

 CILEX



P8 – Employment Law and Practice

Professional Stage

2025-2026

P8: Employment Law and Practice

The aim of this module is to give you, the trainee, detailed and practical understanding of key aspects of employment law and practice, providing a solid basis on which to develop specialist expertise in this area and the ability to handle a varied caseload of employment matters.

The focus of this module is on employment rights and how they affect employees and employers throughout the employment relationship (through recruitment, during employment, and on termination). You should be able to provide suitable, practical advice to employees and employers on a case-by-case basis, considering relevant facts, options and risks. You will learn practical skills to enable you to manage common employment procedures as well as developing drafting skills to support your clients effectively.

The module covers:

1. Determining employment status
2. Overview of key Employment Rights
3. Discrimination
4. Recruitment
5. Family Friendly Rights and Flexible Working
6. General principles of Unfair Dismissal and the role of policies and procedures during employment
7. Termination of employment
8. Transfers of Undertakings
9. ACAS Early Conciliation and Employment Tribunal Claims
10. Settlement Agreements
11. The future of employment law in England and Wales

Learning Outcomes

By the end of this module, you will be able to:

1. Take instructions from a client and identify relevant facts in relation to client matters through appropriate detailed analysis
2. Identify the applicable legal issues in relation to client matters
3. Apply the relevant law and appropriate procedures to the facts to progress client matters
4. Advise clients of their appropriate options, risks and potential outcomes associated with a range of employment matters and be able to react to a change in brief
5. Draft and provide suitable advice on documents in relation to commonly arising employment matters and employment litigation
6. Understand the ACAS Early Conciliation and Employment Tribunal process and the importance of following correct procedures
7. Identify situations that potentially give rise to conflicts of interest, issues of professional ethics or other issues under the applicable Codes of Conduct

Linked online assessment: P8

TQT: 300 hours

Prerequisite knowledge: Advanced Stage Business and Employment Law and Practice

Module Resources

In addition to the VitalSource manual, there is a reading list to accompany the module which is located in the 'Study Guide and Content Updates – Professional Stage 1st Editions' document in the VitalSource bookshelf, Training Provider hub and in myCILEX.

Details of updates included in 2025-2026 Module Specification

Amendments to include anticipated 2025/2026 updates including in respect of:

- Employment Rights Bill
- Equality (Race and Disability) Bill
- Skills England Bill
- Bullying and Respect at Work Bill
- Non-Disclosure Agreements Bill

1. Determining employment status	An ability to differentiate and distinguish between employees, workers and contractors is essential for any employment lawyer as different rules and rights apply to the different relationships. Therefore, you will need to know the following: a) Employees • s.230(1) and (2) Employment Rights Act 1996 (ERA 1996) • The multiple factor test • Other Considerations e.g. payment and National Insurance, who provides tools/equipment, holiday/sick pay entitlement, subject to company policies, risk b) Workers • Definition in s.230(3) ERA 1996 - the four requirements under s.230(3)(b) • The 'gig economy' and caselaw developments c) Different statutory definitions of employment • Public Interest Disclosure Act 1998 (PIDA 1998) • s.83(2) Equality Act 2010 (EA 2010) d) Self Employed Contractors • Rights granted by contract • Claims for breach are under the law of contract • Typical indicators of self-employment • Contractors becoming employees/workers over time and the importance of maintaining the intended relationship a) Atypical workers, apprentices and directors
2. Overview of key Employment Rights	Employment lawyers need to understand a wide range of rights granted to employees and workers. These rights form the basis of employment law claims. You need to have a good knowledge of different employment rights, an ability to apply these rights in practice and be able to identify the consequences of a breach. Therefore, you will need to know the following: a) Minimum Wage • National Minimum Wage Act 1998 b) Statutory sick pay • Eligibility • The relationship with contractual sick pay c) Working Time Regulations 1998 • Defining working time • Daily and weekly rest, rest breaks, maximum weekly working

- Holiday pay: including calculation - Art 7 of the Directive, ss221-224 ERA 1996 and recent case law. Post 1st January 2024, the impact of the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
- Holiday pay: Commission/overtime, carrying over holiday pay into subsequent holiday years
- Compelling employees to take holiday leave
- Refusal of holiday requests

d) Employees at work

- Protection from unfair dismissal (s.94 ERA 1996) - in outline
- Protection from unlawful deduction from wages
 - s.13 ERA 1996/breach of contract considerations
 - Tribunal claim for unlawful deduction
- Maternity and Family Friendly Rights - in outline
- Protection from discrimination
 - Protected characteristics under the EA 2010 - in outline
- Fixed term employees (Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002)
- Health and Safety
 - Health and Safety at Work Act 1974 duties
- Information and Consultation of Employees Regulations 2004
- Particulars of employment
 - s.1 ERA 1996
 - Consequences of breach
- Part time employees (Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Workers (Predictable Terms and Conditions) Act 2023)
- Protected disclosures (Public Interest Disclosure Act 1998)
- Transfer of undertakings - in outline
- Trade union related rights
 - Employment Relations Act 2004
 - s.10 ERA 1999 right to be accompanied
- Statutory minimum notice periods (s.86 ERA 1996)

e) Employees and insolvency

- The impact of different forms of insolvency of the employer on employees
- Rights of employees on insolvency; s.386 Insolvency Act 1986, ss.166-70 ERA 1996, and impact on SSP/Maternity Pay
- Insolvency and its relationship with TUPE

f) Data protection rights of employees

- General Data Protection Regulation (Regulation (EU) 2016/679)
- Data Protection Act 2018
- Controlling, using and processing employee personal data and employee rights

3. Discrimination

Protection from discrimination is a key right which extends beyond the field of employment law. You need to be able to identify and advise on potential/actual instances of discrimination. Therefore, you will need to know the following:

- a) The protected characteristics under the EA 2010 (statutory definitions and consideration of relevant case law as well as the EHRC Code of Practice on Employment)
- b) Introduction to equal pay
 - s.64, 66-70 EA 2010
 - Defences
 - Enforcement
 - Employer requirements: equal pay audit/gender pay gap reporting
- c) Protected parties (e.g. ss. 39, 40, 41, 50, 57, 108 EA 2010); before, during or after employment
- d) Different categories of discrimination: s.13, s.19, s.26, s.27 and s.15, s.20/21, s.18 EA 2010 and how they apply to different protected characteristics
 - Direct
 - s.13 EA 2010
 - Association/perception-based discrimination
 - Indirect Discrimination
 - s.19 EA 2010
 - Harassment and Victimisation
 - Harassment: s.26 EA 2010
 - Victimisation: s.27 EA 2010
 - Burden of proof for Harassment and for Victimisation (s.136 EA 2010)
 - Worker Protection (Amendment of Equality Act 2010) Act 2023
 - Disability Discrimination: additional claims:
 - Reasonable Adjustments (ss. 20 and 21 EA 2010 and schedule 8 guidance/explanatory notes in EA 2020 and consideration of appropriate caselaw)
 - Discrimination arising from disability (s.15 EA 2010 and appropriate caselaw)
- e) Remedies in the employment tribunal
 - s.124 EA 2010: declaration, recommendation, compensation
- f) Determining limitation periods for discrimination claims to the Employment Tribunal

4. Recruitment

Managing the employee/employer relationship properly from the outset is essential. You should understand the potential risks arising through recruitment and provide suitable advice to employers to manage an effective process while minimising their risk. You should also be able to advise potential employees and newly engaged employees of their obligations and rights. Therefore, you will need to know the following:

- a) Sourcing and recruiting
 - Sourcing employees and advertising
 - Discrimination issues arising through recruitment
 - Balancing valid job requirements and potentially discriminatory practices
 - Pre employment checks (e.g. obtaining references/DBS checks/right to work checks)
 - Appointment: (s.1 ERA 1996 statement of terms, the contract of employment, automatic enrolment pension obligations). Also consider the implied duties and responsibilities of employees and employers
- b) Drafting the contract of employment
 - Continuity of employment
 - Term (fixed term or rolling)
 - Implied duties: trust and mutual confidence/fidelity
 - Hours and Pay (including overtime/bonuses)
 - Contractual Holiday entitlement and pay
 - Contractual Sick entitlement and pay
 - Place of work/mobility clauses
 - Confidentiality/trade secrets
 - Restrictive Covenants: non-dealing/non-compete/non-solicitation/non-poaching; drafting considerations to maximise enforceability
 - Notice and Termination
 - PILON clauses and Gardening Leave: including the potential impact of failing to have a payment in lieu of notice re: restrictive covenants
 - Share schemes (Micklefield clauses)
 - Contractual Disciplinary/Grievance Procedures; benefits of making any procedures non-contractual for employees under two years' service
- c) Other considerations when employing staff
 - Zero hours contracts/workers contracts
 - Directors Service Contracts (disclosure – s.228-230 CA 2006, additional duties, share schemes, removal as director under both company law and employment law)
 - Service Occupancies
 - Use of online template contracts
- d) Subsequent variation of contracts of employment
 - Contract cannot be unilaterally varied

	• Seeking employee consent: consultation with employees and best practice • Termination and re-engagement; impact of length of service on options and risks; termination for Some Other Substantial Reason (SOSR) if over two years' service (noting best practice – BEIS Code of Practice on Dismissal and Re-engagement) • Variation clauses in the contract • Imposition of terms without agreement; risks/employee options: (e.g. acceptance, resignation and claiming constructive unfair or wrongful dismissal, refusal to work, remain but litigate for breach of contract)
5. Family Friendly Rights and Flexible Working	An employment trainee must fully understand the range of family friendly rights available to employees and the appropriate eligibility criteria. You need to be able to identify rights appropriate to a situation and understand and advise on the correct processes in order to advise employees and employers effectively. Therefore, you will need to know the following: a) Flexible Working requests • ss.80F-80I ERA 1996 (as amended by the Employment Relations (Flexible Working) Act 2023)/Flexible Work Regulations 2014 • Qualification and process • Grounds for refusal • Tribunal claim and remedies b) Time off for antenatal and neonatal care • s.55-56 ERA 1996, • unpaid time off and protection for partners/fathers under s.57ZE ERA 1996) • Neonatal Care (Leave and Pay) Act 2023 (likely effect from April 2025) c) Maternity leave • Notice (reg. 4(1) MPLR 1999) • Right to return to work • Protection from Redundancy (Pregnancy and Family Leave) Act 2023 • Compulsory maternity leave • Right not to be dismissed or to suffer detrimental treatment • Statutory Maternity Pay and contractual pay • Ordinary Maternity Leave (s.71 ERA 1996) • Additional Maternity Leave (s.73 ERA 1996 as amended) • Working during maternity leave (in touch days reg 12A MPLR 1999) • Suspension during maternity under s.66 ERA 1996 and full pay • Risk assessments as good practice and implications for failing to do so (s18 and s.26 EA 2010) d) Adoption leave and pay • ss.75A-75D ERA 1996 • Paternity and Adoption Leave Regulations 2002 (PALR 2002)

	• ordinary and additional adoption leave • protection from detriment/automatic unfair dismissals • redundancy rights • Statutory Adoption Pay; SPPSAP (General) Regulations 2002 and SSCBE 1992 e) Statutory Paternity Leave and Statutory Paternity Pay; PALR 2002 and amendments under the Paternity Leave (Amendment) Regulations 2024. f) Shared Parental Leave, Shared Parental Pay (qualification and refusal of SPL or ShPP) g) Parental Leave • Unpaid leave (eligibility and extent of right) • Parental Bereavement (Leave and Pay) Act 2018 h) Carer's Leave under the Carer's Leave Act 2023 i) Time off to care for dependants • s.57A ERA 1996 and protection from detriment
6. General principles of Unfair Dismissal and the role of policies and procedures during employment	An employment trainee must be able to guide clients through a range of common processes arising during the employment relationship and understand the importance of following appropriate procedures to avoid claims (particularly relating to Unfair Dismissals). You need identify the appropriate process/procedure for the circumstances and advise on how to best implement it in the client's circumstances. Therefore, you will need to know the following: a) Dismissal (s.95 ERA 1996) • Unfair dismissal (s.94 ERA 1996) • The potentially fair reasons for dismissal; conduct, capability, redundancy, illegality/statutory, some other substantial reason; each subject to following a fair process • Determining an effective date of termination and limitation periods b) Grievances • Informal and formal grievance processes ○ ACAS Code of Practice on Disciplinary and Grievance procedures and an employer's internal grievance procedure • Drafting a grievance and outcome • Advising an employer on receipt of a grievance; identifying key facts/issues in an employee's grievance, how to conduct a grievance meeting (right to be accompanied under s.10 Employment Relations Act 1999 - extent of the right), approach to grievance meetings, adjournment for investigation • Rights of appeal

- c) Disciplinary Meetings - Misconduct
 - Determining difference between misconduct and capability/misconduct and gross misconduct
 - Suspension - when is suspension a neutral act?
 - Managing an investigation fairly, determining if there is a case to answer, weighing up relevant evidence, dealing with anonymous informants, handling sickness absence during disciplinary processes
 - Conducting formal disciplinary meetings: ACAS Code, right to be accompanied; providing an appropriate outcome
 - Disciplinary warnings: tiered process, justifying missing staged warnings
 - Reviewing evidence, determining an appropriate sanction and drafting the disciplinary outcome
 - Appeals
 - Use of online tools to conduct disciplinary processes
- d) Capability
 - Managing persistent Intermittent Absence: discrimination considerations, Bradford points/traffic light systems, managing a fair process/warning
 - Long term ill health; managing long term absence, meetings with the employee/consultation, obtaining medical information (Occupational Health referrals/Access to Medical Reports Act 1988), disability discrimination, reasonable adjustments, considering alternatives to dismissal, conducting dismissal hearings)
 - Managing poor performance; distinguished from conduct, informal management of performance issues, formal processes; full process - identify issues and set reasonable goals/standards to be met within reasonable timeframes, appropriate staged warnings, discrimination considerations
 - Applicability of the ACAS Code
- e) Other common policies
 - Sickness
 - Equality and Diversity
 - Bullying and Harassment
 - Health and Safety
 - Whistleblowing
 - Social media
 - IT/BYOD
- f) Vicarious liability during the employment relationship
 - Overview of vicarious liability in tort
 - Liability for acts of directors
 - Breaches of confidentiality and data protection
 - Statutory provision: e.g. Enterprise and Regulatory Reform Act 2013 re. whistleblowing

7. Termination of employment

You need to be able to identify appropriate processes applicable to termination and the associated employee rights and advise employers and employees accordingly. Therefore, you will need to know the following:

- a) Wrongful dismissal
 - Key principles
 - Calculating compensation/damages
- b) Notice by employee or employer
 - How it is given, when it is binding, when it can be revoked
- c) Background to unfair dismissal
 - Eligibility criteria; determining continuity of employment
 - Certain exclusions/considerations e.g. share fishermen, armed forces, police
 - Onus on employer to show a potentially fair reason for dismissal
 - Employees entitlement to written reason for dismissal (s.92 ERA 1996)
- d) Constructive dismissal
 - What amounts to a constructive dismissal; s.95(1)(c) ERA 1996/s.136(1)(c), significant breaches of express or implied terms amounting to constructive dismissal/repudiatory breach
 - Examples of potentially dismissal; unilaterally reducing pay/altering duties/changing work hours; requiring an employee to change place of work without adequate notice; imposing a disproportionate disciplinary sanction
 - Last straw vs series of events leading to resignation
 - Breaches of trust and confidence
 - Right to claim Constructive Unfair Dismissal and calculation of compensation/awards
 - Link with grievances and impact on tribunal awards for employee's failure to raise a grievance
 - Effective resignation in response to the breach and the impact of timing on resignation
 - Practical considerations of constructive dismissal: advising employees of options and legal/practical risks associated with resignation
- e) Potentially fair reasons for dismissal: s.98(2) ERA 1996 and the burden of proof
- f) Substantive fairness
 - s.98(4) ERA 1996
 - The band of reasonable responses
- g) Procedural Fairness
 - ACAS Code; 25% uplift discretionary power of the ET

- s.10 ERA 1999 right to be accompanied
- Following appropriate, fair procedures
- Capability e.g. using appropriate processes to terminate employment fairly depending on the capability circumstances
- Conduct: processes
 - The Burchell test
 - The role of warnings/stages
 - Dismissing employees for misconduct building on a final written warning
 - Overview of gross misconduct; when it may be appropriate to dismiss an employee without prior warnings e.g. theft, violence, unauthorised absence, gross negligence, subject to surrounding circumstances
- Redundancy
 - Definition of redundancy: s.139 ERA 1996
 - Redundancy principles
 - Redundancy processes: warning and consultation; individual and collective consultation; representatives under s.188 TULR(C)A 1992/Information and Consultation Regulations 2004/HR1 notification of Secretary of State
 - Fair basis for selection; appropriate selection processes/criteria
 - Bumping
 - Consideration of alternative employment
 - Appeals
 - Time off to seek alternative employment
 - Renewal of contract, re-engagement and trial periods
 - Redundancy Pay calculation and claims
- Illegality
 - Dealing with common examples
 - Where an employee needs to drive for their role or a substantial part of it and is disqualified
 - Immigration status
 - Failure to achieve a national statutory qualification
 - Requirement to follow a fair procedure
- SOSR: Substantial requirement and fair processes
 - When SOSR may be a fair and reason to dismiss
 - Cases concerning variation of contracts/refusal of re-engagement
 - Imprisonment of employee
 - Employer required to dismiss by a third-party customer
 - Expiry of a fixed term contract

h) Automatic Unfair Dismissals (AUD): an overview of common AUD grounds and their impact on unfair dismissal eligibility/reasonableness test

- i) Dismissing employees under two years' service
- Obtaining facts in respect of the termination

	Applying potential claims/considerations e.g. breach of contract, discrimination, AUD j) Calculating compensation for unfair dismissal/automatic unfair dismissal
8. Transfers of undertakings	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to a large number of different commercial transactions. You need to be able to identify when TUPE applies, how it impacts both transferor and transferee, the necessary steps required of the transferor and transferee and the rights of transferred employees. Therefore, you will need to know the following: a) Application of TUPE - Relevant transfers under reg 3 b) Business transfers - Reg 3(1)(a); test - Is there an economic entity? (3(2) TUPE) - Has that entity transferred? c) Service provision changes - Reg 3(1)(b) d) Effect of a TUPE transfer - Reg 4(1) TUPE - Transfer of contractual terms under reg 4(2) TUPE - Eligibility (reg 4(3) TUPE) - Right of employee to object under reg 4(7) and 4(8). - Transfer of liability under reg 7(1) e) Unfair dismissal and Automatic Unfair Dismissal relating to TUPE f) Process of a TUPE transfer - duties imposed by regs 11-16 TUPE - including duty to inform and consult (reg 13 TUPE) and remedies. - The amendments to TUPE under the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023. g) Variation of terms post transfer: - Regulations 4(4), 4(5) and 7(1) TUPE - When variations may be lawful
9. ACAS Early Conciliation and Employment Tribunal Claims	Employment disputes can result in action being taken in the Employment Tribunal (ET). You must have an outline understanding of employment litigation starting with ACAS Early Conciliation. You will need to understand the Early Conciliation process as well as the key elements and procedure of handling an ET claim. Therefore, you will need to know the following:

- a) Limitation periods
 - Time limits for commonly occurring claims
 - How they are calculated and the ET's power to extend. *(Note current proposal of Government Equalities Office re extension of limitation for some discrimination claims)*
- b) The role of ACAS
 - ACAS Early Conciliation (EC)
 - Purpose of EC and claims to which EC applies; relevant proceedings under s.18(1) Employment Tribunals Act 1996 (ETA 1996) and exemptions
 - Impact of EC on limitation periods for claims
 - Submitting prescribed information, process under s.18A ETA 1996 and the Early Conciliation Rules,
 - Extension of EC period
 - Conclusion of EC if there is agreement between parties
 - Conclusion of EC without agreement between parties and issue of EC certificate
 - The impact of failure to comply with the EC requirement
- c) Introduction to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013
- d) Issuing employment proceedings
 - Preparing an ET1; preparation of an ET1 form in respect of claims such as unlawful treatment, unfair dismissal and discrimination with a particular focus on drafting the details of claim
 - Rules 8 and 10(1)
 - Overlapping claims
 - Preparing a response; preparing the ET3, Rule 16
 - Initial consideration of the claim (Rule 26/27) and case management (Rule 29)
 - Disclosure and evidence in ET claims (e.g. Rule 31/Rule 50)
- e) Preliminary hearings
 - Rules 53-56 and including strike out (Rule 37)
 - Deposit orders (Rule 39),
 - Withdrawal of claim (Rule 51/52)
- f) Conduct of final hearings (Rules 57-59) and general hearing rules (rules 41 – 50)
- g) Awards and Costs
 - Calculating compensation/awards for common claims (including overlapping claims)
 - recoupment of benefits
 - Calculation of interest
 - Tax treatment of awards

	h) Enforcement of ET decisions i) Reconsideration (Rules 70-74) j) Appeals • Grounds of appeal • Practice Direction (Employment Appeal Tribunal – Procedure 2018, Form T444)
10. Settlement Agreements	Settlement agreements can be used to resolve an employment dispute without the need for a tribunal claim saving both claimants and respondents significant legal costs, time and stress. You need to understand how to negotiate and draft an appropriate, legally binding settlement agreement. Therefore, you will need to know the following: a) Binding settlements: • s.203 ERA 1996 • COT3 and settlement agreements • Settlement agreement criteria: in writing, independent advice, relate to the actual complaint and compliance with statutory provisions • ACAS 2013 Statutory Code of Practice on Settlement Agreements b) Breaches of settlement agreements • Implications of a breach c) Negotiation/protected conversations • Without Prejudice negotiations/ s.111A ERA 1996; identifying appropriate settlement terms and negotiation • Tax treatment of termination payments d) Drafting a settlement agreement • Appropriate clauses • Potential issues: tax indemnity clauses, pensions, restrictive covenants such as non-disclosure terms e) Certifying a settlement agreement f) COT3 • The role of COT3 agreements • The COT3 process

11. The future of employment law in England and Wales

As an ever-evolving area of law, you should not only keep up to date with current developments, but also consider and be mindful of the future direction of employment law and policy.

- a) Overhaul of significant aspects of employment law through the Employment Rights Bill. The Labour Government's Bill expected to come into force in 2025 (with effect potentially in 2026) including changes to:
 - Unfair Dismissal
 - Fire and Re-hire
 - Ending 'exploitative' zero hour contracts
 - Additional changes to protections from sexual harassment
 - Flexible working
 - Parental, Paternity and Bereavement Leave
 - Enhanced maternity/pregnancy protection
 - SSP
 - Gender Pay Gap
 - Menopause
 - Collective redundancy consultation
 - s.1 Written statements of terms
- b) Additional measures not included in the Employment Rights Bill but aspirations of the Government include:
 - A 'right to switch off'
 - Ethnic and disability pay gap reporting
 - Moving to a single status of 'worker' and a transition to a simpler two-part framework for employment status
 - Review of parental and carers leave
- c) Other legislation proposed including:
 - Equality (Race and Disability) Bill
 - Skills England Bill
 - Bullying and Respect at Work Bill
 - Non-Disclosure Agreements Bill
- d) Challenges and benefits of technological advancements
 - Automation and AI, and their impact on the workforce
 - Cross-jurisdiction outsourcing
 - Increased use of remote/digital resources
 - Privacy concerns if employers monitor employees remotely
 - Automated decision making - awareness of use and risks associated with algorithms
- e) Increasing flexibility in the workplace
 - Locations
 - Flexible hours
 - Technology which can accommodate flexibility

	• Fair processes f) Employers' responsibility for employees • Health and Safety law for home working • Mental health in the workplace g) Employee engagement • Collective contribution and corporate responsibility • Addressing negative business cultures • Encouraging inclusivity and diversity
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