



## Higher National Unit specification: general information

**Unit title:** Individual Employment Relations: Law

**Unit code:** H2MK 34

**Superclass:** EC

**Publication date:** October 2012

**Source:** Scottish Qualifications Authority

**Version:** 01

### Unit purpose

This Unit is designed to provide candidates with knowledge and understanding of the main principles of employment law. It is intended to provide underpinning legal knowledge which can be applied in the workplace. This Unit would be relevant to those working or intending to work in a range of contexts such as HR, in-house and specialist legal teams, and voluntary organisations such as Citizens Advice.

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

- 1 Apply common law and statutory rules relating to the contract of employment
- 2 Apply common law and statutory rules in relation to equality
- 3 Apply common law and statutory rules in relation to employment protection
- 4 Apply common law and statutory rules in relation to dismissal

### 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 6 or similar qualifications or experience. Candidates are not required to have prior knowledge of employment law, however it would be beneficial to have some prior knowledge of contract law, eg the Unit F1B3 34 *Commercial Law*.

### Credit points and level

1 Higher National Unit Credit at SCQF level 7: (8 SCQF credit points at SCQF level 7\*)

*\*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.*

## **General information (cont)**

### **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.

The assessment exemplar for this Unit provides assessment and marking guidelines that exemplify the national standard for achievement. It is a valid, reliable and practicable Instrument of Assessment. Centres wishing to develop their own assessments should refer to the assessment exemplar to ensure a comparable standard. Assessment exemplars are available on SQA's secure website.

## 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

Apply common law and statutory rules relating to the contract of employment.

#### Knowledge and/or Skills

- ◆ Fundamentals necessary for a contract of employment
- ◆ Express and implied terms
- ◆ Capacity to contract
- ◆ Duties of the parties to a contract
- ◆ Variation of contractual terms
- ◆ Distinction between contracts of employment and contracts for service, and implications arising thereof
- ◆ Tests used by courts and/or tribunals for the determination of employee status
- ◆ Differences between types of contracts of employment, including but not limited to full-time, part-time, temporary, fixed term, zero hours, casual, home-working, tele-working and agency working
- ◆ Termination of contract
- ◆ Vicarious liability (with reference to joint and several liability)

#### Evidence Requirements

Candidates will be required to provide written and/or oral evidence showing that they can apply common law and statutory rules relating to the contract of employment to at least one case study situation.

It is envisaged that the case study will apply to one or more of the areas on the rules relating to the contract of employment. The case study should include a contract of employment and circumstances in which vicarious liability may or may not be an issue. Candidates are required to identify the pertinent issues and apply common law and statutory rules to the given situation in order to identify whether or not the employer may be jointly or severally liable for the actions, or inactions, of the employee. In their responses, candidates should draw on the knowledge and/or skills for Outcome 1, and must justify their reasoning with relevant references to law and/or practice.

## Higher National Unit specification: statement of standards (cont)

**Unit title:** Individual Employment Relations: Law

Evidence of knowledge for this Outcome which cannot be inferred from the case study should be sampled using restricted response questions.

The assessment should be carried out under supervised conditions, with candidates permitted to bring one A4 sheet of their own notes into the assessment.

### Outcome 2

Apply common law and statutory rules in relation to equality.

#### Knowledge and/or Skills

- ◆ Relevant statutory bodies for current legislation
- ◆ Discrimination on the grounds of one or more of the following:
  - Gender
  - Race
  - Disability
  - Sexual orientation
  - Religion or belief
  - Age
  - Transgender
- ◆ Forms of discrimination, including:
  - Direct Discrimination
  - Indirect Discrimination
  - Associative Discrimination
  - Discrimination based on perception
  - Harassment
  - Harassment by a third party
  - Victimisation
- ◆ Awareness of Human Rights legislation

#### Evidence Requirements

Candidates will be required to provide written and/or oral evidence to show that they can correctly explain and apply their knowledge of Equality Law to a given employment situation.

The candidate should be presented with a case study scenario covering at least one of the protected characteristics. The candidate will be required to define that protected characteristic (or those protected characteristics) to determine whether the circumstances constitute discrimination and, if so, what form the discrimination takes.

Candidates should correctly identify and explain the relevant points of law in the given circumstances and provide a justification for their answer, quoting appropriate legislation where relevant.

## Higher National Unit specification: statement of standards

**Unit title:** Individual Employment Relations: Law

Evidence of knowledge for this Outcome which cannot be inferred from the case study should be sampled using restricted response questions.

The assessment should be carried out under supervised conditions, with candidates permitted to bring one A4 sheet of their own notes into the assessment.

### Outcome 3

Apply common law and statutory rules in relation to employment protection.

#### Knowledge and/or Skills

- ◆ Rights in relation to pay:
  - Contractual rights
  - Guaranteed holiday pay
  - Sick pay (including statutory)
  - Methods of pay
  - Deductions
  - Maternity pay
  - Paternity pay
  - National minimum wage
- ◆ Rights in relation to time off and leave for employees:
  - Trade Union rights and duties
  - Public office
  - Health and safety duties
  - Employee representatives
  - Maternity leave
  - Paternity leave
  - Adoption leave
  - Time off for dependents
  - Working time regulations
  - Flexible working
  - Compassionate leave
- ◆ Rights and legislation in relation to the upkeep and storage of personal information

#### Evidence Requirements

Candidates will be required to provide written and/or oral evidence to show that they can apply common law and statutory rules relating to employment protection to at least one case study situation.

The case study should apply to any one or more of the areas of employment protection, and the candidate should be required to give appropriate advice to an employee in circumstances in which an employer's understanding of the relevant rights differs from that of the employee.

## Higher National Unit specification: statement of standards (cont)

### Unit title: Individual Employment Relations: Law

Candidates should correctly identify and explain the relevant points of law in the given circumstances and provide a justification for their answer, quoting appropriate legislation where relevant.

Evidence of knowledge for this Outcome which cannot be inferred from the case study should be sampled using restricted response questions.

The assessment should be carried out under supervised conditions, with candidates permitted to bring one A4 sheet of their own notes into the assessment.

### Outcome 4

Apply common law and statutory rules in relation to dismissal.

#### Knowledge and/or Skills

- ◆ Wrongful dismissal
- ◆ Unfair dismissal
- ◆ Constructive dismissal
- ◆ Summary dismissal
- ◆ Role of ACAS and employment tribunals
- ◆ 'Fair' reasons for dismissal
- ◆ Remedies for employee
- ◆ Notice periods for employers and employees
- ◆ 'Garden leave' and other restraint of trade clauses

#### Evidence Requirements

Candidates will be required to provide written and/or oral evidence to demonstrate their knowledge and/or skills by showing that they can apply common law and statutory rules in relation to dismissal in at least one case study situation, and provide a justification for their reasoning.

The case study should cover a situation relating to dismissal in which there is a dispute between the employer and the employee as to whether the dismissal is fair or not. For example, the case study could describe the summary dismissal of an employee which the employee claims to be unfair, or it could describe the constructive dismissal of an employee which the employer claims is fair.

Candidates will be required to identify the type of dismissal, state whether it is fair or unfair, and provide a justification for their reasoning.

Evidence of knowledge for this Outcome which cannot be inferred from the case study should be sampled using restricted response questions.

The assessment should be carried out under supervised conditions, with candidates permitted to bring one A4 sheet of notes into the assessment.

## **Higher National Unit specification: support notes**

**Unit title:** Individual Employment Relations: Law

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 is a mandatory Unit within the HNC/D Human Resource Management but could be delivered within other appropriate awards and as a standalone Unit, for example it is an optional Unit within the HNC/D Legal Services.

Employment Law underpins and permeates all aspects of the employer-employee relationship. Therefore, it is essential that candidates receive a comprehensive introduction to the major principles.

At the end of the Unit candidates will be able to identify work situations where specific legal principles apply, explain how they apply and suggest approaches to be taken to ensure legal compliance.

For this essential underpinning knowledge to remain current and valid it is imperative for institutions to review and update where appropriate the content of this Unit on a regular basis.

### **Guidance on the delivery of this Unit**

Throughout, teaching should be focused on helping candidates to understand and apply the principles and main provisions of the law rather than to memorise details of case law.

Outcome 1 introduces the candidate to the employment contract, what it is, when it comes into existence, who can enter a contract, different types of contract and the various terms, duties and responsibilities that this entails for the parties.

Outcome 2 introduces candidates to the various laws that protect individuals from discrimination in the workplace. It is imperative to ensure that current law and additional regulations and amendments are being taught. The Equality Act 2010 is an example of the importance of the need to ensure teaching of current law, as it allows for one claim to be brought based on more than one type of discrimination (eg a claim for race and sex discrimination can be brought as one). Previously, separate claims under legislation were necessary if discrimination was being claimed in multiple areas. Candidates should be made aware that in the employment context, employees can be discriminated against for philosophical beliefs too, even if they are not religious.

In this Unit, candidates should also learn about statutory bodies such as the Equality and Human Rights Commission (EHRC).

## Higher National Unit specification: support notes (cont)

### Unit title: Individual Employment Relations: Law

Outcome 3 introduces candidates to some of the main statutory employment rights. This is an area where there can be considerable and frequent change to the law. The Additional Paternity Leave Regulations 2010 is an example of where two components of law on 'leave' have been amalgamated, with maternity *and* paternity leave being relevant here. The Working Time Regulations 1998 is another area of law particular to this Outcome, and highlights the relevance of European Law to employment law legislation and how the doctrine of supremacy is relevant even here.

Whilst these areas are important in terms of an employee's rights to 'leave', this Outcome also focuses on 'pay' rights, with the National Minimum Wage Act 1998 being an area of importance, along with rights in relation to pay with maternity and paternity provision, amongst other areas. While delivering this Outcome, centres may wish to take a topical approach, since areas like maternity leave and maternity pay could be more meaningful if covered together, rather than being taught separately under the 'rights to pay' and 'rights to leave' headings.

A relevant formative assessment for this Outcome would be to ask the candidate to complete a Flexible Working application form based on a series of paragraphs detailing the employee's relevant information.

In this Outcome, candidates should also be provided with information on data protection issues which covers protection of employment rights. This would include the Data protection Act 1998 and relevant current legislation.

Finally, Outcome 4 relates to the common law and statutory rules in relation to dismissal under a contract of employment. Candidates should be introduced to the common law concept of wrongful dismissal, the statutory provisions in relation to unfair dismissal and the differences between these claims, in terms of rights, enforcement and remedies. Candidates should be made aware of the differences between wrongful and unfair dismissal and the criteria applying to each. Candidates should be able to explain reasons for dismissal that are considered potentially 'fair', the test of 'reasonableness', and those reasons that are 'automatically unfair'. Candidates should know about TUPE (Transfer of Undertakings, Protection of Employment) Regulations, and the various remedies available.

Whilst there are four separate Outcomes in this Unit, certain aspects of law can provide opportunities for teaching and discussion within more than one Outcome. For example, holiday entitlements and the Working Time Regulations 1998 could arise in Outcome 1 when discussing the express terms of a contract as well as in Outcome 3 in relation to rights to time off. It is at centres' discretion to teach these laws within one or in more than one Outcome.

It may be helpful for centres to consider delivery of this Unit over two terms, to maximise candidates' opportunities for self-study in order to develop deeper understanding of the content of the Unit.



## Higher National Unit specification: support notes (cont)

**Unit title:** Individual Employment Relations: Law

### Guidance on the assessment of this Unit

This Unit will require candidates to provide written and/or oral evidence to show that they can identify the salient points of law and apply the law to particular situations, providing justification for their answers rather than simply rote learning. For this reason, it is recommended that case study scenarios be the main instrument of assessment along with restricted response questions to confirm understanding of any knowledge that cannot be inferred from the case studies.

It is recommended that the total time for assessment of this Unit is 4–6 hours, but this is at the centres' discretion.

An exemplar instrument of assessment and marking guidelines has been produced to indicate the National standard of achievement required at SCQF level 7.

### Assessment Guidelines

#### Outcome 1

The case study element for this Outcome should provide the candidate with the opportunity to both correctly explain and to apply their knowledge of contractual matters in relation to one or more working situations in which there exists a contract of employment. The candidate must decide on the pertinent issues and state whether they believe the individual to be working as an employee or otherwise, providing reasons for their answers.

#### Outcome 2

The case study for Outcome 2 could, for example, involve a complaint of discrimination involving at least one of the protected characteristics, with the candidate being presented with a scenario from which they should be able to correctly explain how the situation would be dealt with legally. Alternatively, the centre may wish to focus on one specific area of discriminatory practice. For example, a case study relating to possible disability discrimination in a workplace could be used, providing candidates with the opportunity to define what disability is, and to determine, giving reasons, whether the circumstances of the individual(s) constitute disability and whether any 'reasonable adjustments' should be made.

The centre may instead opt to focus in the case study on the forms of discrimination that can occur. For example, any one or more of the protected characteristics could be the subject of the case study, with the candidate being expected to define and explain whether there has been any discrimination and if so, whether that discrimination is direct, indirect or otherwise.

## Higher National Unit specification: support notes (cont)

**Unit title:** Individual Employment Relations: Law

### Outcome 3

The case study for Outcome 3 could, for example, involve a woman who seeks advice on current maternity rights. This would allow both maternity rights and pay to be subject to assessment and provide an opportunity for the candidate to use up-to-date figures when providing advice. Alternatively, the case study could focus on any individual who would qualify for paternity rights and pay. Other case studies could involve a woman and, for example, a civil partner or any individual expected to be central to the upbringing of the child.

### Outcome 4

In order to sample knowledge that cannot be inferred from the case study assessment, restricted response questions could focus on particular elements mentioned in the Knowledge and/or Skills section for the Outcome. For example, the candidate might be asked to explain the differences between wrongful and unfair dismissal, or the meaning of and circumstances particular to constructive dismissal.

## Online and Distance Learning

This Unit would be ideally suited to delivery by online and distance learning, although additional resources would be required for candidate support, assessment and quality assurance. For further information and advice please refer to the SQA guide, *Assessment and Quality Assurance of Open and Distance Learning*.

## Opportunities for developing Core Skills

The Unit should provide candidates with an opportunity to develop the following Core Skills/Core Skill components at SCQF level 6, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Communication*
- ◆ *Working with Others*

All elements of the core skill of Problem Solving — critical thinking, planning, organising, reviewing and evaluating — will be naturally developed as candidates analyse case studies, identify salient points of law and apply these as appropriate to a range of complex employment situations. Consideration is given to the full range of relevant legal and statutory requirements as candidates evaluate information relevant to areas of liability, disagreement or dispute. All factors in the situations examined have to be taken into account before decisions are reached. Solutions and information given on rights and available remedies are justified with relevant references to law and/or practice.

## Higher National Unit specification: support notes (cont)

**Unit title:** Individual Employment Relations: Law

Candidates need to research, analyse and critically evaluate complex legal information before presenting written and oral responses that are technically accurate and of a professional standard. The specific written and oral communication skills needed to build and maintain working relationships clients and colleagues should be emphasised in formative work. Awareness of the need to establish the nature and scope of goals, roles and responsibilities while working with others will be essential; practical methods to overcome any potential barriers and assure the most positive outcomes could be examined and discussed. In depth understanding of the interpersonal and contractual aspects of employer/employee interactions will be further enhanced through recommended self-study. Group discussion and evaluation of case studies during formative work will also provide opportunities to develop talking and listening skills in a 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](http://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: Individual Employment Relations: Law

A knowledge of employment law, correctly applied, can help to ensure that expensive legal actions and penalties are avoided; that employees are treated correctly and fairly (potentially improving morale and performance); and that the employer's relationship with employees is based upon an awareness of and respect for legal rights.

This Unit will provide you with knowledge and understanding of the main principles of employment law. It will provide you with a broad and fundamental knowledge of relevant areas of law that can be applied in the workplace. This knowledge will be valuable a range of contexts in which you may be working or intending to work. For example, it would be relevant to those working in HR, in-house or specialist legal teams, or voluntary organisations such as Citizens Advice.

The Unit consists of four Outcomes. On completion of the Unit you should be able to:

- 1 Apply common law and statutory rules relating to the contract of employment
- 2 Apply common law and statutory rules in relation to equality
- 3 Apply common law and statutory rules in relation to employment protection
- 4 Apply common law and statutory rules in relation to dismissal

In Outcome 1 you will learn the principles of contracts of employment including the formation of a contract, the content of contracts, and the different types of contracts available. You will also learn about the termination of contracts and about vicarious liability.

In Outcome 2 you will study the operation of law relating to equality. You will learn about protected characteristics such as gender, race and disability, and about different forms of discrimination, such as associative discrimination and discrimination by perception.

In Outcome 3 you will study the various protected rights of employees in the workplace, principally in relation to pay and to time off. Developments in the area of protected rights illustrate the evolving nature of employment law.

In Outcome 4 you will study the law as it relates to the dismissal of employees and reasons for this occurring, and what remedies are available to the dismissed employee. As with other Outcomes in this Unit, the use of common law here will allow you to appreciate the relevant legal principles and provide you with the opportunity to view actual case decisions being made and the reasoning behind these judgements.

Individual Employment Relations: Law is a mandatory Unit in the HNC and HND Human Resource Management and may be delivered within other appropriate awards and as a standalone Unit. For example, this Unit is an optional Unit within the HNC/D Legal Services.