

2023 UNIT SPECIFICATION

Title:	(Unit 6) Employment Law
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
<p>1. Understand that individuals can have different legal employment status within a business</p>	<p>1.1 Define employees, workers and the self-employed</p>	<p>1.1 Employees – s.230(1) Employment Rights Act (ERA) 1996:</p> <ul style="list-style-type: none"> protected by all employment protection legislation; Workers – s.230(3) ERA 1996: broad and developing definition granting eligibility for protection/rights under Working Time/Minimum Wage legislation and anti-discrimination legislation; excluded from other employment protection legislation, eg: right not to be unfairly dismissed/receive redundancy payment Agency Workers Regulations 2010. Self-employed – also ‘independent contractors’, ‘sole-traders’, ‘consultants’;

This specification is for 2023 examinations.

	<p>1.2 Apply the tests established to distinguish between self-employed and employees</p> <p>1.3 Contrast the position of self-employed individuals with that of employees</p>	<p>• individuals deemed ‘in business of their own account’.</p> <p>• The introduction of IR35.</p> <p>1.2 Application of the Tests evolved and evolving to identify employment status namely (but not conclusively):</p> <ul style="list-style-type: none"> • Control • Integration • Mutuality of obligation • Personal service • Economic reality • Multiple factors; • relevant case law, <u>Ready Mixed Concrete (South East) Ltd v Minister of Pensions (1968)</u>, eg: <u>Carmichael v National Power (1999)</u> eg. <u>Autoclenz v Belcher [2011]</u> <u>James v LBG (2008)</u>, eg: <u>Pimlico Plumbers Ltd v Smith (2018)</u> • application of the factors to the relevant tests e.g. written contract specifying self-employed or employed is of limited weight. <p>1.3 Contract for services not contract of service (s.230(2) ERA 1996):</p> <ul style="list-style-type: none"> • lack of (statutory) employment protection rights, ie: • no unfair dismissal or redundancy rights, no entitlement to minimum wage, statutory maternity rights, statutory sick
--	--	---

This specification is for 2023 examinations.

	<p>1.4 Apply an understanding of different legal employment status to a given situation</p>	<p>pay, more limited protection under H&S at Work Act 1974, responsible for own insurance, tax & NI, but free to accept/decline work, work for others, negotiate terms and also protected by anti-discrimination legislation such as Equality Act 2010;</p> <ul style="list-style-type: none"> • rights, duties and obligations of employer/self-employed almost exclusively governed by terms of individually negotiated contract for services; <p>1.4 Application to a scenario.</p>
<p>2. Understand the nature of the contract between employer and employee</p>	<p>2.1 Describe the legal relationship subsisting between employers and employees</p> <p>2.2 Explain how the contract of employment is regulated by statute and the common law</p>	<p>2.1 Contracts of employment may be oral or written: (s.230(2) ERA 1996);</p> <ul style="list-style-type: none"> • commence immediately, ie: as they start work <p>2.2 Statute:</p> <ul style="list-style-type: none"> • working time (hours & holidays) (Working Time Regs 1998) • minimum wage (National Minimum Wage Act 1998) • notice periods (s.86 ERA 1996). <p>Common law implied terms (law):</p> <ul style="list-style-type: none"> • Employer – duty of mutual trust & confidence, <u>Morrow v Safeway Stores plc</u> (2002), duty to provide work & pay, duty of care in respect of health & safety,

This specification is for 2023 examinations.

	<p>2.3 Apply an understanding of the nature of the contract between employer and employee to a given situation</p>	<p>provision of references, <u>Spring v Guardian Assurance plc (1994)</u>;</p> <ul style="list-style-type: none"> • Employee - duty of obedience, personal service, good faith/fidelity (including no secret profits, harmful competition), mutual duty of trust and confidence. e.g <u>Ajai v Metroline West Ltd (2015)</u> • Common law implied terms (fact): “Business efficacy” & “Officious Bystander” tests. • EU Law: Some EU laws are directly applicable and others may require legislation by the UK Parliament. <p>2.3 Application to a scenario.</p>
<p>3. Understand the main terms of a contract of employment</p>	<p>3.1 Identify the employee’s right to be informed about specified terms of their contracts of employment</p> <p>3.2 Explain those specified terms of their contracts of employment</p>	<p>3.1 Contracts not required to be in writing s230(2) ERA 1996.</p> <ul style="list-style-type: none"> • the provision contained in Sections 1-7 and the right to apply to an employment tribunal where statement not supplied under s11. • the provision of a s.1 statement of particulars is a day one right. <p>3.2 S.1-3 ERA namely: parties to contract, date when employment began, date on which continuous employment began; ss210-219 ERA 1996:</p> <ul style="list-style-type: none"> • be able to ascertain whether the identity of the employer has changed and the

This specification is for 2023 examinations.

		<p>consequences (TUPE 2006) and potential difference between date of employment/date of continuous employment;</p> <ul style="list-style-type: none">• duration and conditions of any probationary period;• remuneration (not just pay) (NMWA 1998 and deductions (Part II ERA 1996));• hours of work and working patterns (Working Time Regs 1998);• entitlement to holidays and holiday pay (Working Time Regs 1998);• eligibility for sick leave and sick pay;• details of other types of paid leave e.g. paternity leave;• length of notice: indefinite duration or fixed term (s.86 ERA 1996) notice rights;• title/job description; temporary contracts; place of work;• collective agreements;• periods of working outside UK;• any training entitlement provided;• disciplinary/dismissal and grievance procedures (including disciplinary rules which apply to employee and appeal mechanism). Pay details of rate and frequency ss13-27 deductions from pay. S66 Equality Act 2010 (EA 2010).
--	--	--

This specification is for 2023 examinations.

	<p>3.3 Identify additional terms which may also be included in the contract of employment</p> <p>3.4 Apply an understanding of contract terms to a given situation</p>	<p>3.3 Restrictive covenants, garden leave clauses, intellectual property ownership, mobility clauses, non-dealing, non-solicitation etc. Explanation of usage and enforceability of such clauses.</p> <p>3.4 Application to a scenario.</p>
<p>4. Understand the protection afforded to employees by discrimination legislation.</p>	<p>4.1 Identify the protected characteristics under the Equality Act 2010</p> <p>4.2 Identify when an employee may claim direct discrimination</p>	<p>4.1 Definition of protected characteristics under s4 Equality Act 2010.</p> <ul style="list-style-type: none"> • Age (s.5), • Disability (s.6), • Gender re-assignment (s.7), • Marriage and civil partnership (s.8), • Religion and other belief (s.10), • Sex (s.11), • Race (s.9), • Pregnancy and Maternity (s.18), • Sexual orientation (s.12). <p>4.2 Definition of direct discrimination s.13 Equality Act 2010. Less favourable treatment 'because of' a protected characteristic. Discussion of motive eg: <u>James v Eastleigh BC</u> (1990) including, in outline only, discrimination because of an association with someone of a protected characteristic and, in outline only, less favourable treatment because of the incorrect 'perception' that someone falls within a protected characteristic. Exceptions under EA 2010. Sch 9.</p>

This specification is for 2023 examinations.

	<p>4.3 Explain when an employee may claim indirect discrimination</p> <p>4.4 Identify when an employee may claim victimisation</p> <p>4.5 Explain when an employee may claim harassment under the Equality Act 2010</p> <p>4.6 Identify the statutory protection afforded to disabled people against discrimination</p>	<p>4.3 Indirect discrimination;</p> <ul style="list-style-type: none"> • the application of a provision, criterion or practice; • (s.19 Equality Act 2010). Defence of the PCP being a proportionate means of achieving a legitimate aim. <p>4.4 Definition of victimisation, s.27 Equality Act 2010 (and examples from case law, eg: <u>St Helens Borough Council v Derbyshire and Others</u> (2007)).</p> <p>4.5 Circumstances in which a complaint of harassment may be made s.26 Equality Act 2010. Unwanted conduct which violates a claimant’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive working environment. No requirement for intention to harass. Consider effect upon complainant. In outline only, less favourable treatment because of a claimant’s rejection of or acquiescence to harassment of a sexual nature, eg: <u>In Situ v Heads</u> (1995). One comment, if sufficiently serious, can amount to harassment.</p> <p>4.6 Definition of a disability under s.6 Equality Act 2010. Key concepts, mental or physical impairment, adverse effect, day to day activities, substantial and long term, knowledge of disability;</p>
--	---	--

This specification is for 2023 examinations.

	<p>4.7 Explain the burden of proof in discrimination cases</p> <p>4.8 Explain the remedies available to employers following a successful discrimination claim</p> <p>4.9 Apply an understanding of the protection afforded by anti-discriminatory legislation to a given situation</p>	<ul style="list-style-type: none"> • relevant case law, eg: <u>Goodwin v Patent Office</u> (1999). Discrimination arising from disability, s.15 Equality Act 2010; • unfavourable treatment due to something arising from a disability. Reasonable adjustments ss.20-21 factors as to consider when adjustments have to made and examples of what such adjustments may be • e.g <u>Archibald v Fife Council</u> (2004); • progressive illnesses and conditions within (para 6 Sch 1 EA 2010). Specific exclusions (set out in the Equality Act 2010 (Disability) Regulations 2010) <p>4.7 Explanation of the need for the claimant to establish a <i>prima facie</i> case and then employer to establish discrimination did not occur, s.136 Equality Act 2010.</p> <p>4.8 Remedies:</p> <ul style="list-style-type: none"> • s.124 Equality Act 2010 (declaration, recommendation, compensation), outline of compensation payment available following a successful claim: • Vento guidelines. <p>4.9 Application to a scenario.</p>
--	---	---

This specification is for 2023 examinations.

<p>5. Understand how employment can be terminated</p>	<p>5.1 Describe how employment can be terminated by agreement of the parties</p> <p>5.2 Explain how an employee can be dismissed</p> <p>5.3 Apply an understanding of how employment can be terminated to a given situation.</p>	<p>5.1 The operation of fixed terms contracts;</p> <ul style="list-style-type: none"> • mutual consent. Resignations; • notice periods included as express terms in contracts (s.86 ERA 1996); • understanding of pay and benefits accrued during the notice period and payment in lieu of notice. <p>5.2 S.95 ERA 1996 outlines 3 situations:</p> <ul style="list-style-type: none"> • Termination by employer • Expiry of fixed term contract • Termination by employee in circumstances where employee entitled to terminate. • Dismissal by an employer through language or action. • Repudiatory breach by the employee and summary dismissal. • Repudiatory breach by an employer entitling employee to resign and claim unfair constructive dismissal. Reference to express and implied terms of the contract; • particularly the duty of trust and confidence; • <u>Morrow v Safeway Stores</u> (2002). <p>5.3 Application to a scenario.</p>
--	---	---

This specification is for 2023 examinations.

<p>6. Understand when an employee has been wrongfully dismissed</p>	<p>6.1 Describe the requirement for the termination of the contract without due notice</p> <p>6.2 Describe the remedies available for wrongful dismissal</p> <p>6.3 Identify which courts have jurisdiction for wrongful dismissal proceedings</p> <p>6.4 Apply an understanding of the concept of wrongful dismissal to a given situation</p>	<p>6.1 Understanding that there must be a dismissal without notice (ref to s.86 ERA 1996) and that the employee must not have given grounds for a repudiation of the contract by the employer.</p> <p>6.2 Quantum of damages to include loss of wages and benefits. Not to include injury to feelings, <u>Johnson v Unisys</u> (2001).</p> <p>6.3 Identification of forum (ET and County/High Court) with monetary limits and advantages and disadvantages of each.</p> <p>6.4 Application to a scenario.</p>
<p>7. Understand when an employee has been unfairly dismissed</p>	<p>7.1 Identify the preliminary requirements for a claim for unfair dismissal</p>	<p>7.1 Preliminary requirements:</p> <ul style="list-style-type: none"> • employee (see LO 1 above); • two years continual service requirement applies) (s.108 ERA 1996) when continuity of employment is not broken s212(3); • not an excluded category e.g <u>Ravat v Halliburton Manufacturing</u> (2012) • claim brought in time; • employee must have been dismissed; • effective date of termination s97 ERA 1996.

This specification is for 2023 examinations.

	<p>7.2 Describe the potentially fair reasons for dismissal</p> <p>7.3 Explain the requirement of procedural fairness by the employer.</p> <p>7.4 Explain the requirement for the employer to act reasonably</p> <p>7.5 Identify the forum for an employee to present a complaint and those remedies available for a successful employee</p> <p>7.6 Apply an understanding of the concept of unfair dismissal to a given situation</p>	<p>7.2 S.98(2) ERA 1996:</p> <ul style="list-style-type: none"> • capability, conduct, redundancy, illegality, statutory restriction, some other substantial reason; • in contrast to automatically unfair and automatically fair reasons for dismissal. <p>7.3 ACAS Code of Practice (CP1) and reference to disciplinary/grievance procedures, <u>British Home Stores v Burchell</u> (1978). Power of Employment Tribunal to increase or decrease compensation by up to 25% if employer or employee fails to comply with CP1.</p> <p>7.4 S.98(4) ERA 1996 and the 'band of reasonable responses' test: <u>Iceland Frozen Foods v Jones</u> (1982).</p> <p>7.5 Introduction to the jurisdiction of the Employment Tribunal in employment law disputes and relevant timescales for initiation s111 ERA 1996;</p> <ul style="list-style-type: none"> • a description of the available remedies, reinstatement, re-engagement and Financial award consisting of the basic award and the compensatory award. <p>7.6 Application to a scenario.</p>
--	--	--

This specification is for 2023 examinations.

Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area 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; specifically, Unit 45 First Line Employment Legal Advice and Unit 46 Employment Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
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 unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2011

This specification is for 2023 examinations.