



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 4 – EMPLOYMENT LAW*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Employment Law 2020-2021, 30th edition, Richard Kidner, Oxford University Press, 2020.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. Critically analyse case law governing the enforceability of restrictive covenants in a contract of employment.

(25 marks)

2. (a) Critically assess case law governing interpretation of the Equality Act 2010 s.69 'defence of a material factor' in a claim of sex discrimination.

(15 marks)

- (b) Explain the nature and purpose of the requirement on private companies to report gender pay gaps.

(10 marks)

(Total: 25 marks)

3. Critically evaluate whether the 'consultation' and 'proper selection' processes during a redundancy adequately protect the rights of employees.

(25 marks)

4. Critically assess the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in preserving the contractual rights of transferred employees.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Kiara has been employed on a full-time basis by Yummy Sandwiches Ltd as a delivery driver for the past two years. She is contracted to work Monday to Friday from 12pm to 8pm and is paid £12 per hour. However, if Yummy Sandwiches Ltd does not receive sufficient delivery orders, it will call Kiara and tell her not to come to work that day. Kiara is not paid for the days when the company does not require her to come in to work.

Yummy Sandwiches Ltd requires all its drivers to wear special safety shoe grips when driving delivery vans. On her first day of work, Kiara was provided with these shoe grips but told her manager, Gia, that she would rather not wear them as they might ruin her shoes. Gia told Kiara that it was okay not to wear the shoe grips, but she did so at her own risk.

One afternoon, Kiara was required to deliver a particularly large order of sandwiches. Gia believed that the order was a two-person job, so she sent along another employee, Mitchell, to assist Kiara. Mitchell has worked at Yummy Sandwiches Ltd for just six months. However, Gia has already issued him with a final disciplinary warning for 'inappropriate and aggressive behaviour towards a co-worker'. Kiara was unaware of this.

Kiara and Mitchell set off to make the delivery. While Kiara was driving, Mitchell suddenly raised his voice and swore at her, as he felt she was ignoring him. This resulted in Kiara almost losing control of the vehicle and narrowly avoiding an accident.

Kiara returned to work after this incident, and was very upset and shaken. She stormed into a meeting that Gia was having with several members of management and told her that she needed to speak with her urgently. Gia shouted at Kiara and told her to 'get out, you rude idiot'.

Kiara felt very humiliated by this incident and was also upset at the apparent lack of concern by her employers for her safety and welfare. Kiara resigned from Yummy Sandwiches Ltd two days later.

Advise Yummy Sandwiches Ltd whether:

- it has breached any of the implied duties of an employer;
- Kiara has been constructively dismissed.

(25 marks)

Question 2

Paul has been working at Bibi's Beauty Parlour (BBP) Ltd, a hairdresser, for the past four months. He is the only male employee at the business. Paul's female colleagues often wolf-whistle at him and 'jokingly' refer to him as the 'token male'. These comments are made in front of customers, which makes Paul feel undermined and embarrassed. When Paul complained to management, he was told that BBP is a relaxed and informal work environment, and that he should be able to 'brush it off'.

A week later, Paul made a request to take one afternoon off work, unpaid, to accompany his pregnant partner to her first antenatal appointment. BBP denied this request on the basis of Paul having 'insufficient duration of employment'.

Asha has also worked at BBP as a hairdresser for six years. Last year, Asha fell pregnant and gave birth to her second child. She decided to take the maximum amount of maternity leave available to her, 52 weeks, and returned to work after this leave. When she returned, Asha was told that her previous position of senior stylist had been taken over by another employee. However, she could return as a junior stylist on a lower pay grade.

Also, Asha put in a written request to have her work rota changed, as she needed to breastfeed at regular intervals. BBP responded the same day, stating that it was unable to accommodate this request, as it would interfere with client appointment times.

Advise Bibi's Beauty Parlour (BBP) Ltd whether:

- (a) it has breached Paul's rights and what potential remedies may be available to him;

(15 marks)

- (b) it has breached Asha's statutory maternity rights.

[NOTE TO CANDIDATES: Do not consider Asha's potential remedies.]

(10 marks)

(Total: 25 marks)

Question 3

Numbers Ltd, an accountancy firm, required an agency worker to assist it during a particularly busy time of year. It contacted a specialist employment agency, Hired Hands, which sent Lebron, a qualified accountant, to the company.

Lebron worked with Numbers Ltd on a part-time basis for 12 weeks. During this time, he was paid 10% less than Numbers Ltd employees performing the same role and was not entitled to any pro rata annual leave. Lebron made a written request to the agency, asking for an explanation of these differences, but never received a response.

After the initial 12-week period, Numbers Ltd decided to retain Lebron for a further six weeks, during which he continued to work under the same terms and conditions.

After these further six weeks, Numbers Ltd discovered that Lebron had been claiming payment for overtime that is only available to company employees. He had been claiming this throughout the duration of his time working for the company. Numbers Ltd deducted £600 from Lebron's final wages, to compensate for this apparent breach.

Advise Lebron whether his rights have been breached and, if so, against whom he may bring a claim, and whether any potential remedies are available to him.

(25 marks)

Question 4

Structures Ltd is a building company. One of its operatives was recently injured on site due to being unable to lift a piece of equipment and dropping the item on his foot. In response to this incident, Structures Ltd brought in a new physical test that requires all its operatives to be able to lift a certain weight of material. The company states that this is for the safety of its employees. However, Jalisa, a female operative, has objected to the test as being disadvantageous to females. The company nonetheless confirmed that the test would be implemented.

Carter has been working as a builder for Structures Ltd for the past four years. He was recently matched with a child for adoption, after being on a waiting list for several years. Carter is single, so he needs time off work to prepare for his adoptive son's arrival. Carter put in a written request for two weeks' leave beginning on 1 August, the day his adoptive son would be arriving. He made this request on the same day that he received notice of being matched for adoption. Carter's request was denied, as Structures Ltd states that it cannot manage without him during the particular dates when he is requesting leave.

Indira joined Structures Ltd as a secretary three weeks ago. One week after being hired, Indira noticed that the company uses a brand of industrial glue that was recently confirmed to contain a potentially toxic ingredient that had been very recently banned. Indira told her manager that she felt uncomfortable placing an order for this glue, as it could be dangerous to the workers. Her manager told Indira to order the glue, as the alternative brand was more expensive and the ban was not yet in full force. Indira felt angry that her manager was not respecting her opinions and that she was not being given the attention she deserved. Indira therefore decided to report Structures Ltd to the health and safety department of the local council for using unsafe materials. Indira was dismissed two days later on the grounds of gross misconduct.

(a) Advise Structures Ltd whether it has breached the rights of:

(i) Jalisa;

(7 marks)

(ii) Carter.

(6 marks)

(b) Advise Structures Ltd whether Indira can bring a successful claim of unfair dismissal against the company and, if so, the potential remedies available to her.

[NOTE TO CANDIDATES: Do not calculate the potential awards.]

(12 marks)

(Total: 25 marks)