him.
- Report to the supervisor a hazardous situation he cannot correct.
- Report to the supervisor any accident, injury arising in the course of or connected with his work.
- Co-operate with employer or other person to enable statutory duties or requirement to be performed to be complied with.
- Duty to report dangerous or continuing imminent or serious danger to safety or health of him and other employees.
- Duty not to misuse or interfere with thing xxx
- Prohibition v/s creation of hazards e.g. boisterous play, scuffling, fighting, practical jokes, unnecessary running or jumping or similar conduct.

**Question 3 (a) Industrial Court Composition (Labour Institutions Act (2007): Part III Sec II)**

- Has all powers and rights in this Act or any other Law for furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Kenya.
- Consists of:
  a) Principal Judge
  b) As many Judges as the President and Judicial Service Commission consider fit.
- Members of Industrial Court are appointed as per Sec 17 (Re-appointed for further term, revocation of appointment, remuneration etc)
- Industrial Court is constituted by a Judge sitting with two members of the Industrial Court.
- A person shall not be eligible to hold office as Principal Judge of Industrial Court unless the person:
  a) Is an advocate of the High Court of Kenya of not less than 10 years standing.
  b) Has considerable knowledge and experience in Law and practice of industrial relations and employment conditions in Kenya.
- A person shall not be eligible to hold he office of a Judge of the Industrial Court unless the person:
a) Is an Advocate of the High Court of Kenya of not less than seven years standing and;
b) Has considerable knowledge and experience in the Law and practice of industrial relations and employment conditions in Kenya.

**Question 3 (b) Remuneration: Labour Institutions Act (2007) Part IV Sec. 50**

Remuneration – Amount paid or to be paid in cash to the employee by his employer clear of any dedications, except any dedication lawfully made.

a) For contribution to any provident fund or superannuation scheme.
b) In respect of rations supplied by an employer which the employer is permitted to make under a wages order.
c) Under provision of any other written Law for the time being in force which provides for or permits deductions to be made from an employee’s wage by employer.
d) At the request in writing of the employee, for any purpose in which the employer has no direct or indirect beneficial interest.

“Statutory minimum remuneration” – means the minimum remuneration prescribed in a wages order.

**Question 4 (a) Labour Relations Act (2007) – Part X Sec. 80**

An employee who takes part in, calls instigates or incites others to take part in a strike not in compliance with this Act is deemed to have breached the employee’s contract and:

a) Is liable to disciplinary action;
b) Is not entitled to any payment or any other benefit under the Employment Act during the period the employee participated in the strike

**Question 4 (b) Unionisable Employee: Labour Relations Act (2007)**

Unionisable Employee- In relation to trade union means the employees are eligible for membership of that union

**(Question 4 (c) Right of an Employee: Labour Relations Act (2007) Part II Sec. IV**

Rights of an employee with regard to Freedom of Association

- Right to participate in forming a trade union or federation of trade unions
- Join a trade union
- Leave a trade union
- Every member of a trade union has the right, subject to constitution of that trade union:
  a) Right to participate in its lawful activities
  b) Right to participate in election of its officials and representatives
  c) Stand for election and be eligible for appointment as an officer or official and if elected or appointed, to hold office.
  d) Stand for election or seek for appointment as a trade union representative and if elected to carry out function in accordance with this Act or a collective agreement.
  e) Elect office bearers of Trade Union
f) Stand for election or seek appointment as an office bearer or official and if elected or appointed, hold office.

**Question 5 (a) Employment Act 2007: Part VII Sec….**

- Prohibition of written contracts for children between 13 and 16 years
- Restriction in employing child between 13 and 16 years to attend machinery.
- Time restriction in employing a child (6.30 p.m to 6 a.m)
- No person shall employ a child who has not attained 13 years whether gainfully or otherwise in undertaking.
- 13-16 years old children may be employed to perform light work which is:
  a) Not likely to be harmful to the child’s health or development
  b) Not such as to prejudice the child’s attendance at school, his participation in vocational orientation or training programmes approved by minister or his capacity to benefit from instructions received. Ministry may make rules prescribing light work in which a child between 13-16 years may be employed and the terms and conditions of that employment.

**Question 5 (b) Employment Particulars: Employment Act 2007 Part III Sec 10**

Written contract of service shall state:

- Name, age, permanent address and sex of employee
- Name of employer
- Job description of the employment
- Date of commencement of employment
- Form and duration of the contract
- The place of work
- Years of work
- Remuneration, scale or rate of remuneration, method of calculating that remuneration and details of any other benefits.
- Intervals at which remuneration is paid
- Date on which employee’s period of continuous employment began e.t.c.

Statement II includes particulars:

a) Any terms and conditions relating to:

   (i) Entitlement to leave, including public holidays and holiday pay
   (ii) Incapacity to work due to sickness or injury and provision for sick pay.
   (iii) Pensions and pension scheme

b) Length of notice employee should give and entitled to receive to terminate his contract.
   Any collective agreements directly affecting terms and conditions of employment etc.