



CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 4 – 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 2026 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

Overall, candidate performance was at a similar level witnessed in previous recent sessions.

There were some strong answers to individual questions. In terms of areas of law, stronger knowledge was evident in relation to relevant legal tests with regards to employment status; the criteria for eligibility and entitlements in relation to paternity leave and paternity pay; rights of agency and fixed term workers; employer's implied duty of care.

Weaker responses did not fully answer all the elements of the questions presented. For example, fair procedure; identifying the correct type of discrimination; duty to make reasonable adjustments; remedies available to workers; whistleblowing/H&S automatic unfair dismissal claim.

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.

Section A

Question 1	25 marks
All candidates who attempted this question scored very well on this question. Candidates discussed all of the relevant legal tests with regards to employment status and showed a good knowledge of case law in this area.	
Suggested Points for Response:	
• The courts have fact-based tests to determine employment status. • The multiple/economic reality test, <i>Ready Mixed Concrete Ltd v Minister of Pensions</i> (1968), considers the degree of control, mutuality of obligation, personal service, investment in tools and equipment, length of service and method of payment and taxation. • Examples of tests in application include 'economic realities' being balanced against other factors. Even where the individual pays their own tax and national insurance they may still be an employee if other factors reinforce this status, <i>Pimlico Plumbers Ltd v Smith</i> (2018). • The ability to delegate duties generally suggests the individual is not an employee, <i>MacFarlane and Another v Glasgow City Council</i> (2001). However, delegation, as with all factors, will be considered in the light of the individual's full working circumstances. • When dealing with agency workers and zero hours contracts, despite contracts commonly referring to them as workers, the same tests will apply to determine employment status as for any other individual, <i>James v London Borough of Greenwich</i> (2008) agency workers; <i>Pulse Healthcare Ltd v Carewatch Care Services Ltd and Others</i> (2012), zero hours contractors held to be employees based on the reality of their working lives. In this respect, the tests appear to be appropriately applied to modern ways of working, as reflected in the 'gig economy' of agency workers and zero hours workers. • The "gold standard" of employment status is not generally available to those working in the gig economy. • Recent judicial rulings demonstrate Economic Reality/Multiple tests still effectively used. <i>Uber BV and others (Appellants) v Aslam and others (Respondents)</i>, the evaluation of realities of the gig economy in determining drivers as 'workers' and entitled to statutory rights of minimum wages and holidays. Elements considered included control on terms of working, control of earning limits, and termination of the working relationship. • The tests are several decades old but arguably flexible enough to remain relevant. None of the single factors are exclusively decisive and all factors are balanced. • Case law application of the tests results in varied outcomes that appear to consider the facts of each case. • Any reasoned evaluation/ conclusion.	

Question 2a	15 marks
Candidates showed a solid knowledge of the legislation in this area. Although generally, candidates did not provide sufficient detail in relation to the remedies available to the worker if there was a breach of the AWRs.	
Suggested Points for Response:	
• Responsibility for ensuring the agency worker is equally treated initially lies with the agency, The Agency Worker Regulations (2010), Reg 14. • The agency worker can make a written request, within 28 days, to the agency for a written statement explaining any difference in treatment, Reg 16(1). • If agency fails to provide this, the agency worker can apply to the hirer, who within 28 days, should provide information on the rights of a comparable worker and the reason for the treatment of the agency worker. • If an agency worker's rights are breached, they may bring a complaint to the ET within three months of alleged breach, although can be heard out of time if ET believes just and equitable. The complaint may be made against the hirer or the agency. • ET can make a declaration of rights, order compensation or recommend the respondent takes a specified action. • Tribunal can make an additional award if the assignment appears structured to avoid the provisions of the AWR 2010.	

Question 2b	10 marks
Candidates showed a good knowledge of the legislation in this area, but answers lacked detail regarding the remedies available to the workers.	
Suggested Points for Response:	
• The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (2002), fixed term workers have a right not be treated less favourably regarding terms of contract or any detriment, Reg 3. • If a fixed term worker believes they have been treated less favourably, they can request the employer provides them with a statement giving the particulars of the reasons for the less favourable treatment, which they must provide within 21 days, Reg 4. • The employer can raise a defence of objective justification to any difference in treatment, Reg 4. • If a fixed term worker rights are breached, they can bring a complaint to the ET within three months of incident, or later if ET considers fair. The ET may order a declaration, compensation or recommendation, Reg 7. • Failure to provide a statement of particulars of reasons for difference in treatment allows an ET to draw just inferences at future ET hearing.	

Question 3	25 marks
The responses to this question showed a high level of knowledge of the criteria for eligibility and their entitlements in relation to paternity leave and paternity pay.	
Suggested Points for Response:	
• Ss80A-E ERA 1996, Paternity and Adoption Leave Regulations 2002, to be eligible for ordinary paternity leave (OPL), the employee must: have 26 continuous weeks service with the same employer by the end of the 15th weeks before the child is due to be born; have a relationship with the new-born and the mother and expect to be parenting the new-born child; at least 15 weeks before the EWC, inform their employer of the baby's due date, when they want their leave to start, and how much leave they want to take. • The employee will be paid for ordinary paternity leave if they meet the qualifying criteria and earn at least the lower limit for national insurance. Ordinary paternity leave entitles the individual to be paid the lower statutory rate per week and 90% of their average weekly earnings during the paternity leave, Statutory Paternity Pay, Social Security Contributions and Benefits Act 1992. • The 'qualifying criteria' means that those on a very low income will not be covered under the legislation. Ss80A-E ERA 1996, Paternity and Adoption Leave Regulations 2002 employee who has taken paternity leave has the right to return to the same job and are protected from detriment for exercising this right to leave. • The statutory rights identified extend to employees only, not to workers. Supporting a suggestion of the 'inadequacy' of the rights. •	

Question 4	25 marks
Generally, candidates showed a good level of knowledge in the subject area of unfair dismissal. Although, responses could have been improved by providing a more comprehensive answer. For example, some candidates focused mostly on the five potentially fair reasons for dismissal therefore limited the marks which could be awarded.	
Suggested Points for Response: • Explain the potentially fair reasons for dismissal, s98 ERA 1996, and how, in addition to any of these reasons, there must be evidence of fairness in all the circumstances of the dismissal. • Explain the importance that the employer acts within a 'band of reasonableness' s98(4). The size and resources of the employer considered in reasonable responses test, British Telecommunications plc v Daniels (2012). • Fairness can include where the employer genuinely believed the employee was guilty of the misconduct and had reasonable grounds for that belief, appropriate review of circumstances, warnings, seriousness of the allegation upon which the dismissal is based and corresponding level of investigation, BHS Ltd v Burchell (1978); Sainsburys Supermarkets Ltd v Hitt (2003), Hargreaves v Manchester Grammar (2018). • Define substantive fairness and the employers need to act within a 'range of reasonable responses'. Cite case law examples of the interpretation of this criteria, including but not limited to HSBS v Madden (2000). • Explain the relationship between procedural fairness in dismissal and the requirement to follow the ACAS Disciplinary and Grievance Code. • Discuss how failure to follow the ACAS Code can result in a finding of a lack of 'fairness' and an unfair dismissal. • Procedural fairness is relevant to determine reasonableness, however, procedural defects will not necessarily render the dismissal unfair (London Central Bus Company Ltd v Manning (2013)). • Critical evaluation per the specifics of the question should be evident within the response as a whole.	

Section B

Question 1	25 marks
All candidates who attempted this question answered it well in relation to Anoj, in regard to the employer's implied duty of care towards him. However, some candidates regarding Brenda, misinterpreted and/or incorrectly identified the claim this question was asking them to answer, as it was in relation to indirect discrimination. Some candidates answered it in relation to it being a direct discrimination claim. In relation to Carly, the question required candidates to discuss the employer's duty to make reasonable adjustments. However, some candidates answered it by discussing direct discrimination and a section 15 claim (discrimination from something arising out of disability) and did not discuss the duty to make reasonable adjustments claim.	
Suggested Points for Response:	
Anoj • Fast Food 4U has an implied duty to exercise reasonable care in protecting the health and safety of an employee/worker. This would include providing a safe working environment and safe equipment, this duty has been breached as the company concedes the oven was 'broken' at the time of the incident. • The nature of the work determines what is a reasonable standard of care in the circumstances. As the restaurant is a busy environment and a pizza oven is a potentially hazardous piece of equipment, this suggests a higher standard of care and reinforces a breach of care. • The mere provision of safety equipment is insufficient, Fast Food 4U had a duty to instruct Anoj to wear the oven gloves when using the pizza oven, it cannot place the burden on the individual employee, <i>Pape v Cumbria County Council</i> (1991). • Fast Food 4U has breached Anoj's common law right to a safe working environment and safe equipment. Brenda • Identify the protected characteristics of religion, s4 EA 2010. • Define indirect discrimination under s19 EA 2010. • Identify that an employer can defend against a claim of indirect discrimination by demonstrating that the measure in question is a 'proportionate means of achieving a legitimate aim'. • Fast Food 4U has stated that the justification is the styling of the uniform. This is unlikely to be a valid argument, particularly as the change is for two weeks only. • The suggestion that customers would be unable to identify Brenda as a server in the busy work environment is also unlikely to be a successful defence, but could be argued. Carly • Equality Act 2010 prohibits discrimination on the grounds of disability, s6. • Identify the requirement on employers to protect disabled employees. • There is no need to apply the s6 test as multiple sclerosis is recognised as a disability under the EA 2010. • s39(5) EA 2010 duty to make reasonable adjustments and provision of adjustments, and aids provided, without any cost to the employee s20 (7). Fast Food 4U met this burden by providing Carly with a chair. • The company can defend against the decision not to provide the more expensive chair as it was not reasonable to consider the fashion of the item, particularly as Carly finds the existing chair 'adequate'.	

Question 2	25 marks
Candidates answered this question by discussing the TUPE Regs and it being unlawful to vary a transferred contractual term unless there was an ETO reason. However, some candidates appeared to miss the part of the question that the employee has resigned. Therefore, giving rise to a Reg 4(9) claim. Overall, candidates were quite sparse in detail regarding the remedies available to the employee.	
Suggested Points for Response:	
• Explain that under TUPE 2006 Regulation 4(2), a transferee shall acquire 'all the rights, powers, duties and liabilities under or in connection with the contract'. Ellie's contractual rights and liabilities have been transferred from Free Designs Ltd to Kitties Ltd. • Explain that the transferred employee's employment contract is protected from variation by the transferee. If the sole reason for the variation is the transfer, any such change will be void, Regulation 4(4) and (5). Identify the exception to this rule exists where variation to contractual terms may be allowed for economic, technical or organisational (ETO) reasons entailing changes in the workforce that is related to the conduct of the business, <i>Wheeler v Patel</i> (1987). • Harmonisation of contract terms is not a recognised ETO reason, nor is sustaining working relations. • The 'maintenance of profit' is an economic reason, but unlikely valid in the circumstances. • Identify that the reduction in wages is a repudiation of the contract that brings a substantial and detrimental change. • Ellie can claim constructive dismissal if the transfer results in a substantial change in his/her working conditions to his/her material detriment, <i>Abellio London and CentreWest London Buses v Musse</i> (2012). This allows Ellie to treat the contract as terminated by Kitties Ltd and claim constructive unfair dismissal, Reg 4 (9), <i>Tapere v South London and Maudsley NHS Trust</i> (2009). • The breach of contract leading to the resignation must be 'serious'. The reduction in wages is serious. • Ellie has been employed by Free Designs Ltd for two years, so she meets the employment duration requirement to access statutory remedies. s98 ERA 1996 remedies of reinstatement, re-engagement and compensation of a basic and a compensatory award.	

Question 3a	10 marks
Candidates answered this question well, correctly identifying the issues regarding the selection criteria for both employees.	
Suggested Points for Response 3a:	
• Explain that there has been a redundancy situation under Section 139 Employment Rights Act (ERA) 1996, therefore a fair selection process is required. • Lena: an employee's attendance record may be considered in selection for redundancy. However, the employer must not consider any absence related to disability or maternity EA 2010. Lena has stated her absence was due to allergies. However, 37 days is significant absenteeism, no medical notes provided. The selection appears fair • Roger: selection on 'last in, first out' (LIFO) basis is fair, although not in isolation, <i>Anderson v Pringle of Scotland Ltd</i> (1998). • The LIFO basis is only acceptable if it can be objectively justified and seniority is only one factor among many considered in selection for redundancy, <i>Hobson v Park Brothers</i> (1973). • It does not appear Roger has been fairly selected as this is the only basis for his selection.	

Question 3b	7 marks
Candidates did generally identify the correct heads of compensation in regards to remedy. Although, responses could have been improved by providing a more detailed answer. For example, including a narrative regarding how the basic award is calculated.	
Suggested Points for Response 3b:	
• Remedies under ERA s.112 and Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) s.157(1). • Reinstatement, an order of reengagement and an order for compensation of a basic award and a compensatory award. • If the redundancy was unfair, there will be an additional right to compensation under s123 ERA. This includes loss suffered and expenses reasonably incurred, as well as any benefit lost. • This payment is also subject to a maximum statutory amount of 52 weeks gross pay or a statutory amount that increases each year.	

Question 3c	8 marks
Candidates answered this question well and identified the correct implied duty owed to the employee in regards to her pay, even if she was not provided with any work.	
Suggested Points for Response 3c:	
• Explain that the employer has an implied duty to pay wages even when there is no work for the employee, <i>Way v Latilla</i> (1937), <i>Beveridge v KLM UK Ltd</i> (2000). Jamilla is an employee of Read&Speak Ltd so there is a duty to pay wages and this has been breached. • Explain that the employer does not have a duty to provide work, except in certain circumstances including the employee's ability to have a reasonable opportunity to maintain skills, <i>Langston v Auew</i> (1974). • Language skills could fall under this category, but the duration is unlikely to result in decrease in skills.	

Question 4a	14 marks
Candidates identified the correct legal test for constructive unfair dismissal and some cited some relevant case law. Generally, candidates identified the question was silent in regards to Vanessa's length of service and flagged this as a jurisdictional point for constructive unfair dismissal, but they did not provide the alternative claim of wrongful dismissal if Vanessa did not have the requisite length of service.	
Suggested Points for Response 4a:	
• Identify that a constructive dismissal takes place when an employee feels the employer has made it impossible for them to continue in their job, effectively forcing them to resign from their job. • Explain that constructive dismissal requires that the employer commits a fundamental breach of the employment contract. • The breach of a fundamental term of contract by the employer must be considered sufficiently serious to constitute a constructive dismissal, <i>Western Excavating Limited v Sharp</i> (1979). • Constructive dismissal occurs where there is a breach of the implied duty of trust and confidence, which includes words of the employer, a broad interpretation, <i>Five Elms Medical Practice v Hayes</i> (2012), <i>Ogilvie v Neyrfor-Weir Ltd</i> (2003). • An employee may resign over one 'serious' incident, or several incidents. • The breach may be of an express or implied term.	

- The employee must resign reasonably promptly or may be considered to have affirmed the contract and the right to claim constructive dismissal will be lost, *Brown v Neon Management* (2018). This applies to both single event and cumulative claims.
- Examples of serious breaches of employment contract by the employer, including bullying, and unreasonable changes to working patterns.
- Vanessa had not been previously warned about her lateness, suggesting the comments made by Jolene were a one-off. It was only on the third occasion the warning came, which appears reasonable.
- The language used by Jolene does not appear personal to Vanessa and refers to team dynamics. It is unlikely this was serious breach of the contract and trust and confidence of the relationship.
- An objective test is used to determine if the trust and confidence have been broken.
- The statement however was made in front of Vanessa's colleagues, which suggests a breach of trust.

Question 4b	11 marks
The question wanted to discuss the automatic unfair dismissal reasons of whistleblowing and/or H&S concerns. However, some candidates answered this question by discussing ordinary unfair dismissal by reason of conduct, which was not what the question was aimed at.	
Suggested Points for Response 4b:	
• Identify that Yin may have a claim for automatic unfair dismissal, Employment Rights Act 1996. • This claim does not have a length of service requirement, so Yin is eligible despite working for the company for 18 months, rather than the required two years for potential unfair dismissal. • ERA 1996 automatically unfair reasons for dismissal include whistle blowing s103A. • Yin however did not engage in proper reporting to an appropriate person, although she did voice her concerns with her manager who confirmed the company was taking no steps to change its practices. The issue is one of health and safety and Yin has been dismissed for making this disclosure, Protected disclosures Act 2014, Public Interest Disclosure Act 1998. • It is likely Yin has been automatically unfairly dismissed.	