

Unit 6



<b>Title:</b>	<b>Employment Law</b>
<b>Level:</b>	<b>3</b>
<b>Credit Value:</b>	<b>7</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand that individuals can have different legal employment status within a business</b>	<b>1.1</b> Define employees, workers and the self-employed  <b>1.2</b> Apply the tests established to distinguish	<b>1.1</b> Employees – s230(1) Employment Rights Act (ERA) 1996: protected by all employment protection legislation; employers vicariously liable for negligent actions  Workers - s230(3) ERA 1996: broad and developing definition granting eligibility for protection/rights under Working Time/Minimum Wage legislation and anti-discrimination legislation; excluded from other employment protection legislation, eg, right not to be unfairly dismissed/receive redundancy payment  Self-employed – also “independent contractors”, “sole-traders”, “consultants”; individuals deemed “in business of their own account” – most limited statutory protection  <b>1.2</b> Named parties give contract of limited weight;

	<p>between self-employed and employees</p> <p><b>1.3</b> Contrast the position of self-employed individuals with that of employees</p> <p><b>1.4</b> Apply an understanding of different legal employment status to a given situation</p>	<p>tests evolved and evolving to identify self-employment namely (but not conclusively): Control, Integration, Mutuality of obligation, Personal service, Economic reality, Multiple factors; relevant case law, eg, <i>Ready Mixed Concrete (South East) Ltd v Minister of Pensions (1968)</i>, <i>Carmichael v National Power (1999)</i></p> <p><b>1.3</b> Contract for services not contract of service (s230(2) ERA 1996): lack of (statutory) employment protection rights, ie, no unfair dismissal or redundancy rights, no entitlement to minimum wage, statutory maternity rights, statutory sick pay, more limited protection under H&amp;S at Work Act 1974, responsible for own insurance, tax &amp; NI, but free to accept/decline work, work for others, negotiate terms and also protected by anti-discrimination legislation such as SDA; rights, duties and obligations of employer/self-employed almost exclusively governed by terms of individually negotiated contract for services; employer not vicariously liable for acts of independent contractor</p> <p><b>1.4</b> Application to a scenario</p>
<p><b>2 Understand the nature of the contract between employer and employee</b></p>	<p><b>2.1</b> Describe the legal relationship subsisting between employers and employees</p>	<p><b>2.1</b> Contracts of employment may be oral or written: (s230(2) ERA 1996); commence immediately, ie, as they start work even where the written statement of employment particulars (see s1 ERA 1996) has not been given to the employee</p>

	<p><b>2.2</b> Explain how the contract of employment is regulated by statute and the common law</p> <p><b>2.3</b> Apply an understanding of the nature of the contract between employer and employee to a given situation</p>	<p><b>2.2</b> Statute: working time (hours &amp; holidays) (Working Time Regs 1998), minimum wage (National Minimum Wage Act 1998), equal pay (Equal Pay Act 1970), notice periods (s86 ERA 1996)</p> <p>Common law implied terms (law): Employer – duty of mutual trust &amp; confidence, duty to provide work &amp; pay, duty of care in respect of health &amp; safety, provision of references; Employee - duty of obedience, personal service, good faith/fidelity (including no secret profits, harmful competition)</p> <p>Common law implied terms (fact): “Business efficacy” &amp; “Officious Bystander” tests</p> <p><b>2.3</b> Application to a scenario</p>
<p><b>3 Understand the main terms of a contract of employment</b></p>	<p><b>3.1</b> Identify the employee’s right to be informed about specified terms of their contracts of employment</p> <p><b>3.2</b> Explain those specified terms of their contracts of employment</p>	<p><b>3.1</b> s1-7 ERA 1996: the provision of a statutory statement giving employees specified particulars within 2 months of commencing employment; s11 ERA 1996: the right to apply to an employment tribunal where statement not supplied</p> <p><b>3.2</b> s1-3 ERA namely: parties to contract, date when employment began, date on which continuous employment began; ss210-219 ERA 1996: be able to discuss problems with changing identity of employer (e.g. TUPE 2006) and potential difference between date of employment/date of continuous employment; remuneration (NMWA 1998 and</p>

	<p><b>3.3</b> Identify additional terms which may also be included in the contract of employment</p> <p><b>3.4</b> Apply an understanding of contract terms to a given situation</p>	<p>Equal Pay Act 1970 and deductions (Part II ERA 1996)); hours of work (Working Time Regs 1998); entitlement to holidays and holiday pay (Working Time Regs 1998); sickness, injury and pensions: sick pay (statutory/contractual sick pay – Social Security Administration Act 1992) and time off; pensions: Pensions Act 1993 (contracting-out) and Welfare Reform and Pensions Act 1999 (stakeholder minimum); length of notice: indefinite duration or fixed term (s86 ERA 1996) notice rights; title/job description; temporary contracts; place of work; collective agreements; periods of working outside UK; disciplinary/dismissal and grievance procedures (including disciplinary rules which apply to employee and appeal mechanism); contracting-out certificate in force (Pensions Act 1993)</p> <p><b>3.3</b> Restrictive covenants, garden leave clauses, intellectual property ownership etc</p> <p><b>3.4</b> Application to a scenario</p>
<p><b>4 Understand the protection afforded to employees by discrimination legislation</b></p>	<p><b>4.1</b> Identify the protected characteristics under the Equality Act 2010</p> <p><b>4.2</b> Identify when an employee may claim direct discrimination</p>	<p><b>4.1</b> Definition of protected characteristics under Equality Act 2010. Age (s5), Disability (s15), Gender re-assignment (s7), Marriage and civil partnership (s8), Religion and other belief (s10) Sex (s11), Race (s9), Pregnancy and Maternity (s18), Sexual orientation, (s12)</p> <p><b>4.2</b> Definition of direct discrimination s13 Equality Act 2010. Less favourable treatment 'because of' a protected characteristic.</p>

	<p><b>4.3</b> Explain when an employee may claim indirect discrimination</p> <p><b>4.4</b> Identify when an employee may claim victimisation</p> <p><b>4.5</b> Explain when an employee may claim harassment under the Equality Act 2010</p> <p><b>4.6</b> Identify the statutory protection afforded to disabled people against discrimination</p>	<p>Discussion of motive e.g <i>James v Eastleigh BC (1990)</i> including, in outline only, discrimination because of an association with someone of a protected characteristic and, in outline only, less favourable treatment because of the incorrect 'perception' that someone falls within a protected characteristic</p> <p><b>4.3</b> Indirect discrimination; the application of a provision, criterion or practice; (s19 Equality Act 2010) the issues of considerably larger proportion and comparators and objective justification defence should be considered in outline only</p> <p><b>4.4</b> Definition of victimisation (and examples from case law, eg <i>Chief Constable of West Yorkshire Police v Khan (2001)</i>)</p> <p><b>4.5</b> Outline of circumstances in which a complaint of harassment may be made. s26 Equality Act 2010. Identify examples of when a claim of harassment may be made. Unwanted conduct which violates a claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive working environment. No requirement for intention to harass. Consider effect upon complainant. In outline only, less favourable treatment because of a claimant's rejection of or harassment of a sexual nature.</p> <p><b>4.6</b> Definition of a disability and key concepts, mental or physical impairment, adverse</p>
--	---	---

	<p><b>4.7</b> Explain the burden of proof in discrimination cases</p> <p><b>4.8</b> Explain the remedies available to employers following a successful discrimination claim</p> <p><b>4.9</b> Apply an understanding of the protection afforded by anti-discriminatory legislation to a given situation</p>	<p>effect, day to day activities, substantial and long term, knowledge of disability; relevant case law, eg <i>Goodwin v Patent Office (1999)</i>. Discrimination arising from disability, s15 Equality Act 2010; failure to make reasonable adjustments and examples of what such adjustments may be</p> <p><b>4.7</b> Outline of the need for the claimant to establish a prima facie case and then employer to establish discrimination did not occur, s136 Equality Act 2010</p> <p><b>4.8</b> Remedies: s124 Equality Act 2010 (declaration, recommendation, compensation), outline of compensation payment available following a successful claim</p> <p><b>4.9</b> Application to a scenario</p>
<p><b>5 Understand how employment can be terminated</b></p>	<p><b>5.1</b> Describe how employment can be terminated by agreement of the parties</p> <p><b>5.2</b> Explain how an employee can be dismissed at common law</p>	<p><b>5.1</b> The operation of fixed terms contracts and the expiry of fixed term contracts; mutual consent and constructive dismissal; notice periods included as express terms in contracts (cf s86 ERA 1996); understanding of pay and benefits accrued during the notice period</p> <p><b>5.2</b> A brief explanation of payment in lieu of notice; the statutory basis of notice and the minimum periods of notice under s86 ERA 1996; the concept of dismissal and when a person is dismissed by language or action; summary dismissal or repudiatory breach with</p>

	<p><b>5.3</b> Apply an understanding of how employment can be terminated to a given situation</p>	<p>reference to express and implied terms of the contract; a brief description of constructive dismissal</p> <p><b>5.3</b> Application to a scenario</p>
<p><b>6 Understand when an employee has been wrongfully dismissed</b></p>	<p><b>6.1</b> Describe the requirement for the termination of the contract without due notice</p> <p><b>6.2</b> Describe the remedies available for wrongful dismissal</p> <p><b>6.3</b> Identify which courts have jurisdiction for wrongful dismissal proceedings</p> <p><b>6.4</b> Apply an understanding of the concept of wrongful dismissal to a given situation</p>	<p><b>6.1</b> Understanding that there must be a dismissal without notice (ref to s86 ERA 1996) and that the employee must not have given grounds for a repudiation of the contract by the employer</p> <p><b>6.2</b> Quantum of damages to include loss of wages and benefits in outline only</p> <p><b>6.3</b> Discussion of forum (ET and County/High Court) with monetary limits and advantages and disadvantages of each</p> <p><b>6.4</b> Application to a scenario</p>
<p><b>7 Understand when an employee has been unfairly dismissed</b></p>	<p><b>7.1</b> Identify the preliminary requirements for a claim for unfair dismissal</p> <p><b>7.2</b> Describe the potentially fair reasons for dismissal</p> <p><b>7.3</b> Explain the requirement of procedural fairness by the employer</p>	<p><b>7.1</b> Preliminary requirements: employee (see LO 1 above); one year's continuous service (s108 ERA 1996); not an excluded category; claim brought in time; employee must have been dismissed; effective date of termination</p> <p><b>7.2</b> s.98 ERA 1996: capability, conduct, redundancy, statutory restriction, some other substantial reason and retirement; awareness of automatically unfair reasons for dismissal</p> <p><b>7.3</b> ACAS Code of Practice and reference to disciplinary/grievance procedures, eg <i>British Homes Stores v Burchell (1978)</i> and</p>

	<p><b>7.4</b> Explain the requirement for the employer to act reasonably</p> <p><b>7.5</b> Identify the forum for an employee to present a complaint and those remedies available for a successful employee</p> <p><b>7.6</b> Apply an understanding of the concept of unfair dismissal to a given situation</p>	<p><i>Employment Act 2008</i></p> <p><b>7.4</b> s.98(4) ERA 1996 and the reasonableness of the employer, eg <i>HSBC Bank v Madden (2001)</i></p> <p><b>7.5</b> Basic introduction to the jurisdiction of the Employment Tribunal in employment law disputes and relevant timescales; reinstatement, re-engagement and compensation (basic consideration of basic award and compensation components only)</p> <p><b>7.6</b> Application to a scenario</p>
--	--	--

<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area 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)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	na
Endorsement of the unit by a sector or other appropriate body (if required)	na
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	Only available to owning awarding body
Availability for delivery	1 September 2011

This specification is for 2012 examinations