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# Employment Law

The Employment Law handles all issues in a work situation from recruitment, the terms, and conditions of serving as an employee to redundancy in addition to the provision of information on the amendment of any statutes. Employment law regulates how employees relate with their employers by governing what each party expects from the other, that is, both the employer and employees. Employment Law gives guidance about the termination of the employment and dismissal claims. Additionally, Employment Law also covers discrimination in the workplace and presents the best corrective measures and punishment for offenders. This paper analyzes 2 cases in the English which includes *de Sousa v Danny Yau Limited t/a Princess Garden* [2019] JRC 169 that pertains the termination of the employment contract, and *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 that pertains discrimination in the workplace.

## a. Key Concepts

Termination of the employment contract; refers to the voluntary or involuntary ending of the contract between an employee and an employer. An employment contract is expected to be terminated as described by the employment agreement where an employee can be terminated from a job out of his/her free will or following a decision from the employer. The legal termination of the employment contract is achieved by offering notice of termination as described by law. Voluntary termination occurs when an employee terminates his/her employment voluntarily or as a result of constructive dismissal from the company. In a constructive dismissal, an employee might be forcefully discharged from the company where he/she is given an ultimatum to quit the job or get fired. Involuntary termination occurs during

layoffs and downsizing or when an employee gets fired. Illegal or wrongful dismissal occurs when an employee gets dismissed for exercising their legal rights or out of the employer's anger and hatred and is punishable by law. An employer who involuntarily terminated and the employment contract is expected to provide a notice of termination to the employee and/or offer a termination pay known as severance pay. According to the Fair Labor Standards Act, a company is not mandated to pay a severance, but the company can do so under a private agreement with the employee.

Discrimination in the workplace; refers to the unfair treatment of employees in a workplace basing on the class to which they belong rather than on personal merit. Different forms of discrimination in a workplace may occur between colleagues, between an employer and employee or between the employees and third parties. Discrimination in the workplace is unlawful especially if the discriminated victim belongs to a protected category such as gender, race, and disability. Discrimination in the workplace can be direct, indirect. Direct discrimination occurs when an individual treats another individual disapprovingly because of their protected class which causes unfair assumptions about what the discriminated individual can or cannot do. Indirect discrimination occurs when an imposed policy disadvantages a part of a protected group or even the whole group. In 2017, the Equal Employment Opportunity Commission (EEOC) identified the most common workplace discrimination cases were based on retaliation, race, age, sex, and disability. Other forms of discrimination in the workplace occur during hiring, recruitment or in the employment process.

b. The most important statutes

Termination of the employment contract; Employees are protected by federal laws from wrongful termination of employment contracts that is conducted in retaliatory or discriminatory

or violates public policy. An example is when an employee gets fired because of taking a paternity leave which is acceptable according to the regulations by the *Family and Medical Leave Act (FMLA)*. In the *de Sousa v Danny Yau Limited t/a Princess Garden* [2019] JRC 169 case, if the claimant claim is upheld, both federal and state laws can be used to offer her justice. The Fair Labor Standards Act would have come in and directed on the compensation to the claimant for being unlawfully dismissed. However, since her claims were dismissed, she could not do anything else.

Discrimination in the workplace; Discrimination in the workplace is illegal and thus it is protected under law. The primary law that protects discrimination in the workplace is *Title 8 of the Civil Rights Act of 1964* which forbids discrimination centered on protected categories based on race, gender, religion, national origins, and color. Employees are also protected from being discriminated based on their age by the *Age Discrimination in Employment Act (ADEA)*. Pregnant women and other employees who are in the process of growing their relations are safeguarded by the *Family and Medical Leave Act (FMLA)* together with the Pregnancy Discrimination Act (PDA). Another law that protects discrimination in the workplace is the *Americans with Disabilities Act (ADA)* which bans discrimination based on physical or mental disabilities. In the *Essop v Home Office (UK Border Agency)* [2017] UKSC 27, the claimants who are represented by Essop are protected by *Title 8 of the Civil Rights Act of 1964*. Once the claimant's claim is upheld, the employer will be required to review its Policies, Criteria, and Procedures to ensure that there is no form of discrimination whatsoever.

c. The Facts of the Cases and the Ruling by the Tribunal

The *de Sousa v Danny Yau Limited t/a Princess Garden* [2019] JRC 169 case was an appeal against the ruling of the Jersey Employment and Discrimination Tribunal of dismissing de

Sousa's (the claimant) claim of being unfairly dismissed by Danny Yau Limited t/a Princess Garden (the employer) who terminated her employment. The claimant informed the employer that she would not be present for the month of August without giving reasons for her absence. The claimant came back to the office on 19th September to find out that the employer had employed someone else in her place as the employer thought that the claimant had resigned and would not return to work. The tribunal ruled that the employer was entitled to assume that the employment contract had ended since the claimant's failure to return to work was a breach of the contract.

In the *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 case, Mr. Essop (the claimant) complained of discrimination of the Black and Minority Ethnic (BAME) by the Home Office (the employer). A report illustrated that the BAME and older contestants had lesser pass rates of a Core Skills Assessment (CSA) that was required for promotion compared to the white and young candidates. The claimant argued that the requirement for promotion which was passing the CSA instituted indirect discrimination based on age and race. The home office on the other side required the claimants to prove the reasons for the lower pass rates countering s 19(2)(b) of the Equality Act 2010. The Supreme Court upheld the case and stated that the members of the group failed the CSA suspiciously which was a disadvantage to the group.

#### d. Analysis of the Cases Regarding Relevant Case Law

In the *de Sousa v Danny Yau Limited t/a Princess Garden* [2019] JRC 169 case, it was difficult for the Tribunal to intervene since the parties had agreed with the terms in their contract which was valid. In the absence of direct agreement, the parties can terminate a contract that has already faced a breach without a court sanction. To some extent, the employer was right to think of the probability of the claimant to have resigned since she was unreachable and had not given

any valid reason for her absence. Additionally, the claimant's absence took a longer duration than she had notified her employer and thus breached the contract in the first place. However, the employer would have notified the claimant of her dismissal via email for future reference in such a situation as a court case. [cheapestessay.com](http://cheapestessay.com)

In the *Essop v Home Office (UK Border Agency)* [2017] UKSC 27 case, the Supreme Court stated that it is needless to explain why a particular act disadvantages a specific group and that the fact that it does is enough. Additionally, the court claimed that indirect discrimination entails a contributory connection between the discriminatory action and the specific disadvantage suffered. Some forms of discrimination in the workplace happen in most cases out of the set Policies, Criteria and Procedures and thus employers should review them to ensure there is no discrimination and avoid discrimination claims against them. The Home office applied section 19(2)(b) of the Equality Act 2010 for the claimant to explain whether it was everyone in the BAME group that failed the CSA while the other group, white and young passed entirely

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