CHIEF EXAMINER REPORT

JUNE 2025

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 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
A lack of preparation for the exam and of sufficient revision of the unit content as well as extremely brief answers was evident in lower scoring papers. The overall good pass rate is largely due to good identification of the legal issues examined along with supporting laws. Both statutory provisions and, to a lesser extent, case law, specific to the fundamental legal issues examined were found within answers to all questions posed. These results are typical within the paper generally and in many aspects reflect the findings of the reports of previous cohorts.

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
Higher-scoring answers cited law and provided basic critical commentary. Lower-scoring answers only provided nominal information.	
Suggested Points for Response:	

- Identify the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 aim of protecting employees' rights in a 'traditional' or 'extended' transfer Reg (3).
- Reg 4 a transferred employee's contract of employment is automatically transferred to the transferee employer, includes all contractual rights and liabilities, and any statutory employment claims, any severance or redundancy schemes, bonuses, commission and liability for personal injury.
- Where the transfer is the sole reason for variation of a term within a transferred employee's contract, this variation will be void, Reg 4 (4).
- Identify that variations to the contract of employment may be allowed where the business can prove an Economic, Technical or Organisational (ETO) reason for the variation.
- Reg 7 (1) the employee is automatically unfairly dismissed if the sole or principal reason for the dismissal is the transfer; this includes redundancy of an employee before the specific transferee has been identified but the idea of the transfer was in the mind of the employer at the time of the dismissal, Spaceright Europe Ltd v Bailiavoine (2011). However, 'changes in the workforce' can include a change in the place employees are employed to work. Therefore, redundancy can be considered an ETO reason Reg 4 (5).
- Cite case law demonstrating interpretation of ETO reasons, including but not limited to the below examples.
- ETO reasons include a change to the structure of the workforce by reducing the numbers or changing the functions that individuals perform, Osborne and others v Capita Business Services Ltd and others (2016).
- A new outsource provider cannot rely on the ETO reason defence where it relocated work to its own offices, Royden & ors vs. Barnetts Solicitors (2009).
- The ETO justification would not apply to situations where the transferor anticipates redundancies after the transfer and carries out those dismissals before the transfer, Hynd v Armstrong and Others (2007).
- Wheeler v Patel (1987) an economic reason must relate to the conduct of the business. Therefore, dismissal of an employee by the transferor as a means of facilitating the transfer was not an ETO reason.
- Critical assessment of the laws cited, per the specifics of the questions, should be evident throughout the response as a whole.

Question 2a	10 marks
Higher-scoring papers gave basic relevant statute but lacked critical evaluation. Lower-scoring papers provided very little information relevant to the specific aspect of redundancy examined: consultation.	
Suggested Points for Response:	
Consultation • Identify that the requirement to consult arises where the employer intends to dismiss 20 or more employees within a 90-day period at a single establishment ss188-194 Trade Union and Labour Relations (Consolidation) Act 1992, Dewhirst Group v GMB (2003), Securicor and Omega Express Ltd v GMB (2004), Securicor and Omega Express Ltd v GMB (2004). • Must be a 'genuine attempt' to consult, British Coal Corporation and Secretary of State for Trade and Industry, ex pate Price and Others (1994). • If a tribunal finds that an employer acted in breach of the s188 TULRCA duty to consult, they must make a protective award Hardy v Tourism South East (2005). • Critically evaluate the effectiveness of the measures cited, per the question.	

Question 2b	15 marks
This aspect of the question was overall better answered than part (a) as there was some basic explanation of selection process, with a few papers also providing supporting law.	
Suggested Points for Response:	

• Identify the requirement on the employer to consider a pool of employees. Selection for the redundancy pool must be reasonable in the circumstances, Capita Hartshead Ltd v Byard.
• Employer must use a fair and objective way of selecting persons for redundancy and demonstrate the following:
  • the basis of the selection process, Cox v Wildt Mellor Bromley Ltd (1978),
  • how it was applied in practice, Protective Services (Contracts) Ltd v Livingstone (1992),
  • how it can be objectively checked, Williams v Compair Maxam (1982).
• The selection procedure must be non-discriminatory, Whiffen v Milham Ford Girls School (2001)
• Critical evaluation of the laws cited must be evident, per the question.	

Question 3	25 marks
Few higher scoring papers cited relevant case law and provided good explanatory points. Critical analysis was nominal in a few higher scoring papers. Lower-scoring papers failed to address the area of law examined.	
Suggested Points for Response:	
• 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. • Where a constructive dismissal occurs, an employee can bring a claim for wrongful dismissal. • 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, Western Excavating Limited v Sharp (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, Five Elms Medical Practice v Hayes (2012), Ogilvie v Neyrfor-Weir Ltd (2003). • An objective test is used to determine if the trust and confidence have been broken and the motives of the employer are not relevant to this test. • Breach of this duty can include reputational damage to the employee, hindering future employment, Malik v BCCI (1997). • An employee may resign over one 'serious' incident, or several incidents. • Critical analysis of the laws cited should be evident throughout the response, per the question.	

Question 4	25 marks
Most candidates passed the question with citation of relevant explanatory points with few supporting cases. Specific case law on 'misconduct' was lacking in all but a very few higher-scoring papers.	
Suggested Points for Response:	
• 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 and consideration will be given to the resources of the employer, as well as 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). • Identify the requirements of the ACAS disciplinary code, including the good practice requirement to invite the employee to attend a meeting where the alleged misconduct can be further investigated. • If investigation into the alleged misconduct is not proper, it is unlikely the employer had reasonable grounds for the dismissal. • Where employer fails to follow proper procedure and codes, any award obtained against it for unfair dismissal may be increased by up to 25%, Polkey v AE Dayton Services Limited (1988). • Critical analysis of the law cited should be evident throughout the response.	

Section B

Question 1	25 marks
There were several legal issues examined in the question and most candidates identified and sufficiently addressed many points, with a few excellent answers identifying all issues. Citation of statute was good with higher-scoring papers also including some basic case law.	
Suggested Points for Response:	

Ami (11)

- Identify the Equality Act 2010 (EA) protected characteristics of sex s4 and religion s10.
- Define indirect discrimination, s19. The requirement to wear a skirt is more difficult for Ami to meet due to the protected characteristic of religion.
- Identify that the defence of a proportionate means of achieving a legitimate aim does not appear to apply as trousers are an acceptable item of clothing within the work environment (for male servers), and the only reason given is that 'customers would expect a female to wear a skirt'. This is not a legitimate reason.
- Credit any reasoned arguments.

Ronaldo (14)

- Identify that sexual orientation is a protected characteristic, s 12.
- The comments made by Deana regarding Ronaldo's sexuality are likely harassment, Apply s26 definition. A one-off incident suffices. Power imbalance in the relationship makes harassment finding more likely.
- The fact that Ronaldo does not hold the protected characteristic makes this discrimination by perception as Ronaldo is being treated less favourably due to Deana perceiving him to hold a protected characteristic he does not actually hold, English v Thomas Sanderson (2009).
- Perception discrimination extends to claims of harassment.
- Ronaldo may have been victimised under s27 EA as he has been subjected to a detriment due to supporting a person who has been the victim of discrimination. The detriment is being excluded from opportunity for promotion and the comment made by Deana as to why he was excluded reflect the reason being based upon his support of Ami.
- Ronaldo may also have been discriminated against by his association with Ami as he has been treated less favourably due to his association with a person holding a protected characteristic (Ami), Coleman v Attridge Law (2008).

Question 2a	16 marks
Most candidates passed with relevant statute and application. The lower-scoring papers did not provide sufficient relevant detail.	
Suggested Points for Response	
• Statutory Adoption Leave (SAL) can be taken by one of the parents who adopt the child, not both. Jamal and his partner have agreed Jamal will be the one taking the leave. • Jamal is an employee of ThirdCount Ltd and has worked for the company for 18 months. He is therefore entitled to 26 weeks of Ordinary Adoption Leave followed by 26 weeks of Additional Adoption Leave. • Jamal is also entitled to paid leave under the Paternity and Adoption Leave Regulations 2002 as he has been continuously employed by ThirdCount Ltd for more than 26 weeks by the week he was matched with the child, and he earns over £123 a week before tax. • Statutory Adoption Pay is paid for up to 39 weeks. • Jamal is required to agree with the adoption agency a date for the newly matched adoption and notify his employer that he wishes to take SAL within seven days after the date on which he is informed of the matching (or as soon as possible). • Jamal waited ten days before making his application for adoption leave. • The application should state the specific date of placement and the date on which he wishes to start SAL, Paternity and Adoption Leave Regulations 2002. • Jamal has not included this specific information in his request. • The request is not valid.	

Question 2b	9 marks
Lower-scoring passing papers addressed the area examined within broad responses that often placed too much emphasis on written, rather than implied, duties. Higher-scoring papers also included case law.	
Suggested Points for Response:	
• An employee has an implied duty of good faith, loyalty and fidelity, including the duty not to compete with the client and to account for secret profit, Roger Bullivant Ltd v Ellis (1987). Neary and Neary v Dean of Westminster (1999), Hivac Ltd v Park Royal Scientific Instruments Ltd (1946),Tesco Stores Ltd v Pook (2004) • Rita got the opportunity with Key Aims Ltd through her employment with ThirdCount Ltd and while discussing a deal for the company. • Rita has made a profit and has not declared this to the company. • Rita has breached the duties above.	

Question 3a	15 marks
Higher-scoring papers included supporting law and critical application as well as identifying the reasonableness of the clauses and applied these with some relevance.	
Suggested Points for Response:	

- Identify that Clause 4 contains a garden leave clause and a restrictive covenant. Define both clauses.
- Restrictive covenants and garden leave clauses are judged on a narrow basis as a restraint of trade.
- For the clause to be enforceable, Junk77 Ltd will need to demonstrate there is a legitimate interest to protect, and the clause is no wider than necessary to protect their business interest, is reasonable in terms of time, area and nature.
- The garden leave clause appears reasonable due to payment of full wages and two-week duration.
- The restrictive covenant does not appear reasonable due to the duration, scope and type of job involved. Olia has also been with the company for just one year.
- The restrictive covenant would also be a significant restraint to trade as Olia would be unable to accept her new job and would effectively be left without employment after leaving Junk77 Ltd.
- Credit any reasoned arguments.

Question 3b	10 marks
Higher-scoring papers had relevant law and application noted. Lower-scoring papers did not sufficiently identify the issues examined.	
Suggested Points for Response:	

Deduction of wages:

- Explain that, under the ERA 1996 s13, deductions cannot be made to an employee's wages unless the deduction is required or authorised to be made by virtue of a contractual or statutory provision, or the worker has previously signed a written agreement consenting to the deduction.
- Deductions may also be made to in relation to overpayment of wages and expenses 14 ERA 1996.
- Junk77 Ltd had a right to deduct the overpayment of wages. No breach.
- s8 ERA 1996 every employee is entitled to an itemised statement including gross wages, net amount payable and deductions. There has been a breach of this statute as Junk77Ltd has not issued Helene with the statement.

Question 4a	12 marks
Higher-scoring papers explained the tests examined well. Higher-scoring answers also provided case law and critical detailed application.	
Suggested Points for Response:	

- Identify that the same tests will apply to determine employment status of agency workers as for any other individual, James v London Borough of Greenwich (2008).
- Identify the fact-based tests to determine employment status.
- Erdogan can wear his own clothes. This suggests he is self employed. However, he is controlled as he had to change clothing when told to do so. This suggests employee status.
- Erdogan's contract states he is self employed, but this is not decisive. The employment contract label will only be a deciding point where other factors are of equal weight, Young & Woods Ltd v West (1980).
- Erdogan pays his own tax and NI, which suggests he is self employed. But this is not decisive.
- Even where the individual pays their own tax and national insurance they may still be an employee if other factors reinforce this status, Pimlico Plumbers Ltd v Smith (2018).
- Erdogan cannot delegate his duties, which suggests employee status. The ability to delegate duties generally suggests the individual is not an employee, MacFarlane and Another v Glasgow City Council (2001). However, delegation, as with all factors, will be considered in the light of the individual's full working circumstances.
- Credit any reasoned conclusion as to employment status.

Question 4b	6 marks
Higher-scoring papers provided detailed explanation of statute and application specific to the question.	
Suggested Points for Response:	

- Explain that 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.
- Liam's condition does not appear to be substantial (swollen feet).
- He has not sought medical advice nor does he take any medication.
- The condition is not long term.
- The condition is unlikely to be a disability.

Question 4c	7 marks
Higher-scoring papers identified the types of breach and also relevant potential defences of the employer. Supporting statute was also cited in most answers. Lower-scoring papers did not identify that fixed term workers issues were being examined.	
Suggested Points for Response:	
• Identify the relevance of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (2002). • Penny is a fixed term worker as she is on a 6-month contract with Fit Ltd. • Reg 3 states that fixed term workers have a right not be treated less favourably regarding terms of contract or any detriment. This includes access to benefits and canteen discounts. • Penny does not have access to the gym, nor the benefit of the 20% canteen discount given to other permanent staff. In these regards, she has been treated less favourably. • Fit Ltd can raise a defence of objective justification, Reg 4. Unlikely successfully due to the nature of the benefits. • Credit any reasoned conclusion.	