



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

LCMB 7011

Managing People

Week 8:

Employment Law: Institutions and Procedures & Employment Contract

Trawsnewid Addysg; Trawsnewid Bywydau
Transforming Education; Transforming Lives

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Session Aims

By the end of the session, you should be able to:

- Understand the purpose of employment regulation and the way it is enforced in practice.



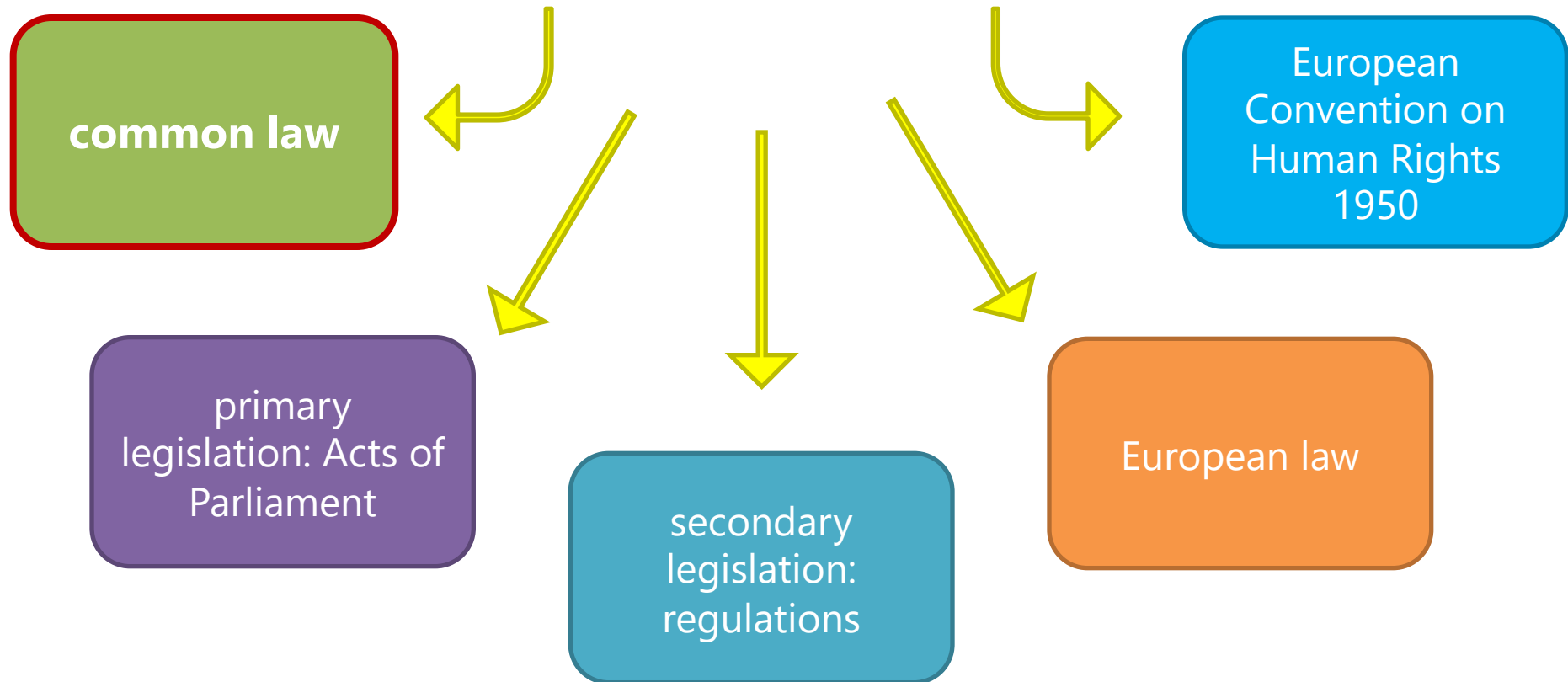
What is 'Employment Law'

Employment law regulates the relationship between employers and employees.

It governs what employers can expect from employees, what employers can ask employees to do, and employees' rights at work.

CIPD

How are legal standards set?



Common Law – setting precedents

- Unlike a statute which is enacted on a particular day, common law **evolves over time as cases come** before the courts and are appealed up through a hierarchy of courts.
- The presence of this hierarchy is highly significant in the UK's judicial system because courts that are lower down in the hierarchy are obliged to apply any **precedents** that have been established by higher courts.
- This means that the judges in the higher courts make the law. Whenever a similar type of case comes before a lower court in the future, the principles that have been set out by the higher court must be applied.

Judge Made Law

- In recent years by far the most significant development in this field has been the evolution of a new common law duty. This applies both to employers and to employees and is phrased as follows - 'the duty to maintain a relationship of mutual trust and confidence'.

Common Law- Employment Law

CIPD

Recruitment

Employment
contract

Data
protection

Pay and
Holiday
entitlement

Working time

Health and
safety at work

Discrimination

Discipline and
grievance

Dismissals and
redundancies

Common Law- Employment Law

- **Employment Contract:**

- Legally binding agreement
- Summary in writing of an employee's main terms of employment
- Offer
- Acceptance
- Consideration
- Intention to create legal relations

Common Law: Content of the contract

- **Express terms**
- **Implied terms**
- **Statutory terms**



Content of the contract: Express terms

Examples

- Job title/ job description
- Rate of pay and when it will be paid
- Date employment starts
- Place of work
- Notice requirements for both parties

Content of the contract: Breach of Express terms

Employer

- Grounds for dismissal

Employee

- Remain in job and claim damages
- Leave job and claim constructive dismissal

Content of the contract: Implied Terms

Not written down but are implied either

- The parties failed to include some information in the express terms

Or

- They are obvious – the contract could not work without them

Content of the contract: Implied terms

Employer must:

- Pay the employee
- Give them work
- Treat them with **trust** and **confidence**
- Take reasonable care of their safety
- Deal with grievances promptly
- Reimburse work related expenses

Content of the contract: Implied terms

Employee must:

- Take good care of employers property
- Act in good faith
- Not be dishonest
- Not compete with employer
- Not disclose confidential information

'The duty to maintain a relationship of mutual trust and confidence'.

- Every contract of employment is treated as containing an imposed **term of trust and confidence**
 - This requires employers and employees not to conduct themselves, without reasonable and proper cause, in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee
 - The term can affect every aspect of the relationship between employer and employee and creates a 'catch all' means of describing unreasonable conduct in employment.
- Example of employment law case: **Direct pay offers to workers during collective bargaining unlawful**

Content of the contract: Statutory Terms

Statute implies various terms into the employment contract

- Equal Pay act (1970)
- Employment Rights Act (1996)
- Equal Rights Act (2010) : Equal Pay Law



Content of the contract: Statutory Terms

Employment Rights Act 1996:

"Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment"

"the statement of employment may be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment"

Content of the contract: Statutory Terms

Employees have statutory rights:

- **Unfair dismissal** after two years service
- **Notice rights**
- Sick pay
- Maternity pay
- **Wage protection insolvency**
- Redundancy payments
- Protection from discrimination



Varying the contract

- Some matters can be changed without the agreement of the employee. Examples include **non-contractual policies** where these have been carefully drafted and where they clearly state that there is no intention for them to be incorporated into the contract.
- Organisations should treat variations of the **contractual terms cautiously** as some changes may be considered to be a fundamental breach of contract that would permit an employee to resign and claim **constructive unfair dismissal**.



Varying the contract - 3 options

1. Agree the changes with the employee after consultation.

- A small incentive may be offered to encourage acceptance, and changes should then be implemented within reasonable timescales. This is the safest course of action.
- Any variations should be confirmed in writing within one month of the changes taking place.

Varying the contract - 3 options

2. Make any changes unilaterally.

- Even where there is a pressing business need to impose the changes, this may be risky.
- The employee's silence cannot be taken as acceptance if the term does not affect the employee at the time the contract was varied; otherwise, the employer may assume acceptance if the employee continues to work without objection.
- The employee may choose instead to continue to work, but do so under protest and bring an action for breach of contract.
- Where the breach of contract is a fundamental breach, the employee may resign and bring a claim for constructive unfair dismissal and/or wrongful dismissal.

Varying the contract - 3 options

3. Terminate the employee's contract by notice and offer them re-engagement on new terms and conditions.

- An employer may consider this option where changes cannot be agreed and where it appears too risky to impose the changes unilaterally.
- The employer must then offer re-engagement on the new terms immediately.
- Employers should be aware that this may be considered in law to be a redundancy dismissal, therefore any rules around collective redundancy and consultation time limits should be observed.
- This course of action is not without risk: the employee may claim breach of contract.

Employment Tribunals

Tribunal Process:

- 1) Employment Tribunal
- 2) Employment Appeals Tribunal
- 3) Court of Appeal
- 4) Supreme Court
- 5) European Court of Justice

Role of ACAS in Tribunal

Before a claim is made:

- Claimant must tell the Advisory, Conciliation and Arbitration Service (ACAS) that they intend to make a claim to the tribunal.
- ACAS will offer the chance to try and settle the dispute without going to court by using ACAS' free 'Early Conciliation' service.

Outcomes of Tribunal

KEY



Settled out of Court



Hearing Reached



Hearing Success Rate



Combined Successful Outcomes

Year				
2010/11	29.27%	20.24%	56.96%	40.80%
2019/20	22.02%	14.87%	63.30%	31.44%
2020/21	24.17%	13.45%	60.69%	32.33%
10 Year Change	-17.43%	-33.55%	6.55%	-20.75%
Change Since Pandemic	9.75%	-9.58%	-4.11%	2.85%

<https://www.wrighthassall.co.uk/knowledge-base/employment-tribunals-workplace-disputes-in-the-uk>

Example of Awards

- 95% of cases settle before going to tribunal
- Reported 4th March 2021:
Priti Patel reaches £340,000 settlement with ex-Home Office chief Philip Rutnam



31 Mar 2022

'Fire and rehire' – guidance for employers

What this practice is, why you should avoid it, and how to approach it if no other options are available

ASSIGNMENT SUPPORT

Reading and Understanding the Assignment Requirements

Your task.

Write an article intended for business or academic publication that:

Reviews the practice of “fire and rehire” tactics within the UK labour market to evaluate the approach taken by different organisations

Explains the legal implications of changing contractual employment terms

Considers the potential impact of any changes on employee engagement

Evaluates HR involvement in this issue and considers whether traditional models of HRM provide an adequate framework for managing contemporary employment relations.

Word count: 5000 words excluding references and appendices

Suggestions on Assignment Prep.

Some suggested points from the article of “Fire and rehire tactics”:

- **Employment law:** 1) wrongful dismissal 2) unfair dismissal 3) the right to be consulted for the group redundant (i.e., more than 20 people)
- **It's a legal practice in the UK but not Ireland, Spain and France**
- **9% victim on worse terms since March 2020, mainly BME Workers**
- **Nearly 70% of firms made profits via this tactics**
- **Proposal bill of Employment and Trade Union Rights**

Suggestions on Assignment Prep.

How to review the tactics of “Fire and rehire” along with what you have learnt so far?

Week1: Role of HR- Three-Legged Stool Model

Week 2: Diversity at Workplace- DEI

Week 3: Engagement & Wellbeing- Good Work (Environment) & Commitment

Week 4: Employment Relations- Career Resilience, EE and IB staffing Strategies

Week 5: Employment Relations- different aspects (e.g., psychological contract), interested parties, key players and external factors (PESTLE)

Week 6: Concerns of organized labors/ Role of Unions

Week 7: Performance Management- AMO theory & Vroom Expectancy Theory

Suggested Structure for the Assignment

Section	Words (approx.)	Notes
Title Page	n/a	With content list and abstract (optional)
Introduction	500	Set out your choice of organisation and review points in the light of the organisation you have chosen
Review point 1	1200	Explains the legal implications of changing contractual employment terms
Review point 2	1300	Analysis the potential impact of any changes on employee engagement
Review point 3	1300	Review managing contemporary employment relations with comparison between hard and soft HRM framework, along with evaluations of HR involvement in this issue
Conclusion & Recommendations	700	Summarise the important aspects of review point 1, 2 and 3 with recommendations
Appendices & Reference list	n/a	• Relevant supported information, graphs and tables etc. • Harvard Reference Style

Marking Criteria

Criterion 1 (20%)

Engagement with Literature Skills Extent of research and/or own reading, selection of credible sources, application of appropriate referencing conventions.

Criterion 2 (20%)

Knowledge and Understanding Skills Extent of knowledge and understanding of concepts and underlying principles associated with the discipline.

Criterion 3 (30%)

Cognitive and Intellectual Skills Analysis, evaluation and synthesis; logic, argument and judgement; analytical reflection; organisation of ideas and evidence

Criterion 4 (20%)

Practical Application Skills Deployment of methods, materials, tools and techniques; application of concepts; formulation of innovative and creative solutions to solve problems.

Criterion 5 (10%)

Transferable Skills for Life and Professional Practice Attributes in professional practice: individual and collaborative working; deployment of appropriate media, presentation and organisation