



CHIEF EXAMINER REPORT

JUNE 2025

LEVEL 6 UNIT 19 – THE 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 June 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

The paper as a whole performed to a good standard

The candidates that failed the paper tended to not answer all questions or provide very brief and/or not relevant responses to more than one of the questions within the exam paper.

The majority of candidates passed the paper by identifying the majority of legal issues examined within each document of the case study. These points were then explained in answer to the questions posed, and some supporting statute cited. However, only few high scoring papers identified all the issues examined and applied the law to the case study details in a thorough and critical way in relation to all the questions posed, along with both support statute and case law, where appropriate.

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 has not been included.

Question 1a	9 marks
The relevant statute was overall well identified and stronger papers also cited case law. Application of the law to the case study was found in most papers. However, only higher scoring papers considered the several factors expressed within the case study dynamics and how this impacted interpretation of the law.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • S26 Equality Act 2010 defines harassment as occurring where a person engages in unwanted conduct related to a protected characteristic or of a sexual nature, which has the purpose or effect of violating another's dignity or creating a hostile, degrading or humiliating or offensive environment for the individual. • Christophe Penny's attempts to meet with Laila Hussain do not appear to be harassment as they are not sexual in nature, nor related to a protected characteristic. Laila Hussain does not appear to feel harassed, and the only concern expressed relates to the finding out of the relationship. • The meetings appear to be reasonable as there is still a manager subordinate relationship between the parties; as Laila Hussain concedes. • Christophe Penny touching Laila Hussain's shoulder is also unlikely harassment as it was reciprocal and does not appear to have made her uncomfortable. Again, the only expressed concern is that of people finding out about the relationship and the consequential loss of standing within the company. • There is a power dynamic between the parties, where Laila Hussain is the stronger as the manager of Christophe Penny, this reinforces a suggestion that no harassment has taken place, <i>Insitu Cleaning Co Ltd v Heads</i> (1995), <i>Minto v Wernick Event Hire Ltd</i> (2011). 	

Question 1b	9 marks
Relevant statute and ACAS procedures were overall well explained, higher scoring papers also applied key case law.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Christophe Penny has been dismissed for his conduct/misconduct of touching Laila Hussian's shoulder when attempting to arrange a meeting with her. Misconduct is a ground for potentially fair dismissal under s98 Employment Rights Act 1996 • Where an employee is dismissed for misconduct, the employer must demonstrate that the dismissal was reasonable and proper procedure followed with regards to appropriate investigation into the alleged misconduct. • Dismissal due to misconduct must be reasonable and fair in the circumstances. Including that the employer genuinely believed the employee was guilty of the offence, whether they had reasonable grounds for that belief and whether the employer carried out as much investigation into the matter as was reasonable, BHS Ltd v Burchell (1978). • The employer must act reasonably in the circumstances including the seriousness of the allegation, Iceland Frozen Foods v Jones (1982) and HSBC Bank v Madden (2001). • When a serious and potentially career changing allegation of misconduct is made, only an appropriately in depth, independent and thorough investigation will be reasonable. Dronsfield v University of Reading (2019); Hargreaves v Manchester Grammar (2018) • Proper procedure has not been followed in the dismissal of Christophe Penny. No meeting was held, nor has there been any investigation taken as management relies solely upon the statements made by Laila Hussain. • The accusation made is of a serious nature, reinforcing the need for a thorough investigation. • The dismissal takes place less than 24 hours later after Laila Hussain's statement, and the dismissal is on the basis of this statement alone, as confirmed by Mr Lee. 	

Question 1c	6 marks
This was a straight forward question resulting in overall high to moderate passing grades. Higher scoring papers gave focus to the 'adviser' role, as necessary.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The formalities of settlement agreements are found in s203 (3) Employment Rights Act 1996 and S111A of the ERA 1996 • The employee must have received independent advice from a qualified professional; this adviser must be completely independent of the employer. • This adviser must inform the employee on the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an Employment Tribunal. • The adviser must be a relevant independent adviser under the Employment Rights Act 1996 s203 (3A), Employment Rights (Dispute Resolution) Act 1998 s9 and must be covered by a professional indemnity insurance in respect of the advice given. • The adviser must be identified in the agreement and the agreement must state that the above conditions are satisfied. 	

Question 2ai	8 marks
<p>There were several issues to address and only very few higher scoring papers identified and addressed all these points. Most papers passed with identification of the majority of, but not all, issues examined. Statute citation was found in most papers. Few failing papers did not recognise the relevant types of discrimination and/or provided insufficient detail.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> EA 2010 hold age and sex as protected characteristic. Timmy Yates has been dismissed due to his age and his sex, this is discrimination under the EA 2010 and automatic unfair dismissal, ERA 1996. Samantha Eagles has been discriminated by association, EA 2010. She has been treated less favourably by having to work late shifts. This treatment is due to her association with a person holding a protected characteristic, Johnny is gay and sexuality is a protected characteristic, Coleman v Attridge Law (2008). Identify s109 EA 2010 and s110 EA claimants can bring a claim against the individual and the employer for vicarious liability. 	

Question 2aii	5 marks
<p>This part of the question resulted in low grades with many papers not identifying the relevant point examined. Very few higher scoring papers answered this point expertly.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> 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, not the tribunal's decision on facts The time limit for appeal is 42 days The applicant must complete a Notice of Appeal Form and send to the tribunal within this time limit There may also be a review of an employment tribunal decision within 14 days 	

Question 2b	13 marks
<p>With the exception of a few excellent answers, most papers identified broad points of age discrimination but required further focus on the specific EJRA issues examined. Few relevant points and supporting law were overall credited in most low scoring but passing answers.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> EJRA justification include but are not limited to: the needs and aims of Fashion19 Ltd and showing there are no reasonable alternative ways to achieve their aim, and that the benefits of this aim significantly outweigh the discriminatory effect. Show a link between the legitimate aims of the EJRA and the specified retirement age proposed by Fashion19 Ltd. Examples of legitimate aims include: retirement policy promotes diversity in terms of race and age, aim of avoiding the need to dismiss older workers on the grounds of incapacity or underperformance, intergenerational fairness Any other relevant details 	

Question 3a	8 marks
This question resulted in high to moderate grades. Lower scoring passing answers identified key legislation, but application was weaker. Most papers however both identified laws and applied these critically to this part of the question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • 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. • Jason Jones does not meet any of these requirements. He has not been employed for the required time, he has not made the request in due time, and he does not intend to co-parent the child. He is not entitled to paternity leave. 	

Question 3b	7 marks
A number of answers failed due to not addressing the emergency leave aspect of the question. The flexible working element of the question was better addressed but also lacked sufficient detail in most papers. Very few high scoring papers answered the question well in relation to both areas examined.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Explain that where a request for flexible working is unreasonably refused, the employee can pursue a claim in the ET, s80H ERA 1996. • The tribunal can issue a declaration, recommendation or re-consideration of the decision, and/or award compensation up to eight weeks gross pay. • Identify that where a request for time off in an emergency has been unreasonably refused by her employer, the employee can bring a claim for compensation in the employment tribunal within 3 months under s57B ERA 1996. 	

Question 3c	15 marks
<p>The following applies to both parts i and ii. With the exception of few very good papers, Part c resulted in low grades overall. Part (i) saw relevant explanatory points and identification of key case law in many papers, but a lack of critical case study application. Part (ii) resulted in lower grades with the majority of papers identifying the remedies but failing to provide sufficient detail thereon; with just one sentence answers seen in a few instances.</p>	
Suggested Points for Response:	
<p>3ci (8 marks)</p> <ul style="list-style-type: none"> • Implied terms only protect the employer in certain circumstances, depending on the nature of the employment and the employee's awareness of the confidentiality of the information. • <i>Hivac Ltd v Park Royal Scientific Instruments Ltd</i> (1946), <i>Roger Bullivant Ltd v Ellis</i> (1987). • Highly confidential information, including trade secrets, are protected by the implied term of fidelity, <i>Faccenda Chicken Limited v Fowler</i> (1986). • The implied duty of loyalty and fidelity includes a duty not to disclose confidential information, however, this term applies during employment only. • As Tomaz Wright has used any information after he had left his employment with EXIP Ltd the company will have to prove any information disclosed were a 'trade secret', for breach of the implied duty of loyalty and fidelity, <i>Faccenda Chicken v Fowler</i> (1986). Tomaz Wright claims the information is not specific to his former employer, therefore not trade secrets. • Credit any reasoned conclusion. <p>3cii (7 marks)</p> <ul style="list-style-type: none"> • Restrictive covenant breached. EXIP Ltd can seek an interim injunction to prevent Tomaz Wright working for the competitor. • However, as the employment has already begun, an injunction may not available/ appropriate. • EXIP Ltd can also seek damages for breach of restrictive covenant, pursued in the civil courts; High Court or County Court depending on value and complexity of case. • EXIP Ltd will need to show damages caused by the breach. • Tomaz Wright has worked for a competitor for one month. If confidential information has been divulged/utilised, significant damage may already be recoverable. Tomaz states that the information is not specific to his former employer but common industry knowledge, so significant loss/damages unlikely if this is the case. 	

Question 4a	6 marks
Citation of relevant law was overall found, with higher scoring papers also applying points critically. Failing answers did not provide adequate detail to demonstrate the minimal knowledge required.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Reg 11 TUPE 2006, the transferor has to notify the transferee of any employee liability information relating to each transferred employee; including disclosure of any disciplinary procedures taken against the employee. • This information must be in writing or made available to the transferee in a readily accessible form. • Notification must be given no less than 28 days before the relevant transfer, or as soon as reasonably practicable. • EL Ltd had a right to this information. 	

Question 4b	9 marks
The relevant statute was identified and basic conclusions reached allowing for some marks to be awarded in most papers. Few failing papers did not provide sufficient detail. Few high scoring answers addressed all the points examined with specific reference to the finer details of the case study.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Identify that 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. The quality assurance department would be a recognised grouping of employees. Dimitri Justin and Tamal Carter have had their contractual rights transferred from ORI4 Ltd to EL Ltd. • Regulation 4 (4) where the transfer is the sole reason for variation of a term within a transferred employee's contract, this variation will be void. • There has been a change in wages and working hours of the transferred employees, this will be a breach of Regulation 4 unless there is an ETO reason for the variation. • No ETO reasons apply to the case study. • Harmonisation is not an ETO reason. • The fact that transferred employees receive more holiday leave at from the transferee does not justify the change in contractual working hours and wages. • EL Ltd has breached the rights of both transferred employees. 	

Question 4c	5 marks
High passing scores identified the correct law and conclusions. Failing paper provided either one sentence answers or did not answer the question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • EL Ltd has breached TUPE 2006 Reg 6 by refusing to recognise the ORI4 Ltd employee representative. • The transferee must recognise the trade union in the same extent as the transferor. • EL Ltd cannot say it does not recognise the employee representative as ORI4 Ltd recognised them as such. • The existence of employee representative within EL Ltd does not negate this breach • Any relevant case law 	