



CHIEF EXAMINER REPORT

JUNE 2026

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 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

Only 9 candidates sat the paper in this session.

In general, students performed very well to the disability discrimination question, showing good knowledge of the law in this area and applied it very well and gave a reasoned conclusion.

For the questions regarding TUPE, some students did not rely on the TUPE Regulations when discussing a potential unfair dismissal claim and missing the constructive unfair dismissal in the TUPE Regulations and instead relied on the Employment Rights Act 1996.

The candidates who scored highly identified the correct law and applied it really well and reached a reasoned conclusion which was of a very high standard.

Candidates who did not perform well tended to lack a great deal of detail in their answers, particularly the 12 mark questions and identified some of the applicable law in summary form, which they received marks for, but lost a significant number of marks on the application of the law to the question.

Some candidates also did not attempt some questions, or gave a one sentence answer. Therefore, there may have been an issue with the candidate's preparation/revision of the subject area.

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.

Question 1(a)(i)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The definition set out in Section 6 of the EqA 2010, which is supplemented by provisions in Schedule 1 poses four essential questions: (1)Does the person have a physical or mental impairment? (2)Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities? (3) Is that effect substantial? (4)Is that effect long-term? • <i>Kirton v Tetrosy [2003] IRLR 353</i> progressive conditions can be disabilities even if the initial effect of the condition had an insubstantial effect on day-to-day activities. • Hollie Wolfe has time off work and at times, cannot walk • Hollie Wolfe's degenerative disc disease is likely to fall within the definition of disability for the purposes of the EqA 2010. • Section 20 of the EqA 2010 impose a duty on employers to make reasonable adjustments to help disabled job applicants, employees and former employees in certain circumstances. • The duty can arise where a disabled person is placed at a substantial disadvantage by: ○ An employer's provision, criterion or practice (PCP). ○ A physical feature of the employer's premises. ○ An employer's failure to provide an auxiliary aid. ○ However, an employer will not be obliged to make reasonable adjustments unless it knows or ought reasonably to know that the individual in question is disabled and likely to be placed at a substantial disadvantage because of their disability • Scilly Textiles were aware of Hollie Wolfe's condition and the effect as she informed her line manager. • Hollie was required to drive in her role and the PCP was the provision of only small manual vehicles. • The disadvantage this PCP had on Hollie was the worsening of her back condition. Therefore, Scilly Textiles had a duty to make reasonable adjustments. • Hollie's doctor has recommended a larger car automatic car as an adjustment • <i>Karim v The Commissioner of Police of the Metropolis</i> additional costs to the employer does not negate their duty to make reasonable adjustments. Therefore, even if the larger automatic car is more expensive, this is still likely to be a reasonable adjustment. • Although credit can be given for the possibility that provision of the desired car would not be a reasonable adjustment if it placed an excessive burden on the employer • It is not reasonable for employer to expect Hollie to wait a further 8 months to have her car changed. • It is likely Scilly Textiles has breached their duty to make reasonable adjustments. Therefore, Hollie's right not to be discriminated for her disability under section 20 has been potentially breached	

Question 1(a)(ii)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Claims for discrimination have a time limit of three months from date of the act of discrimination • If an act of discrimination is a continuing act, <i>Barclays Bank PLC v Kapur [1991]</i>, the time begins to run from the date of the last act. • Scilly Textiles are continuing to fail to provide Hollie with a suitable car. • Hollie will be required to enter into Early Conciliation, the effect this has on the time limit is once the claimant has notified ACAS of their intention to bring a claim before an employment tribunal, the time limit is suspended during the EC period. • If the time limit for the relevant claim is due to expire in the period between ACAS receiving the notification and one month after the end of the EC period, the time limit expires instead at the end of that period.	

Question 1(b)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
Where a claimant succeeds in a discrimination claim, an employment tribunal may, under section 124 of the EqA 2010, do any (or some, or all) of the following: • Order the respondent to pay compensation. This is assessed in the same way as any other claim in tort, the aim being to award a sum of money that will put the claimant into the position they would have been in had the wrong not taken place. • Make an appropriate recommendation. • Make a declaration as to the rights of the claimant and the respondent in relation to the matters to which the proceedings relate. • Explanation of <i>Vento</i> bands and guidance as to what band Hollie Wolfe's case would fall under • As Hollie is still employed, the loss of earnings would be limited. But could receive any difference between her salary and the salary received whilst on sick leave • The Tribunal could recommend that Scilly Textiles provide Hollie with a larger automatic car	

Question 2(a)(i)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Section 98(2) ERA 96 sets out the five potentially fair reasons an employer can dismiss an employee. • The burden of proof is on the employer. • 98(2)(b) ERA 96 provides conduct of the employee has a potentially fair reason for dismissal. • Jose Petra believes that Nikolai has been working on private jobs during his working hours with Petra. • <i>British Home Stores v Burchell [1977]</i> provides the legal test an employer needs to establish for conduct to be a potentially fair reason for dismissal: • The employer believed the employee to be guilty of misconduct. • The employer had reasonable grounds for believing that the employee was guilty of that misconduct. • At the time it held that belief, it had carried out as much investigation as was reasonable. • Statutory test for fairness in Section 98(4) of the ERA 96: The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer): (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case. • <i>Sainsburys Supermarkets v Hitt [2002]</i> <i>Post Office v Foley</i> dismissal has to be in the range of reasonable responses. • It is highly unlikely Jose Petra will establish the <i>Burchell</i> or statutory tests. Jose did not conduct any investigation into Nikolai's conduct, therefore could not have reasonable grounds that he committed the alleged misconduct. • Dismissal highly unlikely to be in the range of reasonable responses	

Question 2(a)(ii)	7 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Even if the employer establishes a fair reason for dismissal, section 98(4) ERA 96 provides the employer must establish they followed a fair procedure. • The basic principles: The employee should know that they are at risk of dismissal and why. • The employee should be allowed to make representations (usually at a meeting or hearing). • They should also be allowed a right of appeal • ACAS code of conduct applies to conduct dismissals • If ACAS code of conduct not followed, the Tribunal can award at uplift to compensation up to 25%. • The Tribunal will also look at the employer's disciplinary procedure (if applicable) • No procedure followed in this case, the Tribunal are highly likely to determine the procedure followed was unfair	

Question 2(b)	9 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• A settlement agreement is a legally binding contract between an employer and an employee, usually used to resolve a dispute or manage an exit from employment on agreed terms. It typically involves a payment to the employee in exchange for them waiving their right to bring future claims against the employer. • In Writing: The agreement must be in writing. • Relate to Specific Complaints: It must clearly identify the specific complaint, dispute, or proceedings being settled (e.g., "unfair dismissal"). A general "full and final" waiver is not sufficient. • Independent Legal Advice: The employee must receive advice from a qualified independent advisor (such as a solicitor, barrister, or certified union representative) on the terms and effect of the agreement. • Adviser Identification: The agreement must name the independent adviser. • Adviser Insurance: The independent adviser must have professional indemnity insurance covering the risk of a claim by the employee regarding that advice. • Statement of Compliance: The agreement must expressly state that the conditions regulating settlement agreements have been satisfied. • Signatures: It must be signed by both parties.	

Question 2(c)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• During the term of employment and for a period of [e.g., 6–12] months following the termination of employment for any reason, • the Employee shall not, directly or indirectly, on their own behalf or on behalf of any other person or entity, solicit, contact, or attempt to entice away any customer or client of the Company • with whom the Employee had contact or about whom the Employee learned confidential information during the last 12 months of their employment, for the purpose of providing products or services that are competitive with those offered by the Company	

Question (3)(a)(i)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• TUPE applies when a business or part of it moves to a new owner, or when a service provision changes. The rules apply regardless of the size of the business. • Automatic Transfer: the contract of employment transfers to the new employer, retaining the original start date and continuity of service. • Terms and Conditions: Identify that 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. • Explain that under 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. • Changes to terms and conditions are permitted where the sole or principal reason for the variation is an ETO reason entailing changes in the workforce (<i>regulation 4(5)(a)</i>) • While there is no statutory definition of this term, it has been held that it must be concerned with the day-to-day running of the business. • The economic, technical or organisational reason must also entail changes in the workforce. This could include a change in: • The location • The number of employees. • The functions performed by employees. • Harmonisation of terms are unlikely to be considered "changes in the workforce" since it will not be related to a change in the numbers, functions or levels of employees <i>London Metropolitan University v Sackur [2006]</i> • Differences in the scope of the transferor's and transferee's operations might amount to an organisational reason. (<i>Nationwide Building Society v Benn 2009</i>) • A1 Smiles reducing Harriet, Ira and Femi hourly salary to match the pre-existing dental nurses is unlikely to be an ETO reason and therefore the change will be void. • The change in working hours is arguably an ETO reason as it related to the operations of the business and therefore is likely to be a valid ETO reason. • Harriet, Ira and Femi's terms and conditions of employment transferred when Tim Wells took over the practice. • This would include rates of pay and working hours • By changing these terms Harriet, Ira and Femi's, Tim Wells has breached their rights under TUPE Regulations	

Question 3(a)(ii)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Harriet, Ira and Femi could continue to work under the new terms but make a claim to the ET seeking a declaration the change in salary is void. They then could make a claim to ET for the difference in salary they have been paid as an unauthorised deductions from wages claim. • They could also resign and claim constructive unfair dismissal under reg 4(9) of TUPE Regs, as the change in salary is likely to be determined as a substantial change in their working conditions to their material detriment • Basic award: calculation of the basic award is the same as that of a redundancy payment. It is half a week's pay for each full year the employee was under 22, one week's pay for each full year they were aged 22 to 41 years, one and half week's pay for each full year the employee was aged 41 years or older. • compensatory award under s123 ERA. Subject to a maximum statutory amount of 52 weeks gross pay or a statutory amount (per June 2026)	

Question 3(b)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• A grievance policy should reflect the principles in the ACAS code of practice in relation to grievances Definition & Scope: Clearly define what constitutes a grievance (e.g., pay, working conditions, bullying) • Informal Resolution Stage: Encourage resolving issues quickly through informal discussions with managers before escalating. • Formal Procedure ○ Submission: Instructions on submitting a written grievance, including who to contact (e.g., HR, superior) if the direct manager is involved. ○ Right to Accompany: Explicit statement allowing a colleague or trade union representative to attend meetings. ○ Meetings/Hearings: Procedures for scheduling meetings without unreasonable delay. ○ Investigation: A process for investigating complaints, including gathering evidence and interviewing witnesses. ○ Timeframes: Realistic, specific time limits for each stage, such as holding meetings within 5 working days. ○ Confidentiality: Commitment to handling all matters with sensitivity and discretion. • Outcome & Appeal: Procedures for communicating the decision in writing and a clear, fair process for the employee to appeal if they are unhappy with the outcome	

Question 4(a)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<u>Carer's leave</u> • Employees have a statutory right under the Carer's Leave Regulations 2024 and Part 8 of the employment Rights Act 1996 to take up to one week's unpaid carer's leave totalling in each rolling 12-month period. • The leave can be taken in any combination of whole or half days up to one continuous week. • The right applies from day one of employment. • The employee must give notice of at least three days, or twice the number of days' or part days' leave sought (where a half day counts as a whole day), whichever is greater, unless the employer agrees to accept shorter notice. • During the period of carer's leave, an employee is entitled to the benefit of all their terms and conditions, apart from the right to remuneration. They remain subject to all their usual contractual obligations. • An employer cannot decline a request for carer's leave altogether but may postpone the leave by up to a month where all of the following apply: • The employer reasonably considers that the operation of the business would be unduly disrupted if it allowed the leave during the requested period. • The employer allows the employee to take a period of carer's leave of the same duration, within a month of the period initially requested. • The employer gives the employee a written notice within seven days of the initial request, setting out the reason for the postponement and the agreed dates on which the leave can be taken (for an example of a letter to an employee providing this notice • The leave must be to provide care for dependent with a long-term care need. • Yen's is likely to fulfil the criteria to be granted carer's leave. It can be used to provide respite care for another carer. • Yen's mother is likely to be considered a dependent with a long term care need. • Yen has provided the requisite notice and is requesting the time permitted to be taken as carer's leave. • The reason the employer refused Yen the leave may be one of the permitted reasons (operation of the business would be unduly disrupted), however, they are only able to postpone the leave by a month. Yen's employer does not seem to have done this. Therefore, Yen's right to this leave has been breached. <u>Time off for dependents</u> • 57A of ERA 1996 provides this right • Only applies to employees and is a day one right • Provides a right to take reasonable time off when it is necessary to provide assistance to a dependent who falls ill/injured (57A(1)(b) 57A(3) • A dependent can be an employee's parent (57A(3) ERA 96 . • There is no legal right for an employee to be paid for this leave • Likely that Yen was entitled to take time off for dependents to take his mother to hospital after a fall and his employer has breached this by their refusal of this leave.	

Question 4(b)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<u>Carer's leave</u> • Section 80N ERA 76 The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, including— (a) the employer's behaviour, and (b) any consequential loss sustained by the employee • Therefore, Yen could claim any consequential losses by the refusal, as the cost of providing a respite carer. <u>Time off for dependents</u> • Where a tribunal finds that an employee has been refused time off in breach of their right, or that they have suffered a detriment for taking or seeking to take time off, it must make a declaration to that effect. • It may also award such compensation as it considers just and equitable, • having regard to the employer's default in refusing to permit the employee to take the time off and • any loss sustained by the employee which is attributable to the matters complained of (Section 49 and 57B(4) ERA 1996) • In Yen's case, this could be the cost of transport to and from the hospital.	