

Qualification: CIPD Diploma in Applied Human Resources

Module Name: Understanding Employment Law

Activities: 1, 2, 3, 4, 5 & 6

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**1. Explain the purpose of employment law and outline the role played by the tribunal and courts system in enforcing employment law.**

Taylor and Woodhams (2016, pp - 26) state that without employment law, many employers would be tempted to compromise on employee rights and health and safety. There would be more employees working in organisations that are paid unfairly low wages, are worked too hard and dismissed unfairly while being denied basic rights such as maternity leave, equal pay for men and women and having fewer opportunities for minorities. There would be an increase in unethical behavior and managers who bully and harass employees because nothing is stopping them.

The aims and objectives of employment regulations are to provide legal protection to employers and employees in their business relationship. This includes, obstructing employers from exploiting employees by treating them fairly, promoting equality and encourages people to work in the UK as opposed to other countries.

According to the CIPD (2018), there are three places where UK employment law originates: in Parliament through the legislative process, in the courts through judicial decisions and, currently, in European Union institutions. Most UK employment law is in the form of statutes which are passed by Parliament and consist of Acts or Regulations issued under the terms of Acts. This is not the case for all employment law as some rights have not been made by parliament and instead, are made by common law; this has been made by judge's ruling on points of principle for cases they are involved with, and then become precedents; whenever a similar case arises these precedents are followed. The UK court system is hierarchical, meaning that there is a right to appeal an outcome of a case to a higher court. Higher courts have the ability to overrule lower courts in cases where the lower court has been seen to misinterpret the law; higher courts can also enforce new law to be interpreted in a particular way.

Employment law is enforced as a result of one party suing another, and starts in one of three courts: employment tribunal, county court and the High court. The legal matter and level of potential compensation of the claimant depends on which court the case goes to. Generally alleged breach of employment statute cases are heard in an employment tribunal. This is dependent on the claim form arriving at the tribunal office within three months of the incident or three months after a dismissal took place. Appeals from a tribunal can only be made on points of law and within 14 days of the sanction being given; if this is the case the appeal will go to the next court in the hierarchy – the EAT (Employment Appeals Tribunal). The rulings made by the EAT will affect all employers in the country as they decide how employment statutes will be interpreted (Taylor and Woodhams, 2016).

Some employment cases relate to common law and are heard in the county court or High court, as opposed to an employment tribunal; this may be because there is an alleged breach of contract, for example. The high court will only hear cases where more than £15,000 of damages are being sought and in cases of personal injury, more than £50,000. If an appeal is to be made against one of these courts, it is taken directly to the Court of Appeal in Scotland or the Court of Session (UK Court System & Employment Law | Factsheets | CIPD, 2019).

The tribunal process is as follows:

- The claimant (who is normally either an employee, ex employee or unsuccessful job applicant) should first inform ACAS (Advisory Conciliation and Arbitration Service) of their intention.
- ACAS then contact the employer (the respondent) by sending them an ET1 form, and speak with the claimant with the prospect of facilitating an out of court settlement. The respondent has 28 days to complete and return an ET3 form to ACAS.

- If this fails, the claimant can proceed by logging the claim with their local employment tribunal office.
- If again the complaint is not settled or withdrawn a hearing will be arranged where the claimant and respondent can present their cases, cross examine witnesses and evidence, and ask the Employment judge to interpret the law in their favor.
- Once the judge has decided who they think is telling the truth/who is most reasonably believable, they will give their sanction. This could be a fine of up to £25,000 for the organisation or a no sanction outcome for the claimant.

## **2. Summarise the main principles of discrimination law in relation to recruitment and selection and explain how contracts of employment are established.**

The Equality Act 2010 gives protection from unfair discrimination which includes the recruitment and selection process for people with protected characteristics; such as:

- Sex
- Sexual Orientation
- Race, ethnicity and national origin
- Religion or belief
- Marriage and civil partnership
- Pregnancy and maternity
- Gender reassignment
- Age
- Disability

There are also EU law that provides some protection for people who work part time and fixed term contracts, and UK law that extends some protection to those who are ex offenders and union members or those who are not union members (Taylor and Woodhams, 2016).

Employers and HR Managers must ensure that their recruitment process is fair and non discriminatory and be able to demonstrate this if needed.

There are two types of discrimination: direct and indirect. Direct discrimination is when an employer directly chooses not to employ someone because of a protected characteristic (whether that person has that protected characteristic or not – this is called discrimination because of perception). For example, an employer might choose to withdraw someone's application because their name sounds foreign (whether or not this is actually true); this is classed as direct discrimination. An example of indirect discrimination would be a job advert that has a lot of feminine or masculine wording. This indicates that the company is trying to attract a particular person and that someone who doesn't fit this description would be at a disadvantage; using words like waiter or waitress are an example. In some cases employers may need to employ someone with a particular characteristic if it is necessary for that job where there is an exception from unlawful discrimination; like being a Carer in a care home for example. The employer might need someone who is male or female to do that role due to residents needing assistance of someone whom is the same sex (Discrimination in recruitment and selection | Recruitment and selection | Employment law manual | Tools | XpertHR.co.uk, n.d.).

Establishing a contract of employment is simple as it does not require lengthy paperwork and can be done via a conversation or email. For an employment contract to be legal in the UK it must contain five major conditions to exist. These conditions are:

- An unconditional offer

- An unconditional acceptance of the offer
- An intention to form a legal relationship (not an informal agreement between friends and family)
- Consideration – payment or payment in kind
- Certainty – clarity about the main terms and conditions and an intention to create a legally binding arrangement

There are also restrictions to ensure that minors are not bound to contracts that go against their interests, that the contract or work being undertaken is not illegal and that both parties are in their right minds when the contract is formed. If all five conditions are satisfied, a contract exists and includes all legal rights and commitments that follow (Taylor and Woodhams, 2016).

An employee is defined by the Employment Rights Act 1996 as an individual who has entered into or works under a contract of service or apprenticeship. Contracts of employment contain a mix of express and implied terms; the express terms must consist of any minimum legal standards and may contain documents such as the staff handbook of that organisation. Implied terms in a contract of employment often are:

- A duty of mutual trust and confidence between the employer and employee
- The employers duty to provide a safe system of work and safe workplace (complying with the Health and Safety at work Act 1974)
- The right to receive at least the national minimum wage or living wage
- The right to a minimum period of notice
- Equality relating to men and women's pay

- 3. An organization is planning a major reorganization which will involve moving some staff to other sites and outsourcing a major function to a sub-contractor.**
- (a) Outline when and how contracts can be changed lawfully.**
- (b) Explain briefly the main requirements of redundancy law.**
- (c) Summarise the main requirements of the law on business transfers.**

Occasionally significant changes to contracts may need to be made; however, they can only be made with the consent of both parties – the employee and employer. Some common changes to contracts include:

- Including a flexible clause in the contract which enables the employer to make reasonable changes in accordance with business needs.
- Writing to the employee setting out contractual changes. Whilst there is no specific timeframe for this change, if the employee continues to attend work without objecting to the change it will be assumed that they are signaling 'acceptance through practice' which is recognized by law.
- Negotiating changes with a trade union when there is a collective agreement in place. This agreement will have been included in all individual contracts of employment.
- Dismissing staff before rehiring them instantly on new terms and conditions of employment. This route is often used as a last resort as it can be risky and bring unfair dismissal cases.

As long as changes don't impact on employees pay rates and other core contractual terms the employer by law is entitled to make technical changes to working arrangements (Taylor and Woodhams, 2016).

Ideally, when an organisation wishes to make contractual changes they will firstly undertake a reasonable consultation with employees concerned. This means an attempt to come to an agreement to change their terms by consent. If this avenue is unsuccessful there are two other ways the employer can seek to make amendments to contracts. One way is to make the change unilaterally, but this could open up employers to be accused of unfair dismissal, especially if the change is significant. Secondly, following a reasonable consultation the employer could terminate the contracts of the employees, amend their contracts and re-hire them on new terms. This option still isn't without its own risks; the employee doesn't have to accept the new terms and choose not to be re-hired but could choose to pursue a claim for unfair dismissal.

Currently, if more than 20 staff are affected with the proposed termination and re-engagement process, the employer will need to engage in formal collective consultation with the trade union or employee representatives for a minimum of 30 days; for 100+ staff, this is for 45 days. This type of termination is not the fault of the employee and is treated as redundancy for the purpose of collective consultation regulations (How should an employer make changes to employees' contracts?, 2016).

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) rule applies to organizations of all sizes and protects employees' rights when the organisation or service they work for transfers to a new employer (ACAS, n.d.).

The aim of this law is to ensure that employees don't get treated unfairly by being dismissed or made redundant when their employers' identity changes. There are two types of situation where TUPE applies; this is when there is a business transfer or a service provision change (Taylor and Woodhams, 2016). There are particular rights that employees have during TUPE situations which are:

- Employees have the right to be consulted before, during and after the transfer has occurred. Failure to do so may result in the transferors and transferees being liable to pay 13 weeks pay per individual for less than 10 employees who are affected.
- Employees have the right to have their continuity of service recognised by their new employer.
- Contracts and their contents transfer with the employees. It is unlawful for the new employer to change these due to TUPE transfer without prior consultation.
- Employment related benefits and liabilities will also transfer with employees.
- If the employee is dismissed for a reason related to TUPE, this is usually unlawful and could result in an unfair dismissal claim.
- The previous employer has an obligation to disclose employee liability information to the new employer. Information includes identity and ages of the employees; information contained in the written statement; disciplinary details within the past two years; details of any grievances raised within the past two years; legal actions taken by employees against the outgoing employer and, information regarding collective agreements (CIPD, 2018).

TUPE regulations protect employees' legal rights in business transfer situations. However, an employee doesn't have the right to object to the transfer unless TUPE regulations weren't followed properly. If the employee does object and resigns due to the transfer, they are not entitled to claim unfair dismissal despite their length of service with their previous employer (Taylor and Woodhams, 2016).

#### **4. Summarise:**

**(a) The major statutory rights employees have in relation to pay, holidays and working time and,**

### ***(b) The major maternity, paternity and other family-friendly employee rights.***

Employment regulation for pay stipulates that men and women should be paid the same for 'like work', assuming they are employed by the same employer and their jobs are either the same or of equal value (Taylor and Woodhams, 2016).

Workers have the right to be paid holiday whether they work full time, part time or a zero-hours contract. Holiday entitlement depends on how many days or hours worked and any added agreements in place with the employer. The current statutory entitlement is 5.6weeks' paid holiday annually; this consists of 20days plus 8days for bank holidays, amounting to 28days annual leave (ACAS, n.d.).

The Working Time Regulations 1998 states the main conditions relating to weekly working time, rest entitlements and annual leave for workers in the UK (CIPD, 2018). Any period during which the worker is working is at the employers' disposal and is covered by these regulations; it includes working lunches, and time spent travelling as part of their job (Personnel Today, 2006). There is an option for workers to opt out of the 48hr rule by signing a declaration and in some instances an employer can make the 'opt out' option a requirement of employment. There are two others ways around these regulations for employers:

- Averaging. Employers can average out time worked over a reference period of 17weeks.
- Workforce Agreements. Employers can adapt their interpretation of the regulations to suit their needs if it is accepted by the whole workforce through a workforce agreement (Taylor and Woodhams, 2016).

Women are entitled to maternity leave as long as; she has continuously worked for her employer for at least 26weeks and assessed at the 15<sup>th</sup> week before the baby is due; has average weekly earnings in the eight weeks preceding the qualifying week, at or above the lower earnings limit for the payment of NI contributions and; work for an employer who is liable to pay the employers share of Class 1 NI contributions (CIPD, 2018).

Three types of maternity leave are:

- 'Compulsory Maternity Leave' (CML) - two weeks immediately after giving birth where the leave is compulsory.
- 'Statutory Maternity Leave' (SML) - a woman can take up to 52weeks leave.
- Shared Parental Leave (SPL) - shared leave available to either or both parents.

Women can start maternity leave at the earliest of 11weeks before the baby is expected, and should give her employer details of the expected birth date and date she chooses to start maternity leave. In some circumstances maternity leave may start earlier; either due to the baby arriving early or pregnancy related illness in the 4 weeks before the baby is expected (Taylor and Woodhams, 2016).

A woman is entitled to up to 39weeks Statutory Maternity Pay (SMP) which is 90% of her average weekly earnings for the first 6weeks, and then for the following 33weeks is either: £151.20 per week or 90% of her average weekly earnings, whichever is lower. If a woman chooses to take the full 52weeks, the last 13weeks are unpaid unless her employment contracts states otherwise (ACAS, n.d.).

Fathers are entitled to Ordinary Paternity Leave (OPL) as long as they have been in continuous employment for 26weeks ending with the 15<sup>th</sup> week before the baby is due; must be the biological father or the partner/husband of the mother and is expected to have responsibility of the baby's upbringing (CIPD, 2018). The father can take up to two weeks

leave unless he has an alternative agreement with his employer. The father must give notice of his intention to take paternity leave by the end of the 15<sup>th</sup> week before the baby is expected and state the date of leave to be taken, expected week of confinement and duration of leave. The rate of Statutory Paternity Pay (SPP) is the same as SMP (CIPD, 2018).

Other family-friendly rights include the right to:

- Take unpaid leave from work for family emergencies
- Take up to four months unpaid parental leave
- Request flexible working

Requesting flexible working can be formally by the employee once a year, but can be rejected by the employer if the request isn't feasible. There are eight reasons an employer can reject this request; some of which are: creating a larger cost or having a negative effect on ability to meet customer needs. If the employee is successful with their request, they have agreed with their employer to a one off permanent change in their terms and conditions to their contract (Taylor and Woodhams, 2016).

## **5. Summarise:**

**(a) The major requirements of health and safety law**

**(b) Key legislation supporting equality and diversity in the workplace.**

**(c) The concept of implied duties in relation to employee management at work.**

The Health and Safety at Work Act 1974 (HSW Act) stipulates that an employer has a duty of care to all employees in the workplace and this duty cannot be assigned to another person. Whilst employees should expect not to be hurt in any way by their work, they are also expected to take reasonable care in their work place (Ferrett, 2012).

Any work place that employs more than five people must have a written health a safety policy which will include risk assessments of various activities carried out by staff or customers. This is to determine any risks and hazards that need to be reasonably reduced in order to comply with this Act; employees often use risk assessment in practice to ensure a task is being carried out safely. Any place of work deemed unsafe by the inspectorate may be forced to close down and bring criminal prosecutions where there has been a serious breach of the regulations (Taylor and Woodhams, 2016).

There are five categories the employer must provide which are:

- A safe place of work, including access and egress
- Safe plant and equipment
- A safe system of work
- Safe and competent fellow employees; and
- Adequate levels of supervision, information, instruction and training.

The Health and Safety at Work Act 1974 is based on criminal law and protects all workers, members of the public and volunteers who may be affected by work activities (Managing health and safety in swimming pools, 2003).

The Equality Act 2010 protects people from discrimination related to any of the eight protected characteristics in England, Scotland and Wales. The main purpose of this Act is to protect people with these characteristics and minimize discrimination in places of work,

education, housing provision of services, public functions and membership of associations (Employment, 2011).

There are two statutes that make it an offense for employees or employers to bully or harass someone at work which are: the Criminal Justice and Public order Act 1994 and, the Protection from Harassment Act 1997; both of which are punishable with up to six months imprisonment if convicted. However, more general protection is provided within all contracts of employment and both the employee and employer have a duty to maintain a relationship of trust and confidence (Taylor and Woodhams, 2016).

'Implied terms' refers to the employers obligations to provide certain duties/terms to the employee that are read into the contract and not specifically written or said verbally (Implied terms | MyLawyer, n.d.). Terms may be implied because it is so obvious that the term is assumed to have been implied, for example (CIPD, 2018).

Implied terms include:

- Duty to pay wages
- Duty to provide work
- Duty to indemnify employee
- Duty to take care of employee's health and safety
- Mutual trust and confidence
- Duty to take reasonable care in giving references
- Provision of a grievance procedure
- Notice

Whilst employers can't set all terms and procedures within employment contracts, they should include as many as possible to avoid uncertainty or debate between the employer and employee.

**6. Explain briefly the main requirements of unfair dismissal law in respect of:**

**(a) Capability**

**(b) Misconduct**

**(c) Grievance**

Employees (who generally have two years of service with the same employer) are protected by the Employment Rights Act 1996 against unfair dismissal and have the right to fair treatment. Employers must treat all matters of a disciplinary/ capability or the grievance process lawfully and follow the correct procedure set out by the organisation (Taylor and Woodhams, 2016). Failure to do so could result in an unfair dismissal claim even if the reason for dismissal is fair; if the process isn't adhered to or is inconsistent the claimant may be successful.

For an employee to bring a claim of unfair dismissal they must qualify to do so. They must have been dismissed; be an employee, not a worker; be employed for the requisite qualifying period, commence the claim within three calendar months of dismissal date; not be within the excluded categories, and; not be an employee shareholder. There are five reasons stated in the Employment Rights Act 1996 that may be classed as 'fair', these are:

- Capability
- Conduct
- Redundancy
- Statutory illegality
- Some other substantial reason (SOSR)

In the case of dismissal through capability, the employer should follow a fair process in which the employee is given changes to improve or seek occupational health through the employer to allow them make reasonable adjustments (if there are any). If this fails the employer can demonstrate to the employee (and Tribunal judge) why they have been dismissed due to capability. Capability is usually through no fault of the employee and is something they can do nothing about for example; an employee whose sight has deteriorated which has resulted in them being unable to carry out their role effectively but does not resign. Failing to be able to prove that poor work performance was the reasons for dismissal may result in the dismissed employee bringing a claim of unfair dismissal (CIPD, 2018).

In the case of misconduct, the organisations process should be strictly followed and adhered to regardless of the issue. If the process is fair then a warning (for a first offense) may be applied but if the reason warrants it, a dismissal may be fair. The employee must always be given a right to appeal the decision which will be heard by an individual not related to the recent disciplinary process; this is to ensure the appeal can be fair and non bias (Taylor and Woodhams, 2016). Dismissal for misconduct may be unfair if the process is flawed or the dismissed employee thinks they were dismissed for another reason other than the one they were disciplined for. The dismissed employee could claim that this was due to a protected characteristic and it would be up to the employer to prove that it was not. If it is proved that the employer did actually dismiss due to a protected characteristic the dismissal would have been unfair and the dismissed employee would likely be paid a large sum of money in compensation from the employer.

Grievance procedures should be followed by a formal process by the employer and should be followed even if the grievance was raised informally. Employers should:

- Make it clear that they will deal with grievances fairly and consistently
- Investigate to get as much information as reasonably possible
- Allow the employee to bring relevant persons to a grievance meeting
- Give everyone a chance to have an input before making a decision
- Take actions and make the decisions as soon as possible
- Allow the employee to appeal against the grievance outcome

If an employer does not allow or do one of the above points, the decision made could be unfair even if the reason for grievance was justified (ACAS, n.d.).

## **Bibliography**

Acas.org.uk. n.d. *Checking Holiday Entitlement* | Acas. [online] Available at: <<https://www.acas.org.uk/checking-holiday-entitlement>> [Accessed 27 April 2020].

Archive.acas.org.uk. n.d. *Home* | Acas. [online] Available at: <<https://archive.acas.org.uk/index.aspx?sricleid=1655>> [Accessed 26 April 2020].

Cheary, M., n.d. *Why Does Employment Law Exist?* | Reed.Co.Uk. [online] reed.co.uk. Available at: <<https://www.reed.co.uk/career-advice/why-does-employment-law-exist/>> [Accessed 18 April 2020].

CIPD. 2018. *UK Court System & Employment Law | Factsheets* | CIPD. [online] Available at: <<https://www.cipd.co.uk/knowledge/fundamentals/emp-law/about/court-system>> [Accessed 22 April 2020].

Cipd.co.uk. 2018. *A Guide To TUPE Transfers*. [online] Available at: <[https://www.cipd.co.uk/images/7697-a-guide-to-tupe-transfers-web\\_tcm18-44310.pdf](https://www.cipd.co.uk/images/7697-a-guide-to-tupe-transfers-web_tcm18-44310.pdf)> [Accessed 26 April 2020].

Equality Act 2010 Statutory Code of Practice. *Employment*. Manchester: Equality and Human Rights Commission.

FERRETT, E., 2012. *HEALTH AND SAFETY AT WORK REVISION GUIDE*. 2nd ed. [S.l.]: ROUTLEDGE, pp.10-18.

HSE 2003. *Managing Health And Safety In Swimming Pools*. 3rd ed. Sudbury: HSE Books, p.5.

Macdonald, L., n.d. *Discrimination In Recruitment And Selection | Recruitment And Selection | Employment Law Manual | Tools* | Xperthr.Co.Uk. [online] Xperthr.co.uk. Available at: <<https://www.xperthr.co.uk/employment-law-manual/discrimination-in-recruitment-and-selection/157530/?keywords=main+principles+of+discrimination+in+relation+to+recruitment>> [Accessed 23 April 2020].

Mylawyer.co.uk. n.d. *Implied Terms* | Mylawyer. [online] Available at: <<https://www.mylawyer.co.uk/implied-terms-a-A76018D32685/>> [Accessed 27 April 2020].

Personnel Today. 2006. *Working Time - Personnel Today*. [online] Available at: <<https://www.personneltoday.com/hr/working-time/>> [Accessed 27 April 2020].

Taylor, S. and Woodhams, C., 2016. *Human Resource Management*. 2nd ed. London: CIPD, pp.25 - 43.

www.qcs.co.uk. 2016. *How Should An Employer Make Changes To Employees' Contracts?*. [online] Available at: <[https://www.qcs.co.uk/employer-make-changes-employees-contracts/utm\\_source=google&utm\\_medium=cpc&utm\\_adgroup=All%20web%20pages%20-%20Google%20Index&utm\\_campaign=03\\_Wales\\_DSA&matchtype=b&keyword=&network=](https://www.qcs.co.uk/employer-make-changes-employees-contracts/utm_source=google&utm_medium=cpc&utm_adgroup=All%20web%20pages%20-%20Google%20Index&utm_campaign=03_Wales_DSA&matchtype=b&keyword=&network=)>

s&device=c&gclid=CjwKCAw4pT1BRBUEiwAm5QuRxLtKzsvsipHi13NJvKtaqv5ZZkhdI\_2Z0  
moZbpdf-WSRtejRMJPqBoCLdoQAvD\_BwE> [Accessed 26 April 2020].