

Unit 4

Title:	Employment Law
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand key concepts and themes in the development of employment law in England and Wales	<p>1.1 Explain the role of contract in employment law</p> <p>1.2 Analyse different kinds of employment status including difficulties arising from standard definitions</p>	<p>1.1 The role of contract in forming the core of the employment relationship; key contractual principles including: offer, acceptance, consideration, contracts may be partly oral and written, outline of sections 1-7 Employment Rights Act (ERA)1996, concepts of express and implied terms to include following examples: employer – duty of mutual trust and confidence, duty to provide work and pay, duty of care in respect of health and safety, duty of care provision of references; employee - duty of obedience, personal service, good faith/fidelity</p> <p>1.2 Employee status; definition: s230 (1) ERA 1996; protected by the key employment protection legislation including the ERA 1996 and a broad range of legislation across the following areas: discrimination, employment relations, fixed term employment, maternity/parental leave, minimum wage, part-time working, paternity and adoption leave, public interest disclosure, transfer of undertaking, working time;</p>

	<p>1.3 Explain the impact of EU law and the law of the European Convention on Human Rights on employment law</p>	<p>Worker status; definition: s230(3) ERA 1996; a broad definition granting eligibility for protection/rights under working time, national minimum wage, and part-time workers legislation;</p> <p>Self-employed status/independent contractors; definition: individuals deemed in business of their own account; most limited statutory protection;</p> <p>The common law tests that distinguish between the self-employed and employees and the protection available to each; the tests developed (but not conclusively) to identify employee status namely: Control, Mutuality of obligation, Personal service, Economic reality, Multiple factor test, Integration; relevant case law: eg, <i>Ready Mixed Concrete v Minister of Pensions (1968)</i>, <i>Montgomery v Johnson Underwood Ltd [2001] ICR 819, CA</i>, <i>Carmichael and another v National Power plc (HL) (1999) ICR 1226</i>, <i>Inspector of Taxes v Lorimer CA (1994) ICR 218, CA</i>; more recent cases re the status of agency workers, eg, <i>Dacas v Brook Street Bureau (UK) Ltd & another CA 2004 EWCA Civ 21</i>, <i>Franks v Reuters CA 2003 EWCA Civ 417</i>; <i>Muschett v HM Prison Service [2010] All ER (D)18</i> tax and national insurance consequences of different types of status including need for proposals for reform</p> <p>1.3 The impact of EU law, especially EU Directives; the effects of directives that require the UK to bring in national laws to implement: eg, Treaty of Rome art 141 -</p>
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	<p>1.4 Apply an understanding of the main concepts and themes of employment law in England and Wales to a given situation</p> <p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>equal pay for equal work, General Framework Directive for Equal Treatment in Employment and Occupation 2006/56/EC, Part Time work Directive 97/81/EC, The EC Working Time Directive 2003/88/EC</p> <p>An understanding and ability to apply the principles of vertical and horizontal direct effect in relation to the enforceability of employment law rights against state bodies contrasted with private sector employees</p> <p>Relevant articles of European Convention on Human Rights (ECHR) and application of HRA 1998; the main effects of the HRA 1998, ie, framework for the operation of the European Convention on Human Rights (HRA 1998, schedule 1); Human Rights Act 1998 applies the ECHR only in respect of public authorities (which include courts and tribunals) and public bodies (Human Rights Act 1998 s6); no direct relevance in disputes between private employers and their employees</p> <p>1.4 Application of understanding to a complex scenario</p> <p>1.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>2 Understand the nature of the contract between employer and employee</p>	<p>2.1 Explain how the contract of employment is regulated by statute</p> <p>2.2 Identify the employee's right to be informed</p>	<p>2.1 Eg, Working time (hours & holidays) (Working Time Regs 1998), minimum wage (National Minimum Wage Act 1998), equal pay (Equality Act 2010), notice periods (s86 ERA 1996)</p> <p>2.2 s1-7 ERA 1996; the provision of a statutory</p>

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	<p>about specified terms of their contract of employment</p> <p>2.3 Explain what wages are and when an employer can and cannot deduct an amount from an employee's wages</p> <p>2.4 Explain the legal consequences if an employer improperly deducts from wages</p> <p>2.5 Explain the current adult and young person's national minimum wage rates and any penalties for non-compliance</p>	<p>statement giving employees specified particulars within 2 months of commencing employment; specified contractual terms, eg, parties to contract, date when employment began, hours of work etc; additional, non-essential terms, eg, restrictive covenants, garden leave clauses etc</p> <p>2.3 Knowledge of the Employment Rights Act 1996 Part Two, s13 to s27; definition of wages and circumstances in which sums may and may not be deducted; pension contributions; expenses payments; redundancy pay; allowances and benefits in kind do not count as payments by an employer to a worker for the purposes of the National Minimum Wage; special treatment of tips</p> <p>2.4 Penalties for improper deductions, remedies, time limits and forum, relevant statutes/statutory instruments: National Minimum Wage Act 1998, National Minimum Wage Regulations I 1999/584 regulation 13, National Minimum Wage Act 1998 (Amendment) Regs 1999 SI 1999/583; effectiveness and proposals for reform</p> <p>2.5 Adult rate for workers aged 21 years and older, 18-20 inclusive, and a youth rate for workers under the age of 18 who are no longer of compulsory school age; penalties for non-compliance; remedies; time limits and forum; relevant statutory instrument: National Minimum Wage Regulations 1999 (Amendment) Regulations 2008, SI 2008/1894; effectiveness and proposals for reform</p>
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	<p>2.6 Explain the basic provisions of the working time regulations</p> <p>2.7 Apply an understanding of the nature of the contract between employee and employer to a given situation</p> <p>2.8 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>2.6 Provisions of the working time regulations relating only to the 48 hour working week and statutory minimum annual holiday, including operation and reform of right to opt out; relevant legislation: Working Time Regulations 1998: Regulations 4-16; the EC Working Time Directive 2003/88/EC art 22; Working Time Regulations 1998-Regulation 28-32 and schedule 3; developments: Working Time (Amendment) Regulations from 1st October 2007, ie, 28 days holiday; developments leading to EC Agreement on Working Time and Working conditions for Temporary Agency; proposals for reform</p> <p>2.7 Application of understanding to a complex scenario</p> <p>2.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>3 Understand aspects of employment protection given to different types of workers</p>	<p>3.1 Explain the protection that exists for workers with regard to less favourable treatment in the workplace</p>	<p>3.1 The difference between workers and employees (see 1.2 above); definitions of workers: agency, temporary, fixed term and part-time; key protection measures including the link with unfair dismissal and the following: definition of fixed term conversion to permanent contracts, ie, <i>Webley v Department for Work and Pensions CA (2005) ICR 577</i>, less favourable treatment, written reasons for non renewal; part-time workers: definition to include <i>Matthews and others v Kent and Medway Towns Fire Authority and ors HL (2006) ICR 365</i>, pay, less favourable treatment and objective justification; agency and temporary workers' legislation, ie, Agency Workers Regulations</p>

	<p>3.2 Explain the legal consequences if an employer improperly treats such workers less favourably</p> <p>3.3 Apply an understanding of the nature of protection for workers to a given situation</p> <p>3.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>2010 (effective from October 2011): right not be treated by the agency or the end user less favourably once been in employment for 12 weeks; provisions on who an agency worker can sue if he or she is dismissed; proposals for reform to existing protection</p> <p>3.2 Remedies, time limits and forums; relevant provisions of: Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002; The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and (Amendment) Regulations 2002; Agency Workers Regulations 2010</p> <p>3.3 Application of understanding to a complex scenario</p> <p>3.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>4 Understand the protection afforded to employees by the Equality Act 2010</p>	<p>4.1 Analyse the meaning of and issues arising from discrimination legislation</p>	<p>4.1 S.4 EA 2010 introduces the concept of protected characteristics covering sex, race, disability, religion, sexual orientation and age including direct discrimination s.13, indirect discrimination s.19, harassment s.26 and victimisation s.27 and concerning the liability of employers under s.109 and s.110.</p> <p>s.66 EA 2010 concerns the introduction of the sex equality clause; the need for a comparator s.79; sex discrimination in relation to contractual pay s.71; relevant types of work s.64; equal work s.65; discussions on pay s.77; defence of material factor s.69</p>

	<p>4.2 Explain the legal consequences following a breach of discrimination legislation</p> <p>4.3 Apply an understanding of the provisions relating to discrimination to a given situation</p> <p>4.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>s.6 Equality Act 2010 defines who will have the protected characteristic of disability emphasising what will constitute a disability; s.4 concerns direct discrimination; s.15 concerns discrimination arising from disability (e.g. the need to take disability related absence) can be justified by the employer provided it is a proportionate means of achieving a legitimate aim; s.19 concerns indirect discrimination; s.20 concerns duty to make adjustments and examples of what such adjustments are; s.26 concerns harassment and s.27 concerns victimisation; burden of proof, and limited defences.</p> <p>4.2 Enforcement of discrimination legislation including procedure, questionnaires, time limits and remedies including compensation including injuries to feelings and quantum; effectiveness</p> <p>4.3 Application of understanding to a complex scenario</p> <p>4.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>5 Understand the law concerning wrongful dismissal</p>	<p>5.1 Explain the key elements of a wrongful dismissal claim</p> <p>5.2 Explain the legal consequences of a wrongful dismissal</p>	<p>5.1 Key elements of wrongful dismissal: a claim in contract, that there must be a breach, the requirement for the termination of the contract without due notice (including awareness of s86 ERA 1996); distinguishing it from an unfair dismissal claim</p> <p>5.2 Wrongful dismissal claims including procedure, time limits, remedies and forums; quantum of damages to include loss of</p>

	<p>5.3 Apply an understanding of wrongful dismissal to a given situation</p> <p>5.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>wages, benefits and mitigation of loss; explanation of forum (Employment Tribunal and County/High Court) with monetary limits and advantages and disadvantages of each; effectiveness and proposals for reform</p> <p>5.3 Application of understanding to a complex scenario</p> <p>5.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
6 Understand the law concerning unfair dismissal	<p>6.1 Explain the qualifying requirements for an unfair dismissal claim</p> <p>6.2 Explain the “fairness in all the circumstances” test</p> <p>6.3 Explain the provisions governing fair procedure in a dismissal situation</p>	<p>6.1 Application of the preliminary qualifying requirements and the six potentially fair reasons to dismiss under s98 ERA 1996 (capability, conduct, redundancy, retirement, statutory illegality, some other substantial reason); automatically unfair dismissals</p> <p>6.2 Relationship between potentially fair reasons and “fairness in all the circumstances”; consequences on an unfair dismissal claim if no fair procedure followed: s98(4) ERA 1996; including the band of reasonable responses of the employer derived from <i>HSBC Bank v Madden (2001)</i>; failure of the statutory disciplinary and grievance procedures</p> <p>6.3 Understanding of the role of: the ACAS Code of Practice; and an organisation’s own procedure before making a decision to dismiss; to include the role of detailed disciplinary and grievance policies and procedures and the ACAS Code of Practice on disciplinary and grievance matters; the failure of the Employment Act 2002 (Dispute Resolution) Regulations 2004 and</p>

	<p>6.4 Explain the legal consequences following an unfair dismissal</p> <p>6.5 Apply an understanding of unfair dismissal protection to a given situation</p> <p>6.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>replacement by the Employment Act 2008 provisions concerning consequences of failure to follow ACAS code; statutory provisions governing the right to be accompanied</p> <p>6.4 The forum and remedies available to an employee when the employer dismisses unfairly, including basic and compensatory award elements, and the potential increase or decrease to the awards; the role of mitigation; awareness of further remedies of reinstatement and reengagement; effectiveness and proposals for reform</p> <p>6.5 Application of understanding to a complex scenario</p> <p>6.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>7 Understand the law governing redundancy</p>	<p>7.1 Define redundancy</p> <p>7.2 Analyse the elements of a properly implemented redundancy procedure</p>	<p>7.1 Definition: ERA 1996 s139(1); also, <i>Murray and another v Foyle Meats Ltd (1999) ICR 827</i>; mobility clauses: <i>High Table Ltd v Horst and others CA (1998) ICR 409</i>; bumping</p> <p>7.2 The contents of a formal redundancy policy and the stages of a properly implemented redundancy to include: planning, identifying the pool for selection, invitation of volunteers, consultation - collective duty to consult trade union representatives: Trade Union and Labour Relations Act 1992 s188 (TULRCA) (in large scale redundancies), individual consultation in all cases, notification to the Department for Business, Enterprise and Regulatory Reform (BERR) in large scale redundancies: TULRCA 1992</p>

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	<p>7.3 Explain the legal consequences of redundancy</p> <p>7.4 Apply an understanding of the redundancy provisions to a given situation</p> <p>7.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>s193, use of objective selection criteria, advance notice of individual consultation meeting, permitting a colleague to be present at consultation meetings, opportunity to appeal, allowing seeking of suitable alternative employment, statutory or other redundancy payment, relocation expenses, helping redundant employees obtain training or alternative work; the main provisions of The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (TUPE) and Amendment Regulations 2006, SI 2006/2387; effectiveness of process and legislation; proposals for reform</p> <p>7.3 The position following a properly implemented redundancy: the right to a redundancy payment, ERA 1996 s135; calculation of payment; the position following a poorly implemented redundancy; prima facie presumption of fair dismissal: ERA 1996 s98(2)(c); consideration of if it would be just and equitable to treat the redundancy dismissal as unfair: ERA 1996 s98(4); unfairness if the selection of a particular individual for redundancy was unfair or if proper procedures (especially consultation) were not followed; dismissal can be <i>automatically</i> unfair dismissal depending on the reason for selecting for redundancy</p> <p>7.4 Application of understanding to a complex scenario</p> <p>7.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Employment Law
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 45 First Line Employment Legal Advice and Unit 46 Employment Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2011

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