CHIEF EXAMINER REPORT

JANUARY 2025

LEVEL 6 UNIT 19 – PRACTICE OF EMPLOYMENT LAW

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2025 examinations.

The 'suggested points for responses' set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview
This was a small cohort on this occasion. Only nine candidates sat this assessment. Some strong answers were produced that addressed the question carefully and provided good detail on case law and legal provisions. Weaker answered lacked detail, references to case law and sufficient analysis and, for Part B questions, application to the facts. In part B questions, candidates are advised to review the facts and consider carefully who is doing what and how this affects their answers to the question.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited due to low or no attempts at questions.

Section A

Question 1a	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Identify that Clause 3.7 is a garden leave clause requiring Dimitri Ellery not to work during his two months' notice period. • The clause is likely binding as Dimitri Ellery is the head of marketing and likely privy to confidential company information and company contacts. The clause would prevent him gaining more such knowledge during his notice period and would therefore protect the legitimate business interest of Comet90 Ltd. • Clause 3.7 also gives Dimitri Ellery full pay and benefits for the duration of garden leave, which argues in favour of the validity of the clause. • The two month duration of the clause seems fair within the circumstances, but any reasoned arguments credited on this point. • Clause 3.7 is likely valid.	

Question 1b	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Explain that Comet90 Ltd may seek an interim injunction preventing Dimitri Ellery from working for a competitor during his notice period/garden leave. • Identify that injunctions are equitable remedies and are granted only under strict criteria. Furthermore, as Dimitri Ellery has been working for the competitor for four weeks, it may be preferable for Comet90 Ltd to seek damages for breach of contract / breach of Clause 3.7. • Comet90 Ltd may seek damages against Dimitri Ellery in the civil courts; High Court or County Court depending on value and complexity of case. County Court most appropriate. • Comet90 Ltd will need to show damages caused by the breach. • Dimitri Ellery has worked for a competitor for four weeks, the courts will consider probabilities and calculate losses accordingly.	

Question 1c	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Identify that the seizures experienced by Leena Patel may be considered a disability under the Equality Act 2010
- S6 EA 2010 defines disability as a physical or mental impairment having a substantial and long-term adverse effect on an individual's ability to carry out their normal day-to-day activities.
- Substantial means more than minor by reference to what the individual could do with or without the impairment, Paterson v Metropolitan Police Commissioner (2007).
- Long term impairment means at least 12 months, or likely to last the rest of the person's life.
- Leena Patel has experienced the seizures for at least five years as she has taken prescription medication throughout that time. It appears the seizures affect Leena Patel's day-to-day activities and are substantial in that she must avoid bright lights and takes long term prescription medication.
- Leena Patel's condition is likely a disability under s6 EA 2010.
- Under s20 EA 2010, once Comet90 Ltd was made aware of Leena Patel's condition/disability, it was under a requirement to make reasonable adjustments for her condition.
- The adjustments requested do not appear unreasonable and the 'inconvenience' of the company is not a recognised reason to reject a request for reasonable adjustment, s39 EA 2010
- It appears Comet90 Ltd has ability to make the adjustments requested by Leena Patel.

Question 2a	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Under the Maternity and Parental Leave Regulations 1999 regulation 8, Zulika Patrick has the right to take ordinary maternity leave (OML) of a period of 26 weeks.
- The regulations also allow for additional maternity leave (AML), a period of 26 weeks leave taken immediately after the ordinary maternity leave.
- When taking OML, the employee has the right to return to their former job s71(4), ERA 1996. However, if Ms Patrick takes AML she can return to the work in which she was employed, or if this is not reasonably practicable for the employer, to an alternative and appropriate job on the same terms and conditions as the previous job, Regs 18 and 18A MPLR 1999.
- There is currently no breach. Credit reasoned arguments.
- S26 EA 2010 harassment on the basis of sex. The comments made to Zulika Patrick by Mrs Sahir are based on sex and have created a hostile environment as Ms Patrick finds the comments very offensive. Power imbalance as manager reinforces this finding. The fact that the comment was made without the intention of causing offence is not relevant. The reasonable perception of the claimant is considered.
- Employees have the right to time off for antenatal care, s55 ERA 1996.
- The time off must not be unreasonably refused and must be paid s56 ERA 1996.
- Ms Patrick's antenatal leave had been unreasonably refused and her right to leave and the right to paid leave s57 ERA 1996 have been breached.

Question 2b	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The Equality Act 2010 maternity equality clause gives Zulika Patrick the right to receive any bonus she would have received had she not been on maternity leave, s74(7) Equality Act 2010 maternity equality clause. • This amount must be paid at the time it would have been paid were she not on maternity leave. • HeartsandDarts must pay Zulika Patrick the £2000 bonus at the same time as other relevant members of staff.	

Question 3a	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Employees with at least two years' service who are not in an excluded category have a right not be unfairly dismissed, s98 ERA 1996 • Ms Bradshaw meets these requirements; she is an employee, three years duration, no other exclusions apply. • Conduct/gross misconduct is a potentially fair reason for dismissal under s98 ERA 1996. • The conduct in question must be sufficiently serious to justify the dismissal. It will be necessary to consider whether the company acted reasonably in treating the potentially fair reason as a reason for dismissal. • Reasonableness is determined by considering several factors including whether the employer genuinely believed the employee was guilty of the misconduct, whether the employer had reasonable grounds for that belief, whether the employer carried out reasonable investigation into the matter and whether dismissal was an appropriate sanction, BHS v Burchell (1978). • The misconduct in question, use of the phone, is not under challenge as Ms Bradshaw admits she was distracted by a phone call and did not see the child until after he fell. • The single incident of phone use would not normally be considered a serious issue, however, given the nature of the role and the fact that a child was injured, this point may be argued either way.	

Question 3b	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
Settlement agreements must comply with the independent advice requirements in s203 (3) Employment Rights Act 1996, as below: • The employee must have received independent advice from a qualified professional • The adviser must be a relevant independent adviser under the Employment Rights Act 1996 s203 (3A), Employment Rights (Dispute Resolution) Act 1998 • The adviser must be identified in the agreement and the agreement must state that the above conditions are satisfied.	

Question 3c	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
The policy must • identify disciplinary offences • deal with matters promptly and confidentially • tell employees what disciplinary action might be taken/penalties • carry out a full investigation • hold a disciplinary hearing and allow the employee to present their case • inform the employee of the outcome and the appeals procedure	

Question 4ai	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• TUPE 2006 Regulation 4(3) transfers employment contracts of individuals who were employed by the transferor immediately prior to the transfer and assigned to the relevant grouping of employees that is transferred. • All contractual rights and liabilities under or in connection with the employment relationship are transferred. Sammy Otterbon's contract has been transferred to MakeMe400 Ltd. • Reg 7(1) where an employee is dismissed the dismissal will be automatically unfairly dismissed if the sole or principal reason for the dismissal is the transfer itself or a reason that is not connected to an ETO reason. • ETO reasons include 'profitability'. However, as the cost of the new offices were known prior to the transfer, this is unlikely to be accepted as a valid ETO reason justifying dismissal of Sammy Otterbon. • Automatic unfair dismissal does not require a duration of employment, so Sammy Otterbon is protected irrespective of working for CCJ Ltd for just 18 months.	

Question 4aii	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Remedies for automatic unfair dismissal • Remedies under s112 and 113 ERA 1996 are reinstatement, reengagement and financial compensation.	

Question 4bi	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• There is a right to appeal an ET decision within the Employment Appeal Tribunal (EAT), Court of Appeal and Supreme Court • Appeals may only be on a question of law, or correct application of law, not the tribunal's decision on facts, appeal may also be possible if incorrect procedure affected the decision, there was no evidence to support the decision, the decision was unfairly bias • The time limit for appeal is 42 days • The employee must complete a Notice of Appeal Form and send to the tribunal within this time limit	

Question 4bii	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• If an individual believes another person has relevant evidence but will not attend the tribunal voluntarily, they may apply to tribunal for a witness order compelling the person to attend. • Witness orders r32 sch 1, the judge may issue a witness order if satisfied the witness can give evidence relevant to the dispute and it is necessary to issue an order to secure their attendance • *Dada v Metal Box Company Limited (1974)* • *Any relevant law*	