

2025 UNIT SPECIFICATION

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| Title: | (Unit 4) Employment Law |
| Level: | 6 |
| Credit Value: | 15 |

| Learning outcomes The learner will: | Assessment criteria The learner can: | Knowledge, understanding and skills |
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| 1. Understand key concepts and themes in the development of employment law in England and Wales | 1.1 Analyse different kinds of employment status including difficulties arising from standard definitions. | 1.1 Employee status; definition: s230 (1) ERA 1996; protected by the key employment protection legislation including the ERA 1996 and a broad range of legislation across the following areas; <ul style="list-style-type: none"> • Discrimination • employment relations • fixed term employment • maternity/parental leave • minimum wage • living wage part-time working • paternity and adoption leave • public interest disclosure, transfer of undertaking, working time. |

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| | | <p>Worker status; definition s230(3) ERA 1996 a broad definition granting eligibility for protection/rights under working time, national minimum wage, living wage for workers aged 25 and over and part-time workers legislation.</p> <p>Self-employed status/independent contractors;</p> <ul style="list-style-type: none"> • definition: individuals deemed in business of their own account; • most limited statutory protection; • sham contracts, <u>Autoclenz v Belcher</u> (2011) UKSC; <u>Pimlico Plumbers Ltd v Smith</u> (2017). Gig economy workers • <u>Harpur Trust v Brazel</u> in (2022) UKSC 21 changes to calculation of holiday entitlement for zero-hour contract workers. • <u>Uber v Aslam & Others</u> (2021) Supreme Court ruling on defining workers and related rights. <p>The common law tests that distinguish between the self-employed and employees and the protection available to each;</p> <ul style="list-style-type: none"> • the tests developed (but not conclusively) to identify employee status namely: • Control • Mutuality of obligation • Personal service • Economic reality • Multiple factor test |
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| | | <ul style="list-style-type: none"> • Integration; • relevant case law: eg: <u>Ready Mixed Concrete v Minister of Pensions</u> (1968), <u>Montgomery v Johnson Underwood Ltd</u> (2001) ICR 819, CA, <u>Carmichael and another v National Power plc (HL)</u> (1999) ICR 1226, <u>Inspector of Taxes v Lorimer CA</u> (1994) ICR 218. • CA; Agency Workers Regulations (2010) tax and national insurance consequences of different types of status including need for proposals for reform. • The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022, use of agency workers during strikes • Anomalous contracts: ‘zero hours’ including banning of exclusivity clauses, ‘as required’ and ‘regular casual’. • The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022- exclusivity clauses in zero hours contracts |
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| | <p>1.2 Explain the role of contract in employment law</p> | <p>1.2 The role of contract in forming the core of the employment relationship;</p> <ul style="list-style-type: none"> • key contractual principles including • offer, acceptance, consideration, variation of contract may be partly oral and written. • The role of employee shareholder contracts - the obligation of the employee to give up his/her rights in unfair dismissal and statutory redundancy pay when accepting the shares. <p>Outline of sections 1-7 Employment Rights Act (ERA)1996, concepts of express and implied terms to include following examples:</p> <ul style="list-style-type: none"> • employer – duty of mutual trust and confidence, including limitations to recovery, <u>James-Bowen v Commissioner of Police</u> (2018) • duty to provide work and pay, duty of care in respect of health and safety • to provide information, duty of care provision of references; employee - duty of obedience, • personal service, good faith/fidelity. |
| | <p>1.3 Explain the main express and implied post-termination restrictive covenants</p> | <p>1.3 The four types of restrictive covenants:</p> <ul style="list-style-type: none"> • definitions and purpose of non competition • non-solicitation, non-poaching and non-dealing • the concept of implied terms with a particular focus on the implied term of confidentiality. |

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| | <p>1.4 Analyse the enforceability of these post-termination restrictive covenants</p> <p>1.5 Analyse the relationship between post-termination restrictive covenants and any garden leave clause</p> | <p>1.4 Enforceability of restrictive covenants, criteria which must be satisfied to achieve enforceability, including legitimate interests to protect and being no wider than necessary to protect the employer's business interest; reasonableness in terms of time, area and nature of information protected. Department of Business, Energy and Business Strategy 2021 consultation on post termination clauses, including the removal of non-compete clauses.</p> <ul style="list-style-type: none"> • <u>Richard Baker Harrison Ltd v Brooks and others</u> – [2021] All ER (D) 94, judicial interpretation on restrictive covenants, good faith obligations and post-termination restrictions. <p>1.5 Definition of garden leave clauses;</p> <ul style="list-style-type: none"> • importance of an express clause and their purpose as well as effect (if any) on restrictive covenants. |
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| | <p>1.6 Explain the impact of EU law and the law of the European Convention on Human Rights on employment law</p> <p>1.7 Apply an understanding of the main concepts and themes of employment law in England and Wales to a given situation</p> <p>1.8 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>1.6 Relevant articles of European Convention on Human Rights (ECHR) and application of HRA 1998;</p> <ul style="list-style-type: none"> • the main effects of the HRA 1998, ie: framework for the operation of the European Convention on Human Rights (HRA 1998, schedule 1); • an employee’s right to freedom of expression (Article 10) and freedom of association and assembly (Article 11) in light of the case of <u>Redfearn v UK (2012)</u>. • Recruitment of European Economic Area nationals (“EEA”) from 1 January 2021. <p>1.7 Application of understanding to a complex scenario.</p> <p>1.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| <p>2. Understand how employees and workers are protected under statutes</p> | <p>2.1 Explain how statutes provide employment protection to employees and workers</p> <p>2.2 Identify the employee’s right to be informed about specified terms of their contract of employment</p> | <p>2.1 Eg: Working time (hours & holidays) (Working Time Regs 1998)</p> <ul style="list-style-type: none"> • minimum wage (National Minimum Wage Act 1998) • living wage • equal pay (Equality Act 2010) • notice periods (s86 ERA) maternity Rights (ERA 1996 (as amended) and Maternity and Parental Leave Regs 1999 (as amended) • Paternity and Adoption leave - Employment Act 2002, Parental leave. <p>2.2 S1-7 ERA 1996;</p> <ul style="list-style-type: none"> • the provision of a statutory statement giving employees specified particulars, provided to all employees and workers on or before their first day of employment • specified contractual terms, e.g: parties to contract, date when employment began, hours of work etc; additional, non-essential terms, eg: restrictive covenants, garden leave clauses etc. • Pay slip changes: Employers must include the total number of hours worked where the pay varies according the hours worked, for example under variable hours or zero hours contract. Payslips must be given to ‘workers’ and not just employees. |
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| | <p>2.3 Explain what wages are and when an employer can and cannot deduct an amount from an employee's wages</p> <p>2.4 Explain the legal consequences if an employer improperly deducts from wages</p> | <p>2.3 Knowledge of the Employment Rights Act 1996, s13 to s27;</p> <ul style="list-style-type: none"> • definition of wages and circumstances in which sums may and may not be deducted; • pension contributions; • expenses payments; • redundancy pay; • allowances and benefits in kind do not count as payments by an employer to a worker for the purposes of the National Minimum Wage; • special treatment of tips. <p>2.4 Penalties for improper deductions, remedies, time limits and forum, relevant statutes/statutory instruments:</p> <ul style="list-style-type: none"> • National Minimum Wage Act 1998, National Minimum Wage Regulations I 1999/584 regulation 13, National Minimum Wage Act 1998 (Amendment) Regs 1999 SI 1999/583; • effectiveness and proposals for reform. |
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| | <p>2.5 Explain the current adult and young person’s national minimum wage rates and any penalties for non-compliance</p> <p>2.6 Explain the basic provisions of the working time regulations</p> | <p>2.5 Adult rate for workers aged 21 years and older, 18-20 inclusive, and a youth rate for workers under the age of 18 who are no longer of compulsory school age;</p> <ul style="list-style-type: none"> • penalties for non-compliance; • remedies; time limits and forum; • relevant statutory instrument: • National Minimum Wage Regulations 1998(Amendment) Regulations 2008, SI 2008/1894; • living wage for over 25 years old • effectiveness and proposals for reform. <p>2.6 Provisions of the working time regulations relating only to the 48-hour working week and statutory minimum annual holiday, including operation and reform of right to opt out;</p> <ul style="list-style-type: none"> • relevant legislation: • Working Time Regulations 1998: • Regulations 4-16; • the EU Working Time Directive 2003/88/EC art 22; • Working Time Regulations 1998-Regulation 28-32 and schedule 3; • developments: Working Time (Amendment) Regulations from 1st October 2007, i.e. 28 days holiday; • developments leading to EC Agreement on Working Time and Working conditions for Temporary Agency; proposals for reform; |
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| | <p>2.7 Apply law governing statutory employment protection of employees and workers to a given situation</p> <p>2.8 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>Holiday pay in light of <u>Williams v British Airways (2012)</u>. Non-guaranteed overtime to be included in holiday pay: <u>British Gas v Lock (2016)</u>; rest breaks (<u>Grange v Abellio 2016</u>); <u>Crawford v Network Rail Infrastructure (2017)</u>).</p> <p>2.7 Application of understanding to a complex scenario.</p> <p>2.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
| <p>3. Understand aspects of employment protection given to different types of workers</p> | <p>3.1 Explain the protection that exists for workers with regard to less favourable treatment in the workplace</p> | <p>3.1 The difference between workers and employees (see 1.1 above);</p> <ul style="list-style-type: none"> • definitions of workers: agency, temporary, fixed term and part-time; • key protection measures including the link with unfair dismissal and the following: • definition of fixed term conversion to permanent contracts, less favourable treatment, written reasons for non-renewal; • part-time workers: • pay, less favourable treatment and objective justification; • agency and temporary workers’ legislation, ie: Agency Workers Regulations 2010 right not be treated by the agency or the end user less favourably once been in employment for 12 weeks; removal of the Swedish derogation |

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| | <p>3.2 Explain the legal consequences if an employer improperly treats such workers less favourably</p> <p>3.3 Apply law relating to the nature of protection for workers to a given situation</p> | <ul style="list-style-type: none"> • provisions on who an agency worker can sue if he or she is dismissed; • proposals for reform to existing protection implications for employers and agency workers. Relevant case law such as <u>Matthews v Kent & Medway Towns Fire Authority (2006)</u> for part-time workers; <u>Wiltshire County Council v National Association of Teachers in Further and Higher Education and Guy (1978)</u> for fixed-term workers and <u>James v London Borough Council (2008)</u> for agency workers. <p>3.2 Remedies, time limits and forums;</p> <ul style="list-style-type: none"> • relevant provisions of: • Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002; The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and (Amendment) Regulations 2002; Agency Workers Regulations 2010. <p>3.3 Application of understanding to a complex scenario.</p> |
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| 4. Understand the protection afforded to employees by the Equality Act 2010 | 4.1 Analyse the nine types of protected characteristics and six types of discrimination arising from the Equality Act 2010 | 4.1 S4 Equality Act 2010 introduces the concept of protected characteristics covering gender, race, disability, religion or belief, sexual orientation, pregnancy and maternity, gender re-assignment, marriage and civil partnership, and age; <ul style="list-style-type: none"> the types of discrimination include direct discrimination s.13, indirect discrimination s19, disability related discrimination s15; failure to make reasonable adjustments s20; harassment s26 and victimisation s27 and concerning the liability of employers under s109 and s110. Also, discrimination by perception eg: <u>English v Sanderson Blinds Ltd</u> (2008) or association eg: <u>Coleman v Attridge Law</u> (2008). the relationship between discrimination claims and rights under the ECHR, <u>Mackereth v DWP</u> (2019); <u>Lee v Ashers Bakery</u> (2018). |
| | 4.2 Explain the provisions on equal pay under the Equality Act 2010 and the defences available | 4.2 S66 EA 2010 concerns the introduction of the sex equality clause; the need for a comparator s79; sex discrimination in relation to contractual pay s71; <ul style="list-style-type: none"> relevant types of work s64; equal work s65 (like work, work rated as equivalent to the comparator’s work and work of equal value); discussions on pay s77; defence of material factor s69 (e.g. location <u>NAAFI v Varley</u> (1976) and economic necessity <u>Rainey v Greater Glasgow HB</u> (1987)). Gender pay gap reporting obligation on employers with more than 250 or more employees under the Equality Act 2010 (Gender Pay Gap Information) |

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| | <p>4.3 Explain the various types of disability discrimination under the Equality Act 2010</p> | <p>Regulations 2017.</p> <ul style="list-style-type: none"> • Executive pay ratio reporting: Requirement of UK listed companies with more than 250 UK employees to report annually on the pay gap between their chief executive and their average UK worker. • <u>Asda Stores Ltd v Brierley and others</u> [2021] UKSC 10 equal pay comparators. <p>4.3 S6 Equality Act 2010 defines who will have the protected characteristic of disability emphasising what will constitute a disability;</p> <ul style="list-style-type: none"> • s4 concerns direct discrimination; • s15 concerns discrimination arising from disability (eg: the need to take disability related absence) can be justified by the employer provided it is a proportionate means of achieving a legitimate aim; • s19 concerns indirect discrimination; s20 concerns duty to make reasonable adjustments eg: <u>Wade v Sheffield Hallam University</u> (2013) and examples of what such adjustments are eg: <u>Chief Constable of South Yorkshire Police v Jelic</u> (2013) • actual or constructive knowledge of disability, <u>Baldeo v Churches Housing Association</u> (2019) • Menopausal symptoms can be a disability under the EA 2010 definition, <u>Rooney v Leicester City</u> |
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| | <p>4.4 Explain the legal consequences following a breach of discrimination legislation</p> <p>4.5 Apply the law of the provisions relating to discrimination to a given situation</p> | <p><u>Council EA-2020-000070-DA; EA- 2021-000256-DA.</u></p> <ul style="list-style-type: none"> • s26 concerns harassment and s27 concerns victimisation; burden of proof, and limited defences. Harassment to include harassment based upon a protected characteristic and harassment based upon rejection or acquiescence to sexual conduct; harassment claims are highly fact sensitive, <u>Evans v Xactly (2018)</u> • <u>Allay (UK) Ltd v Gehlen EAT/0331/20</u> the 'reasonable steps' defence requires that an employers diversity training is updated and current. • Bullying and harassment claims brought by employees. Discrimination by association e.g. under <u>Coleman v Attridge Law (2008)</u> and <u>Truman v Bibby Distribution Ltd (2014)</u>. Perceptive discrimination (<u>The Chief Constable of Norfolk v Coffey (2017)</u>). <p>4.4 Enforcement of discrimination legislation including procedure, judicial mediation, time limits and remedies including compensation including injuries to feelings and quantum;</p> <ul style="list-style-type: none"> • declaration of rights, effectiveness of remedies. <p>4.5 Application of understanding to a complex scenario.</p> |
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| | 4.6 Critically evaluate a given issue or situation to predict probable legal implications | 4.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate. |
| 5. Understand the law concerning wrongful dismissal and constructive dismissal | <p>5.1 Explain the key elements of a wrongful dismissal claim</p> <p>5.2 Explain the legal consequences of a wrongful dismissal</p> | <p>5.1 Key elements of wrongful dismissal:</p> <ul style="list-style-type: none"> • a claim in contract at common law, that there must be a breach, the requirement for the termination of the contract without due notice (including awareness of s86 ERA 1996); • distinguishing it from an unfair dismissal claim. Relevant cases such as <u>Malik v BCCI (1997)</u>; <u>Johnson v Unisys (1999)</u>. <p>5.2 Wrongful dismissal claims including procedure, time limits, remedies and forums;</p> <ul style="list-style-type: none"> • quantum of damages to include loss of wages, benefits and mitigation of loss; • explanation of forum (Employment Tribunal and County/High Court) with monetary limits and advantages and disadvantages of each; • effectiveness and proposals for reform. Relevant cases include <u>Edwards v Chesterfield Royal Hospital NHS Foundation (2011)</u>; <u>Botham v Ministry of Defence(2011)</u>. Implications of manner of dismissal on restraint of trade clauses eg: <u>General Billposting v Atkinson</u> and <u>Boston Deep Sea Fishing v Ansell</u> following termination of a contract. |

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| | <p>5.3 Explain the key elements of a constructive dismissal claim</p> | <p>5.3 The employee resigns as the employer has made it very difficult for the employee to continue working. The employer's actions must have amounted to a fundamental breach of contract between the employer and the employee.</p> <p>Examples of constructive dismissal include:</p> <ul style="list-style-type: none"> • harassing or humiliating staff, particularly in front of other less senior staff; • victimising or targeting particular members of staff; • changing the employee's job content or terms without consultation; • making a significant change in the employee's job location at short notice • falsely accusing an employee of misconduct such as theft or of being incapable of carrying out their job. <p>An employee can resign over one serious incident or due to the build-up of a number of less serious incidents. However, the employee must resign soon after the incident(s) in order to be able to rely upon it, a lengthy resignation notice period may affirm the employment contract, <u>Brown v Neon Management</u> (2018).</p> <p>Relevant cases such as <u>Tanner v Kean</u> (1979); <u>Morrow v Safeway Stores</u> (2002) and <u>Sovereign House Security Services Ltd v Savage</u> (1989).</p> |
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| | <p>5.4 Explain the legal consequences of a constructive dismissal</p> <p>5.5 Apply the law of wrongful dismissal and constructive dismissal to a given situation</p> <p>5.6 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>5.4 An employee’s resignation will be treated as a dismissal and the employee can claim for wrongful dismissal but the employee must establish the dismissal was unlawful.</p> <p>5.5 Application of understanding to a complex scenario.</p> <p>5.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
| 6. Understand the law concerning unfair dismissal | <p>6.1 Explain the qualifying requirements for an unfair dismissal claim</p> <p>6.2 Evaluate the six potentially fair reasons for dismissal under section 98 Employment Rights Act 1996</p> | <p>6.1 Application of the preliminary qualifying requirements:</p> <ul style="list-style-type: none"> • at least two years continuous service; • employee status; • not excluded to bring an unfair dismissal claim and utilised the internal grievance procedure (section 32 Employment Act 2002). Dismissal is required under section 95 Employment Rights Act 1996 for an unfair dismissal claim. <p>6.2 The potentially fair reasons to dismiss under s98 ERA 1996 (capability, conduct, redundancy, statutory illegality, regulated transfers of undertakings due to economic, technical or organisational reasons, some other substantial reason).</p> |

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| | <p>6.3 Explain when an automatically unfair dismissal arises</p> <p>6.4 Explain the ‘fairness in all the circumstances’ test</p> | <p>6.3 Automatically unfair dismissals such as</p> <ul style="list-style-type: none"> • whistleblowing • dismissal due to raising health and safety concerns • pregnancy • time off for dependants or exercising statutory rights. <p>Workers will be able to claim protection from detriment or dismissal in relation to whistleblowing if they reasonably believe their disclosure is in the public interest. The requirement of disclosure in good faith has been abolished. If disclosure is made in bad faith, tribunal can reduce award by up to 25%, Public Interest Disclosure Act 1998.</p> <p>6.4 Relationship between potentially fair reasons, operation of investigation of conduct dismissals eg: <u>BHS v Burchell</u> (1978) and “fairness in all the circumstances”;</p> <ul style="list-style-type: none"> • consequences including the <u>Polkey v AE Dayton Services Limited</u> (1988) argument on an unfair dismissal claim if no fair procedure followed: • s98(4) ERA 1996; including the band of reasonable responses of the employer derived from <u>Iceland Frozen Foods v Jones</u> (1982) and <u>HSBC Bank v Madden</u> (2001). • procedural fairness and draft investigations, <u>Dronsfield v University of Reading</u> (2019) • serious allegations of misconduct with severe consequences require a higher standard of |
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| | <p>6.5 Explain the provisions governing fair procedure in a dismissal situation</p> <p>6.6 Explain the legal consequences following an unfair dismissal</p> <p>6.7 Apply the law of unfair dismissal protection to a given situation</p> | <p>investigation, <u>Hargreaves v Manchester Grammar</u> (2018)</p> <p>6.5 Understanding of the role of:</p> <ul style="list-style-type: none"> • the ACAS Code of Practice; • and an organisation’s own procedure before making a decision to dismiss; • to include the role of detailed disciplinary and grievance policies and procedures and the ACAS Code of Practice on disciplinary and grievance matters; • the Employment Act 2008 provisions concerning consequences of failure to follow ACAS code; • statutory provisions governing the right to be accompanied. <p>6.6 The forum and remedies available to an employee when the employer dismisses unfairly, including basic and compensatory award elements, and the potential increase or decrease to the awards;</p> <ul style="list-style-type: none"> • the role of mitigation; • awareness of further remedies of reinstatement and re engagement; • effectiveness and proposals for reform. <p>6.7 Application of understanding to a complex scenario.</p> |
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| | 6.8 Critically evaluate a given issue or situation to predict probable legal implications | 6.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate. |
| 7. Understand the law governing redundancy | <p>7.1 Define when redundancy arises</p> <p>7.2 Analyse the elements of a properly implemented redundancy procedure</p> | <p>7.1 Definition:</p> <ul style="list-style-type: none"> • ERA 1996 s139(1); • also, <u>Murray and another v Foyle Meats Ltd</u> (1999) ICR 827; • mobility clauses: <u>High Table Ltd v Horst and others CA</u> (1998) ICR 409; • Effect of offer of alternative work s.141 ERA 1996. <p>7.2 The contents of a formal redundancy policy and the stages of a properly implemented redundancy to include:</p> <ul style="list-style-type: none"> • planning, identifying the pool for selection, invitation of volunteers, consultation - collective duty to consult trade union representatives: • Trade Union and Labour Relations Act 1992 s188 (TULRCA) (in large scale redundancies), interpretation of ‘one establishment’ in TULRCA (<u>USDAW v Woolworths</u> (2012)); • individual consultation in all cases, notification to the Department of Business, Innovation and Skills in large scale redundancies: • TULRCA 1992 s193, use of objective selection criteria, advance notice of individual consultation meeting, permitting a colleague to be present at consultation meetings, opportunity to appeal, allowing seeking of suitable alternative employment, statutory or |

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| | <p>7.3 Explain the legal consequences of redundancy</p> | <p>other redundancy payment, relocation expenses, helping redundant employees obtain training or alternative work;</p> <ul style="list-style-type: none"> • the main provisions of The Collective Redundancies and Transfer of Undertakings (Protection of Employment) and (Amendment) Regulations 1999 (TUPE) and Amendment Regulations 2006, SI 2006/2387; • effectiveness of process and legislation; proposals for reform. <p>7.3 The position following a properly implemented redundancy:</p> <ul style="list-style-type: none"> • the right to a redundancy payment, ERA 1996 s135; • calculation of payment; • the position following a poorly implemented redundancy; • <i>prima facie</i> presumption of fair dismissal: ERA 1996 s98(2)(c); consideration of if it would be just and equitable to treat the redundancy dismissal as unfair: ERA 1996 s98(4); • unfairness if the selection of a particular individual for redundancy was unfair or if proper procedures (especially consultation) were not followed; • dismissal can be <i>automatically</i> unfair dismissal depending on the reason for selecting for redundancy; • where an employee can claim redundancy payment when an employer is insolvent; |
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| | <p>7.4 Apply law of the redundancy provisions to a given situation</p> <p>7.5 Critically evaluate a given issue or situation to predict probable legal implications</p> | <ul style="list-style-type: none"> • protective award imposed on employer if collective redundancy procedure is not complied with. <p>7.4 Application of understanding to a complex scenario.</p> <p>7.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
| <p>8. Understand the law in relation to a transfer of a business or part of a business from one organisation to another</p> | <p>8.1 Explain what a Transfer of an Undertaking is and why there is a need for employee protection when such a transfer takes place</p> <p>8.2 Explain when TUPE applies to a business situation</p> | <p>8.1 Definition of transfer of an undertaking;</p> <ul style="list-style-type: none"> • the overall nature of the protection afforded by the provisions of Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE 2006'); • the common law position before statutory provisions. <p>8.2 The potential range of TUPE transfer situations including definition of a relevant transfer (TUPE 2006 regulation 3) and application to:</p> <ul style="list-style-type: none"> • business transfers (including whether there is an identifiable economic entity), changes of service provision including outsourcing, first generation contracting out, second generation contracting out, taking services back in house; • the activities carried on after the change in service provision must be "fundamentally or essentially the same" as those carried on before it (Collective Redundancies and Transfer of |

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| | | <p>Undertakings (Protection of Employment) (Amendment) Regulations 2013). the effect of the TUPE regulations, understanding that there can be a transfer of an undertaking for the purposes of TUPE 2006 even though:</p> <ul style="list-style-type: none"> • there is no contractual relationship between the alleged transferor and the alleged transferee, there is no transfer of physical assets, only part of an undertaking is transferred; • guidance taken from case law: for example, principles from <u>Spijkers Gebroeders v Benedik Abbatoir CV and Alfred Benedik en Zonen BV, ECJ (1986) ECR 1119 (Spijkers case)</u>, <u>Cheesman v Brewer Contracts EAT (2001) IRLR 144</u>, <u>Fairhurst Ward Abbotts Ltd v Botes Building Ltd and others CA 2004 EWCA Civ 83</u>, <u>TGWU v Swissport (UK) Ltd (in administration) and Aer Lingus Ltd EAT 2007 ICR 1593</u>. • Definition of ‘organised grouping of employees’ for the purpose of a service provision change: <u>Tees Esk & Wear Valleys NHS Foundation Trust v Harland and others (2017)</u>. |
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| | <p>8.3 Explain the legal consequences following a relevant transfer</p> | <p>8.3 Legal consequences including:</p> <ul style="list-style-type: none"> • dismissals: effect of relevant transfer on contracts of employment and preservation of continuity of employment (TUPE 2006 regulation 4); • preservation of terms and conditions of those employees who are transferred (TUPE 2006 regulation 4); • limited opportunity for the transferee or transferor to vary the terms and conditions of employment (TUPE 2006 regulation 4, including regulation 9 - insolvency) • protection from dismissal before or after a relevant transfer (TUPE 2006 regulation 7); • notification of employee liability information (TUPE 2006 regulation 11); • remedy for failure to notify employee liability information (TUPE 2006 regulation 12); • information and consultation requirements: duty to inform and consult representatives (TUPE 2006 regulation 13 and 15); • protective award imposed on employer if collective consultation procedure is not complied with; • effect of employer being insolvent. |
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| | <p>8.4 Define an economic, technical or organisational reason and describe its effect in a transfer situation</p> <p>8.5 Apply law on the effective management of a transfer of business to a given situation</p> <p>8.6 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>8.4 Definition: economic, technical or organisational (ETO) reason and the importance of the fact the ETO reason must entail changes in the workforce;</p> <ul style="list-style-type: none"> • ETO reason includes change in the location of the employer Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013; • the ETO reason must relate to the transferor's future conduct of the business (eg: <u>Hynd v Armstrong and others</u> (2007) and <u>Whitehouse v Blatchford and Sons Ltd</u> 2000 ICR 542, CA); • effect on protection from dismissal if an ETO reason applies (regulation 7); • effect of an ETO on attempts to vary terms, ie: the variation will be void if the sole or principal reason for the variation is the transfer itself; • or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce (Regulation 4 (4)); • <u>Spaceright Europe Limited v Baillavine</u> (2011) <u>EWCA Civ 1565</u>. <p>8.5 Application of understanding to a complex scenario.</p> <p>8.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| <p>9. Understand the law regarding family friendly rights</p> | <p>9.1 Explain the right to time off for ante natal care</p> | <p>9.1 Ante natal care: outline right to time off for ante natal care, when an employer can refuse and remedies for unreasonable refusal;</p> <ul style="list-style-type: none"> • s55 Employment Rights Act 1996. An expectant father or the partner (including same sex) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to 2 of her antenatal appointments. |
| | <p>9.2 Explain the key features of maternity and paternity leave</p> | <p>9.2 Maternity Leave: outline compulsory maternity leave (ERA 1996 s72 and Maternity and Parental Leave Regulations 1999 regulation 8);</p> <ul style="list-style-type: none"> • the qualifying criteria for ordinary and additional maternity leave; • notice to be given; the extent of ordinary leave, ie: 26 weeks (Maternity and Parental Leave Regulations 1999 regulation 7); • when maternity leave commences; notifying an employer re the end date of maternity leave; the extent of additional maternity leave; contract of employment continues throughout ordinary and additional maternity leave - differences between rights during ordinary and additional leave; the right to the continuation of rights and benefits of the contract (remuneration excepted) and the right to return to work; • Maternity and Paternity Leave (Amendment) Regs 2002; • Act 2002 and Part VIII ERA 1996; s.18 Equality Act 2010, pregnancy and maternity discrimination; |

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| | <p>9.3 Explain when statutory maternity and paternity pay will be paid and the current rates</p> | <ul style="list-style-type: none"> • failure to implement bespoke rosters for breastfeeding employees amounted to indirect sex discrimination: <u>McFarlane v EasyJet Airline Company</u> (2016); work cases and the insertion of a maternity equality clause under s.73 Paternity Leave: statutory paternity leave (Employment Act 2002 s1, ERA 1996 s80A Paternity and Adoption Leave Regulations 2002); • amount; who can take paternity leave; entitlement (must be an employee but can be a part-time employee); • notice to be given; qualification (the employee must have been in continuous employment with their employer for 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth); • entitlement while absent on statutory paternity leave to all the benefits and obligations, other than entitlement to wages or salary, to which he would be entitled if at work; entitlement to return to job at end of paternity leave; ss.73-76 Equality Act 2010. <p>9.3 Maternity and Paternity Pay: qualifying criteria for Maternity and Paternity leave, the level of remuneration and both rates of Statutory Maternity and Paternity Pay; ss164-171 Social Security Contributions and Benefits Act 1992.</p> |
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| | <p>9.4 Explain the remedies available to an employee when an employer fails to honour maternity or paternity rights</p> | <p>9.4 Remedies available to an employee when the employer fails to honour maternity or paternity rights: dismissal of a pregnant employee will be automatically unfair dismissal under section 18 Equality Act 2010, shared parental leave under the Shared Parental Leave Regulations 2014, or time off for helping dependants under ERA 1996 s57A, failure to return to work at the end of maternity leave if the employer had not given her the notice of the end date of her maternity leave, selection for redundancy on any of the grounds above is also automatically unfair dismissal;</p> <ul style="list-style-type: none"> • dismissal of a male employee will be automatically unfair dismissal if he is dismissed because he took or sought to take paternity leave (or is selected for redundancy for that reason) (see Paternity and Adoption Leave Regulations 2002 regulation 29); • other remedies include: the right not to be subjected to a detriment (ERA 1996 s47C and s57A); • a female employee who has suffered a detriment in contravention of the rules noted above can make a complaint to an employment tribunal (ERA 1996 s48); • compensation (ERA 1996 s.49); • the right not to be subjected to a detriment for male employees: ERA 1996 s47C and Paternity and Adoption Leave Regulations 2002 SI regulation 28. |
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| | <p>9.5 Explain the current right to request flexible working and proposed extensions to that right</p> <p>9.6 Explain the right to parental leave and time off for dependants</p> | <p>9.5 The right to request flexible working to all employees:</p> <ul style="list-style-type: none"> • awareness of rationale (that it is just a right to request and not a right to work flexibly); • employers will have a duty to consider all requests in a reasonable manner; • employers will have the right to refuse requests on business grounds. Consequences of an employers' refusal; • remedies if unfairly refused; • right to appeal; s80F ERA 1996. <p>9.6 Parental leave for employees to take time off work to look after a child's welfare. Leave can be taken up to a child's 18th birthday.</p> <p>Shared parental leave and statutory shared parental pay; qualifying criteria; an employed mother will continue to be entitled to 52 weeks of Maternity Leave and 39 weeks of statutory maternity pay or maternity allowance. An eligible mother can end her maternity leave early and, with her partner or the child's father, opt for Shared Parental Leave instead of Maternity Leave. If they both meet the qualifying requirements, they will need to decide how they want to divide their Shared Parental Leave and Pay entitlement. Adopters have the same rights as other parents to shared parental leave and pay. Both men and women are entitled to shared parental leave in addition to paternity</p> |
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| | | <p>and maternity leave. It is not discriminatory to pay men on shared parental leave less than women on maternity leave; the purposes of the two types of leave greatly differ, <u>Ali v Capita Ltd</u>; <u>Hextall v CC of Leicestershire Police</u> (2019).</p> <ul style="list-style-type: none"> • Time off for dependants: • all employees are entitled to a reasonable amount of unpaid time off work to deal with emergencies involving a dependant (Employment Rights Act 1996 s57A); • right not to be dismissed or victimised for doing so; • if a person is dismissed, including being selected for redundancy, for exercising or seeking to exercise this right, the dismissal will be automatically unfair (ERA 1996 s.99); • time off can be taken in order to take action to provide assistance when a dependant falls ill, gives birth, is injured or dies; • definition of dependant; an employee who is unreasonably refused permission to take time off can take action in the employment tribunal for compensation. • Parental Bereavement Leave and Pay Act 2018: in force in 2020. Gives all employed parents the right to 2 weeks' leave if they lose a child under the age of 18 or suffer a stillbirth from 24 weeks of pregnancy. |
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| | <p>9.7 Explain the law on adoption leave</p> <p>9.8 Apply law on family friendly rights to a given situation</p> <p>9.9 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>9.7 The main adopter will get 90 per cent of pay for six weeks, then the basic rate for 33 weeks. Adoptive parents will no longer need to have 26 weeks' service in order to benefit from adoption leave and pay. A single adopter will have the right to paid time off to attend up to five adoption appointments. When there are joint adopters, one parent will be able to attend up to five appointments with pay and the other can attend two appointments on an unpaid basis adoptive parents will also be able to take shared parental leave.</p> <p>9.8 Application of understanding to a complex scenario.</p> <p>9.9 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| Additional information about the unit | |
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| Unit aim(s) | To accredit a broad and detailed understanding of Employment Law |
| Details of the relationship between the unit and relevant national occupational standards (if appropriate) | This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards |
| Details of the relationship between the unit and other standards or curricula (if appropriate) | N/a |
| Assessment requirements specified by a sector or regulatory body (if appropriate) | N/a |
| Endorsement of the unit by a sector or other appropriate body (if required) | N/a |
| Location of the unit within the subject/sector classification | 15.5 Law and Legal Services |
| Name of the organisation submitting the unit | CILEx (The Chartered Institute of Legal Executives) |
| Availability for delivery | 1 September 2009 |

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