



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 how the Equality Act 2010 definition of harassment has been interpreted by courts and tribunals.

(25 marks)

2. Evaluate the importance of an employer conducting a proper investigation, before dismissing an employee for misconduct.

(25 marks)

3. (a) Assess the selection criteria that may be used to choose employees for redundancy.

(13 marks)

(b) Explain the financial awards available to an employee, where the employer has failed to follow a fair redundancy procedure.

(12 marks)

(Total: 25 marks)

4. Analyse the methods used to distinguish between employees, workers and self-employed persons.

(25 marks)

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

Question 1

Tamisha is the managing director of Millers Ltd, a bakery. The company has employed Lynette as a cashier for the past three years. Lynette has recently decided that she wants to make some changes to her working schedule. She currently works from 9am to 6pm five days a week and wishes to change this to working from 8am to 5pm five days a week, as this would allow her to get home earlier.

Lynette sent Tamisha an email, outlining this proposed change in working hours and confirming that she would like the change to have immediate effect and that this is her first such application since joining the company.

Tamisha read the email, but decided not to allow Lynette the change requested, as the business is very quiet in the mornings, so she does not need extra staff at that time. Furthermore, she would need to hire someone to cover the late afternoons/early evenings, when Lynette would not be working, and this is an expense that the company cannot afford.

Noel also works as a cashier for Millers Ltd and has been with the company for eight months. Yesterday, his partner suffered a miscarriage, just one week before she was due to give birth. Noel is obviously devastated, and he asked Tamisha for a few days off work, to be with his partner and to grieve in private. Tamisha refused Noel's request for time off, as she would need to hire a temporary worker to fill his post and cannot afford this expense due to the financial state of the company.

When Noel challenged Tamisha's refusal, she told him: 'You have not been with the company long enough to ask for such time off'. Tamisha further added that this leave is 'rightfully only available to the woman in such circumstances, as she is the one who has suffered the greatest loss'.

Advise Tamisha:

- whether Lynette has made a proper application for flexible working;
- as to the grounds upon which an application for flexible working may be refused, and whether her reasons for refusing Lynette's application are legally valid;
- whether she has breached Noel's legal rights.

(25 marks)

Question 2

Zeena is the managing director of Eating Ltd, a catering company. The business of the company is to provide catering services to a number of undertakings on the north side of the city. However, three weeks ago, it took over similar provision in the west side of the city by a transfer from a competitor, Lean Treats Ltd.

As part of taking over this provision, two employees were transferred from Lean Treats Ltd to Eating Ltd. Zeena took the decision to reduce the rate of pay of these two employees by 5%, to ensure that her existing staff are not paid less than these new staff.

Zeena has been unhappy with the performance of one of the transferred employees, Jack. Despite working at the company for just three weeks, Jack has already arrived at work over an hour late on five occasions. Zeena has recently found out that Jack had been issued with a written warning by Lean Treats Ltd as a result of his 'persistent lateness and poor attitude'. Zeena was not made aware of Jack's disciplinary record prior to the transfer.

Advise Zeena whether:

(a) the transfer from Lean Treats Ltd to Eating Ltd falls under TUPE 2006;

(6 marks)

(b) she can change the rate of pay of the transferred employees for the reason stated;

(7 marks)

(c) she had a right to know about Jack's disciplinary record prior to the transfer and, if so, potential remedies available to Eating Ltd against Lean Treats Ltd.

(12 marks)

(Total: 25 marks)

Question 3

Mohammad works as one of a team of five machinists for Pretty Dresses Ltd. A new managing director, Katya, has recently been appointed to the company. One week after arriving, Katya held a meeting with the machinists to discuss their future opportunities within the company. However, Katya did not invite Mohammad to this meeting.

When Mohammad learned that all the other machinists had been invited to the meeting, he asked Katya why he had been excluded. Katya replied that, on seeing his name on the employee list, she had assumed that someone of his religion would not want to have a discussion with a female managing director, so she had not invited him. After this exchange, Mohammad no longer felt comfortable entering the communal work areas, and would often miss his lunchbreak in an effort to avoid running into Katya. Mohammad's family is religious and named him accordingly; however, Mohammad himself does not follow any religion.

Demi is also a machinist at Pretty Dresses Ltd. She and Mohammad are good friends both at work and outside their workplace. When Demi learned of the reason behind Mohammad's exclusion from the meeting, she told Katya that her actions were unfair and made her (Demi) 'feel very uncomfortable'. Prior to Katya's arrival at the firm, Demi had been shortlisted for an interview for promotion; however, the day after this exchange, Demi learned that she was no longer being considered for promotion. When Demi asked Katya the reason behind her removal from the shortlist, Katya told her that she was an unsuitable candidate, as the role required a person who was 'not so easily offended'.

Advise Mohammad and Demi whether their rights have been breached and, if so, any potential remedies available to them.

(25 marks)

Question 4

Peter has been employed as a senior account executive with Sums Ltd for 18 months. He has never got on with his manager, Hatty. During a company meeting between Peter and the team of executives who he manages, Peter asked Hatty a question. She answered his question, then turned to the rest of the group and laughed, saying: 'Well, that was a rather stupid question, wasn't it?' Several members of the team joined in the laughter. Peter felt very embarrassed and humiliated by this incident and believes that his team have lost professional respect for him due to Hatty's comments.

Peter considered resigning but did not want to be hasty, as he had enjoyed working at the company up until this incident with Hatty. However, he continued to feel uneasy and came to the conclusion that his professional standing within the company had been irreparably damaged by Hatty's comments. After three months, Peter decided to resign.

Peter has begun looking for another job. However, he is concerned that Clause 4.4 in his contract of employment with Sums Ltd may prevent him from working in his field of expertise. Clause 4.4 prohibits Peter from 'working within the same field within a five-mile radius, for a period of six months after leaving the company'.

After resigning, Peter found out that his employee record at Sums Ltd states that he resigned due to an 'inability to cope with the workload'. This is inaccurate, as he has always completed work tasks on time, and no disciplinary action was ever taken against him. Peter is concerned that this erroneous record means he will not receive a good reference from the company.

Advise Peter:

(a) whether he can bring a successful claim for dismissal against Sums Ltd;

(11 marks)

(b) on the validity of Clause 4.4;

(8 marks)

(c) on his rights in relation to a reference from Sums Ltd.

(6 marks)

(Total: 25 marks)

End of Examination Paper

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