



Higher National Unit specification: general information

Unit title: Employment Relationship and the Employment Contract

Unit code: FT2C 35

Superclass: EC

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Unit purpose

This Unit is designed to provide candidates with a knowledge and understanding of different contractual relationships, employee's statutory rights, employment contracts and compromise agreements. Candidates shall obtain legal knowledge which can then be used to advise clients, under the supervision of a solicitor, in the workplace. Candidates shall obtain experience of drafting a contract of employment and drafting a compromise agreement. This Unit is particularly geared to those who currently work as paralegals, or wish to become paralegals, in the field of employment law.

This Unit is also intended to be relevant to those already employed in the legal sector who may wish to broaden their expertise and students or others who aspire to work in a relevant role in the legal sector.

On completion of the Unit the candidate should be able to:

- 1 Explain the nature of the employment relationship.
- 2 Explain an employee's statutory rights.
- 3 Draft an employment contract.
- 4 Explain the remedies available following a breach of contract.
- 5 Explain how a contract of employment can come to an end.
- 6 Draft a compromise agreement.

Recommended prior knowledge and skills

Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have competence in Communication Skills at SCQF level 6 or equivalent and should normally have completed Law of Contract: An Introduction (SCQF level 6) (FN4X 12), Essential Skills for Paralegals (FT5R 35), be undertaking Essential Skills for Paralegals concurrently or have similar qualifications and experience.

General information (cont)

Credit points and level

2 HN credits at SCQF level 8: (16 SCQF credit points at SCQF level 8*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes of this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment

This Unit could be assessed in a number of different ways. Centres will have discretion as to how they assess the Outcomes provided that the minimum amount of evidence is obtained. Candidates will produce evidence to show they can explain: the nature of the employment relationship; employees' statutory rights; remedies available following a breach of contract; and how a contract of employment can come to an end. Candidates will draft one written contract of employment and will draft one written compromise agreement.

Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate.

Higher National Unit specification: statement of standards

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Explain the nature of the employment relationship

Knowledge and/or Skills

- ◆ Awareness of different types of contractual relationships
- ◆ Employee/Worker/Self-employed/Volunteer/Other
- ◆ Distinction between a contract for services and a contract of service
- ◆ The irreducible minimum that must exist for a contract to be an employment contract: personal service, mutuality of obligation and control
- ◆ Awareness that only a court or tribunal can determine contractual status
- ◆ Relevant factors that may be taken into account by a court or tribunal in determining contractual status

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply their Knowledge and/or Skills to answer an enquiry or enquiries from a fictitious client based on at least one case study.

The case studies should be reasonably detailed, and should include a number of facts that point towards, and a number of facts that point away from, the relationship being one of employer and employee. One case study should include a scenario on an employer/employee relationship and the other where there is not an employee/employer relationship.

The enquiry or enquiries from the fictitious client should cover whether it is likely, or not likely, that a court or tribunal (if asked to determine an issue of status) would find that the relationship is one of employer and employee as opposed to some other relationship.

Candidates should give an opinion as to why the relationship is likely to be one of employer and employee or otherwise. The opinion must be supported by reasons. All reasons given should be legally correct. Incorrect reasoning is not acceptable. An error of omission is not acceptable.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

If oral evidence is used it should be recorded.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this.

In addition, written and/or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Assessment Guidelines

It is suggested that the case study include a contract (or draft proposed contract) in addition to any other information given.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Outcome 2

Explain an employee's statutory rights

Knowledge and/or Skills

- ◆ Statutory rights limit the principle of freedom of contract
- ◆ Rights in relation to pay
- ◆ Rights in relation to time off
- ◆ Rights in relation to equal treatment
- ◆ Other statutory rights

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply their Knowledge and/or Skills to explain an employee's statutory rights.

Candidates will be presented with queries from a fictitious client. The questions from the fictitious client should cover rights in relation to pay, rights in relation to time off, rights in relation to equal treatment and other statutory rights. Candidates must not be told in advance the statutory rights on which they will be assessed. Candidates will be expected to answer questions covering all five of the Knowledge and Skills listed above. All answers must be correct.

If re-assessment is necessary, candidates should be presented with a different set of questions.

If oral evidence is used it should be recorded.

Evidence should be generated through assessment under controlled open-book conditions.

In addition, written or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Assessment Guidelines

The assessment for this Outcome may take the form of written and/or oral responses to either a set of extended response questions, or restricted response questions, or multiple choice questions or case study/studies or a mixture of any of these which samples the knowledge required in Outcome 2. It is suggested that assessment by way of restricted response questions or multiple choice questions, would be appropriate.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Outcome 3

Draft an employment contract

Knowledge and/or Skills

- ◆ Capacity to contract
- ◆ Formation of contract
- ◆ Illegality
- ◆ Express and implied terms
- ◆ Incorporated terms
- ◆ Terms imposed by statute
- ◆ Style contract
- ◆ Variation of contract

Evidence Requirements

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Produce a written contract of employment based on a given case study. The case study should set out a fictitious client's requirements for a contract for an employee. The instructions should be clear and comprehensive, including all the information that the candidates will need to draft the contract of employment.

An acceptable contract should be fit for purpose and should be drafted in accordance with a style previously given to a candidate. The contract must include the written particulars required to be given in terms of sections 1 to 4 of the Employment Rights Act 1996. The contract produced must meet the fictitious client's express instructions. An exception to this would be where an express instruction would result in a clause that would be unlawful.

Candidates should also be presented with a case study detailing an instruction for a client that would result in a clause that would be unlawful, if implemented. The candidate should identify the legal issue and suggest a clause that would be lawful.

Candidates should identify any potentially unlawful clauses. In such a case, or cases, candidates should explain to the fictitious client why the express instruction given would result in an unlawful clause. If appropriate, candidates should suggest to the client a clause that would be lawful.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this.

In addition, written or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Assessment Guidelines

Candidates should be provided with at least one example of a contract. This contract can be used as a style. The contract must include all written particulars required to be given in terms of sections 1 to 4 of the Employment Rights Act 1996. It is suggested that an instruction could be given by the fictitious client that would result in a clause that would be unlawful if implemented. An example of unlawful clause could be the instruction that the rate of pay be less than the current national minimum wage. In such a case candidates should identify the legal issue and suggest to the client that the rate of pay be amended to at least the amount of the current national minimum wage.

With regard to variation of one or more terms of an existing contract of employment, candidates could be presented with a case study where a client is seeking to vary one or more contractual terms of an existing contract of employment. Candidates should be able to explain the ways in which a contract of employment can be varied to the fictitious client. These are: through operation of law (for example a statutory change, such as an increase in the national minimum wage); by agreement; allowed by a term or terms of the existing contract; via a collective agreement; through imposed change with acquiescence; and, in absence of agreement, through termination and re-engagement. Alternatively candidates could be presented with a series of restricted response questions.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Outcome 4

Explain the remedies available following a breach of contract

Knowledge and/or Skills

- ◆ Identifying a breach of contract
- ◆ Actual and anticipatory breaches of contract
- ◆ Remedies for breach of contract available to the employee/employer

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply their Knowledge and/or Skills to explain the remedies available following a breach of contract to a given case study.

The case study should contain at least one breach of contract. If oral evidence is used it should be recorded. The enquiry or enquiries from the fictitious client should ask whether there has been, or may be, a breach of contract by the other party. From the set of circumstances given candidates should give an opinion as to whether there has been, or may be, a breach of contract. The opinion should correctly identify the actual or anticipatory breach. On the basis that there has been an actual, or will be an anticipatory, breach of contract, candidates should advise as to the potential remedy or remedies available.

Any advice given should be legally correct.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this.

In addition, written or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Assessment Guidelines

The assessment for this Outcome will take the form of written and/or oral responses to an enquiry or enquiries from a fictitious client. This simulates practice. It is suggested that a suitable response would be by way of a letter of advice to the fictitious client.

In designing the case study an example of a breach of contract could be:

- ◆ failure to pay sums due arising under the contract of employment (wages, overtime, bonus, etc)
- ◆ where an employer acts in such a way to destroy trust and confidence
- ◆ an employee's gross misconduct (such as fighting), which would entitle an employer to summarily dismiss, without notice or payment in lieu of notice

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

an example of an anticipatory breach of contract could be:

- ◆ where an employer states their intention not to pay sums due arising under the contract of employment
- ◆ where an employer states their intention to, or acts in such a way that it is clear that there will be destruction of trust and confidence.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Outcome 5

Explain how a contract of employment can come to an end

Knowledge and/or Skills

- ◆ Summary Termination
- ◆ Termination in Breach of Contract
- ◆ Termination by mutual agreement
- ◆ Termination by serving notice
- ◆ Termination by relying on a fundamental breach of contract
- ◆ Termination by performance
- ◆ Frustration of contract

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply their Knowledge and/or Skills to answer an enquiry or enquiries from a fictitious client based on a case study.

The case study should contain details that could give rise to the contract of employment coming to an end or contain details that the contract has already come to an end.

Candidates should correctly identify how the contract has or may come to an end and advise the client accordingly. This should be in the form of an extended response to the fictitious client. Any advice given should be legally correct.

If oral evidence is used it should be recorded.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this.

In addition, written or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Assessment Guidelines

It is suggested that a suitable response would be by way of a letter of advice to the fictitious client.

In designing a case study scenario suggested examples could be:

- ◆ whereby notice has been served by letter on the other party
- ◆ whereby the contract provides for termination on the occurrence of a particular event or performance
- ◆ where the contract comes to an end because of a supervening event that was not foreseeable when the contract of employment was entered in to (frustration), such as a long prison sentence being imposed on an employee, or the employers premises burning down, with no prospect of rebuilding/temporary relocation for a period of time.

Higher National Unit specification: statement of standards (cont)

Unit title: Employment Relationship and the Employment Contract

Outcome 6

Draft a compromise agreement

Knowledge and/or Skills

- ◆ Concept of a compromise agreement
- ◆ Similarities with an ACAS COT 3 agreement
- ◆ Statutory basis of a compromise agreement
- ◆ Style compromise agreement

Evidence Requirements

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Draft at least one compromise agreement to a given scenario.

The compromise agreement should be drafted in accordance with a style previously given to a candidate. Candidates will be provided with a case study setting out a fictitious client's requirements for the compromise agreement. This will include particular details only. Particular details shall include the fictitious employee's name, the fictitious employer's name, the amount of termination payment and any other particular details.

The compromise agreement produced must be accurate and meet the fictitious client's express instructions.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this.

In addition, written or oral evidence of knowledge which cannot be inferred from the above case study may be sampled.

Assessment Guidelines

Paralegals are not able to give advice in respect of the nature and effect of the terms of the compromise agreement. Therefore candidates will not be asked to give such advice. This assessment is only concerned with the accurate transposition of particular details from the fictitious client's instructions to the draft compromise agreement.

The assessment for Outcome 6 could be integrated with the HN Units, Employment Tribunal Procedures and Practice and Unfair Dismissal.

Higher National Unit specification: support notes

Unit title: Employment Relationship and the Employment Contract

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

Guidance on the content and context for this Unit

This Unit is designed to provide candidates with a knowledge and understanding of the nature of the employment relationship, employees' statutory rights, breach of contract and remedies available following a breach of contract and how a contract of employment can come to an end. Candidates shall also obtain experience of drafting legal documents: a contract of employment and a compromise agreement. This Unit is particularly geared to those who currently work as paralegals, or wish to become paralegals, in the field of employment law.

Legal theory and principles will be taught to the candidates. This is so that candidates will have a sound knowledge base from which they can give advice to clients. It should be stressed that paralegals should only be giving advice under the direction of a supervising solicitor. This point should be stressed wherever appropriate.

Outcome 1 deals with the nature of the employment relationship.

Outcome 2 deals with a range of statutory rights that are afforded to employees (and many to workers, though not all of them are) and these statutory rights limit the principle of freedom of contract.

Outcome 3 deals with the drafting of a contract of employment from a given style. It also deals with proposed variations to an existing contract of employment.

Outcome 4 deals with breach of contract and the remedies available following breach of contract.

Outcome 5 deals with how a contract of employment can come to an end.

Outcome 6 deals with drafting a compromise agreement from a given style.

When the Outcomes have been achieved candidates shall have a sound knowledge base. This knowledge base is very important. Ultimately, it will be required to advise clients in real-life practical situations.

The knowledge will also be needed for later Units, where it can be applied in the context of employment tribunal practice and procedure.

Accuracy is essential. Without accurately applying knowledge candidates could incorrectly advise clients, which could have implications for their client, their supervising solicitor, their firm and themselves.

Higher National Unit specification: support notes (cont)

Unit title: Employment Relationship and the Employment Contract

Employment law advice is not given in a vacuum and often it will be appropriate to note and emphasise the perspective from which the advice is being sought.

Advice could be sought from an employee in respect of whether certain contractual terms are lawful and enforceable. A 'worker' could be unsure of his or her actual status, and determining legal status could be very important, in that it may give him/her statutory employment law protections that would not otherwise be available.

It is exceptionally rare that an employee would draft a contract of employment. When asked to draft a contract of employment it will therefore (almost certainly) be drafted from the point of view of the employer.

It may be appropriate to provide candidates with an understanding in the context of employee recruitment, development, reward, pay, retention and managing performance.

Generally, employees will only apply for jobs if the rewards including pay, are sufficiently attractive for them to give their time and labour. Employees will often seek promotion or other development opportunities. If these are not offered, or other incentives, or pay awards given, employers may have difficulty retaining good staff.

With regard to managing performance, the starting point to determine standards will often be the contract (policies and handbook) where from coaching and guidance, and if appropriate disciplinary action can be taken, to improve an employee's performance.

One way to motivate an employee, or group of employees, is to include a bonus clause, as a contractual term.

Guidance on the delivery and assessment of this Unit

Where this Unit is taught as part of the PDA in Employment Law, it is recommended that this Unit is taught as the second Unit after the Unit Essential Skills for Paralegals as statutory rights, and the contract of employment, are very important. It is from this foundation of knowledge that further Units can be understood in context.

All Outcomes are intended to reflect real work place tasks.

Open learning

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in the Unit specification must still be applied if this method of delivery is chosen. For further information and advice please refer to the SQA document *Assessment and Quality Assurance for Open and Distance Learning* which is available on SQA's website www.sqa.org.uk

Higher National Unit specification: support notes (cont)

Unit title: Employment Relationship and the Employment Contract

Opportunities for the use of e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or e-checklists. Centres which wish to use e-assessment must ensure that the national standard is applied to all candidate evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. Further advice is available in *SQA Guidelines on Online Assessment for Further Education (AA1641, March 2003)*, *SQA Guidelines on e-assessment for Schools (BD2625, June 2005)*.

Opportunities for developing Core Skills

All elements of the Core Skill of Problem Solving — critical thinking, planning, organising, reviewing and evaluating — are naturally developed as candidates analyse fictitious case studies, identify remedies available and, under the supervision of a solicitor, complete tasks relating to the application of Employment Law. An overview is taken of current legal/statutory requirements that may be taken into account by a court or tribunal. Assessment of contractual status, potential value of claims and the component elements of compensation available will be made before candidates draft contracts and agreements that are fit for purpose.

Paralegals have to build and maintain effective written and oral communication with a range of others, including the Supervising Solicitor, clients and colleagues. As the Unit is undertaken there should be a focus on enhancing the additional or specific communication skills needed in the production of documents that are legally compliant, accurate and comprehensive. Identifying different communication options and selecting the language and format appropriate to the particular situation and/or client will be essential. Opportunities for enhancing oral skills may be provided by discussion of case studies or the option of oral explanation.

Knowledge and understanding of both interpersonal and contractual aspects of working with others in employer/employee interactions underpin competences developed. Recognition of mutuality of obligation and control will be supported by understanding of reasons and methods for negotiating the nature and scope of goals, roles and responsibilities. Although candidates work independently to complete practical tasks, discussion of case studies with opportunities to review and evaluate best practice will enhance interpersonal skills in a practical workplace context.

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Employment Relationship and the Employment Contract

This Unit is designed to provide you with knowledge in relation to the employment relationship and the employment contract. In addition to gaining knowledge you will also gain practical skills.

By the end of this Unit you will be able to:

- 1 Explain the nature of the employment relationship.
- 2 Explain employee's statutory rights.
- 3 Draft an employment contract.
- 4 Explain the remedies available following a breach of contract.
- 5 Explain how a contract of employment can come to an end.
- 6 Draft a compromise agreement.

This Unit is largely assessed through case studies together with a set of restricted response questions or multiple choice questions and you will be expected to apply your knowledge of the law to the facts of the case in order to give advice to a fictitious client. You will be expected to show clear reasoning in your case studies with reference to the applicable legal principles. All advice in 'real life' situations will be given under the direction of a supervising solicitor.