

CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 4 Employment Law

Question paper

January 2024

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- A calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute book; ***Blackstone's Statutes on Employment Law 2022-2023, 32nd edition, Richard Kidner, Oxford University Press, 2023.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A

Answer at least one question from this section.

1. With reference to case law and the Equality Act 2010, critically assess:

(a) the protection from discrimination based on gender reassignment;

(11 marks)

(b) the protection from **direct** discrimination based on age.

(14 marks)

Please note: Do NOT consider remedies.

(Total: 25 marks)

2. The Shared Parental Leave Regulations 2014 aim to provide support to 'mothers'. However, only those on a sufficiently high income are protected by this legislation.

Critically analyse the above statement.

(25 marks)

3. The statutory requirements of a properly conducted redundancy **consultation** aim to ensure protection of employees' rights within a redundancy. However, the remedies available for breach of the consultation process are insufficient to ensure compliance with that process.

Critically assess the above statement.

(25 marks)

4. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) seek to maintain the contract of employment within a recognised transfer. However, there are various 'Economic, Technical and Organisational' (ETO) reasons under which changes to an employee's contract of employment may be allowed. These 'ETO reasons' are interpreted too broadly by courts and tribunals, resulting in a lack of protection of the employee within a transfer.

Critically evaluate the above statement.

(25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Ajay has been employed as a cashier at 'Sally's Supermarket' for three years. One evening, Ajay is on his way out of the supermarket after his shift when his backpack breaks open and ten packets of cigarettes fall out. The security guard for Sally's Supermarket, Janet, witnesses this and asks Ajay where he got the cigarettes from as they are the same kind sold by the supermarket.

Ajay did not answer Janet, at which point she said to him: 'I should have known, people from Asia are known to be thieves'. Ajay told Janet to 'stop being racist'. Janet replied: 'I'm not being racist, Asia is a place, not a race of people'.

The next day, Ajay's manager, Balvinder, told Ajay that Janet had reported the incident with the cigarettes, and that it would be a very serious matter if Ajay was found to have stolen these from the stock room. Balvinder then told Ajay that a meeting would take place at which he would have a chance to explain his actions. The meeting took place one hour later and just Ajay and Balvinder were present.

During this meeting, the first question Balvinder asked Ajay was: 'How long have you been stealing items from the supermarket?' Ajay replied that he had not stolen anything, and that Janet had made a racist comment to him. Balvinder ignored this statement and told Ajay: 'We are here to discuss your behaviour, nothing else'. The meeting lasted less than 10 minutes in total.

Sally's Supermarket dismissed Ajay for gross misconduct later that same day.

Advise Ajay if his rights have been breached.

Please note: Do NOT consider remedies.

(25 marks)

Turn over

Question 2

Carmel is 34 years old. She was hired through an employment agency, Do More Ltd, to assist in wedding catering for 'Eva's Events' during their peak season of business; spring/summer.

Carmel received £8.60 per hour, the same hourly rate of pay as other staff members in the same role. However, she was not allowed to use the staff break room, as provided for permanent staff. Carmel made a written request to Do More Ltd, asking for an explanation of this difference in treatment between herself and permanent staff, but she never received a response.

After four weeks of working with Eva's Events, Carmel found out she was pregnant. She informed Do More Ltd and Eva's Events of her pregnancy and requested time off to attend two antenatal appointments over the coming month. Carmel was allowed time off to attend one of her appointments, unpaid, on the condition she made the time up the following week, which she did. Carmel was not permitted time off to attend the second antenatal appointment as there was a wedding taking place that day and Eva's Events 'urgently' required her services.

Carmel has worked for Eva's Events for a total of 10 weeks over the spring/summer wedding season, with her services no longer being needed once this peak season was over.

Advise Carmel if her rights have been breached and, if so, the potential remedies available to her for each breach.

(25 marks)

Question 3

Freedom Ltd is a company that sells paper products. The company suffered losses over the past two financial years, so it decided to make two employees redundant. George was the first employee to be made redundant; he was selected because he had received two disciplinary warnings in the past six months. Heather was also selected for redundancy due to being the newest employee in the company.

Linus was also employed by Freedom Ltd and was friends with George and Heather. When Linus found out they were being made redundant, he was very upset as he believed they were both good workers. Linus approached his head of department, Nina, and asked her why George and Heather had been selected for redundancy. Nina told Linus to 'mind your own business'. Linus replied that there is 'no need to be so rude', at which point Nina told him 'I'll take whatever tone I choose and if you don't like it you can leave'. Linus turned around to walk away and overheard Nina saying to other employees in the same room that she was: 'surprised Linus can still walk away with all the weight he's gained lately, we should call him Large Linus'.

Linus was very embarrassed by this comment and walked away without responding. It was not the first time Nina had commented on his weight, but this was the first time she had done so in front of other employees, which he found particularly distressing. Linus returned to work as usual but, over the following weeks, he felt increasingly upset over the comments made by Nina. Linus also felt he had lost the respect of his co-workers who, as a result of hearing Nina's comment, now also called him 'Large Linus'. Six weeks after the incident with Nina, Linus resigned as felt he could no longer work in an environment where he was not respected. Linus had worked at Freedom Ltd for a total of 12 months.

Advise Freedom Ltd whether:

- (a) its reasons for selecting George and Heather for redundancy are legitimate;

(8 marks)

- (b) Linus can bring any claims against it and, if so, the potential remedies available to him.

(17 marks)

(Total: 25 marks)

Question 4

Michael has worked for Times3 Ltd, a cleaning company, for five years on a full-time basis working 35 hours per week. His contract with Times3 Ltd states that he is self-employed. Michael is paid in arrears, with tax and national insurance deducted. He receives a weekly, non-negotiable, timetable and is required to wear a uniform. Michael is unable to delegate any of his working duties.

Piku also works for Times3 Ltd as a cleaner and works in the same department, and in the same role, as Michael. She has worked for the company for the past year for 10 hours per week, and her contract states she is a worker. Piku is paid the same hourly wage as full-time workers performing the same job. However, Piku does not benefit from the company pension as Times3 Ltd gives pension rights only to workers who work over 35 hours per week.

Karly is also employed by Times3 Ltd on an 18-month contract to work as a senior sales negotiator. Unlike permanent senior sales negotiators, Karly is not granted use of a company car. When Karly verbally queried this with her manager, Karly was told that her contract did not require as much travel as permanent staff within the same role, so provision of a company car could not be financially justified by the company.

(a) Advise Michael if he is self-employed or an employee of Times3 Ltd;

(7 marks)

(b) Advise Piku if her rights have been breached by Times3 Ltd;

Please note: Do NOT consider remedies.

(8 marks)

(c) Advise Karly if her rights have been breached by Times3 Ltd and, if so, the potential remedies available to her.

(10 marks)

(Total: 25 marks)

End of the examination