



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 2019-2020, 29th edition, Richard Kidner, Oxford University Press, 2019.**
- 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.

With reference to the Equality Act 2010 and supporting case law, critically assess the 'proportionate means of achieving a legitimate aim' defence to indirect discrimination.

(25 marks)

2.

(a) Analyse the role of consultation in redundancy.

(15 marks)

(b) Explain how the offer of re-engagement or alternative work affects entitlement to a redundancy payment.

(10 marks)

(Total: 25 marks)

3.

Critically evaluate whether the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 offer appropriate protection to employees during a transfer.

(25 marks)

4.

Analyse the importance of an employer demonstrating substantial and procedural fairness in the dismissal of an employee.

(25 marks)

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

Question 1

Kalinda has been working at a fast food restaurant, Eat Well Ltd, for the past four years.

Kalinda's contract states that she is on a zero-hours agreement and is an independent contractor. She is sent a non-amendable timetable of her work each week and has, in fact, worked the same shifts at the restaurant throughout her four years with the company. Kalinda pays her own tax and national insurance. All employees of Eat Well Ltd are required to wear their own clothing to work but must wear a plain black shirt and black trousers; Kalinda is also required to wear this clothing.

Kalinda needed a day off for personal reasons. She asked her manager, Sarah, if she could send one of her friends who works in the same industry to cover her duties; Sarah refused. Kalinda then suggested that her colleague, Robert, could cover her shift. Robert works in the same department of Eat Well Ltd as Kalinda and is therefore familiar with her duties; Sarah agreed to this.

One evening, Kalinda, her manager Sarah, and the company owner, Emma, were all working late together. Sarah commented to Kalinda that she should open the top buttons of her work shirt to 'bring in more customers'. When Kalinda looked horrified at this suggestion, Sarah stated that she should 'loosen up, we're all girls here'. This was the first time Sarah had ever made such a remark to Kalinda; however, it made Kalinda feel very humiliated and embarrassed. The fact that Emma said nothing in response to the remark and laughed along to the suggestion that she should 'loosen up', added to Kalinda's discomfort.

Advise Kalinda on her employment status and whether her rights have been breached in relation to Sarah's comments to her.

(25 marks)

Turn over

Question 2

Gita has been an employee at a metal goods factory, Exceedo Ltd, for 18 months. Her work involves assembling metal baskets for use in deep fryers. Gita has over ten years' experience working in such industries, as required for this type of role.

Stella has recently been employed by Exceedo to work alongside Gita in the same role. Stella's CV states that she has 12 years' experience of working in metal assembly roles. However, Exceedo Ltd took no steps to verify this information prior to hiring Stella, nor did it give her any training.

Exceedo Ltd provides all employees with protective eyewear to use when assembling these baskets, as the work involves spot welding. This can generate small particles of very hot metal if there is any moisture at the weld site. Gita does not wear her protective eyewear, because it does not fit over her prescription glasses, which she needs to see her work properly. Gita's line manager, Farooq, is aware of this, but considers it Gita's own decision not to wear the protective equipment and he has not offered her alternative eyewear that would fit over her glasses.

One morning, Gita and Stella were working together welding a basket, when a particle of metal flew from Stella's work area and hit Gita in the eye, causing a serious injury. Upon investigation into the incident, it was found that Stella had just six months' experience of working within the metal assembly industry.

Joe is 32 years old and has worked for Exceedo Ltd for four years as a canteen food server, working 30 hours per week. He has been paid £1.00 per hour below the national minimum wage for the duration of his contract of employment. Exceedo Ltd provides Joe with a weekly bus pass costing £10 to get to work and he is also entitled to a free set lunch, which costs the other workers £5.00 per day. The value of these two benefits more than accounts for the difference between Joe's actual pay and the appropriate minimum wage. One month, Joe noticed that £30 had been deducted from his wages. When he queried this, he was told that the deduction resulted from him breaking an expensive canteen serving dish that had to be replaced.

(a) Advise Gita whether Exceedo Ltd has breached its contractual obligations to her.

(15 marks)

(b) Advise Joe whether any of his legal rights have been breached and of any potential claims he may bring.

[NOTE TO CANDIDATES: Do not consider remedies]

(10 marks)

(Total: 25 marks)

Question 3

May-ling has been working as a receptionist for Home Pottery Ltd for two years. She recently received a phone call at work, informing her that her 15-year-old daughter had been involved in a road traffic accident and had been taken to the local hospital. May-ling briefly informed her manager, Felicia, that there was an emergency and she had to leave immediately. Felicia told her to 'stop being so stupid and dramatic' and to wait until her colleague had returned from lunch break before she left. May-ling ignored this request and rushed out of her workplace, driving straight to the hospital to be with her daughter.

May-ling returned to work the following day, as her daughter had suffered only a very minor injury in the accident. Upon May-ling's return, Felicia issued her with a written warning for leaving her workplace unattended. Felicia also told her: 'you should not have lied about your daughter being in an accident just to leave work early'. Felicia made this statement to May-ling in front of her co-workers and several customers. May-ling told Felicia that she was not lying and that she had a hospital report to prove it. Felicia angrily told her to 'stop damn well lying'.

May-ling felt very humiliated and embarrassed by this exchange and believed it had immediately triggered a bout of depression. May-ling had no holiday leave remaining and did not feel she could work her two-week notice period. She therefore resigned from her job the day after her exchange with Felicia. May-ling then took a one-week holiday abroad to recover from the incident and to 'forget about all things work-related'.

Advise May-ling whether her legal rights have been breached and on potential remedies available to her.

(25 marks)

Turn over

Question 4

Heather is a transgender female, who has worked as a dressmaker at Fancy Dresses Ltd for over three years. Heather notified her manager, Paul, that she would need time off within the next one to two months, as she had been matched with a child for adoption. She stated that, as she is the sole adopter, this time off is essential to her. Although Heather was notified of the adoption in early March, she did not make a request for leave until three weeks later, upon her return from a holiday abroad.

Heather anticipated that she would need to work different hours once her adopted child was settled. She therefore decided to apply for flexible working, to start from the date when she returned from adoption leave. She wrote a letter to Paul, outlining her proposed change to the hours she works, when she wanted the change to be effective from, and noting that it was a statutory request.

Upon receiving Heather's requests for adoption leave and flexible working, Paul stated that he was surprised she was making these applications and that he would need to consider them in light of her 'unusual life choices'. Paul then asked Heather how far along she was in the gender transition process and whether she had undergone any 'genital removing surgery'.

Advise Heather:

- (a) whether she has made a proper application for adoption leave; **(8 marks)**
- (b) whether she has made a proper application for flexible working; **(5 marks)**
- (c) whether Paul's comments to her are discriminatory. **(12 marks)**

(Total: 25 marks)

End of Examination Paper

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