

LPC Buddy Employment Law – Changelog – 02.06.2022

Rates updated for 2022 tax year for:	
<ul style="list-style-type: none"> ❖ National Minimum Wage ❖ Statutory Sick Pay ❖ Compensation for a Failure to Provide Written Statement of Terms ❖ Compensation Award for Unfair Dismissal ❖ Cap on a weeks' pay used for Statutory Redundancy Pay 	Various
<u>Definition of an Employee</u>	
<ul style="list-style-type: none"> ❖ Added note on Uber BV v Aslam and Others [2021] UKSC 5 (updated authority from Supreme Court appeal but little substantive change in the law). 	2
<ul style="list-style-type: none"> ❖ R (on the application of the IWGB) v CAC and Rooffoods Ltd t/a Deliveroo [2021] EWCA Civ 952 (updated authority but little substantive change in the law). 	3
<ul style="list-style-type: none"> ❖ Nursing and Midwifery Council v Somerville UKEAT/0258/20 re zero hours contracts. Authority for the absence of being contracted to work a minimum number of hours not being fatal to establishing that the individual is a “worker”. 	4
<u>Implied terms in employment contracts</u>	
<ul style="list-style-type: none"> ❖ Added note on Royal Mencap Society (Respondent) v Tomlinson-Blake (Appellant) [2021] UKSC 8. If a worker is permitted to sleep during a shift and is only required to respond to emergencies, the hours spent sleeping are not included in the National Minimum Wage calculation. 	7
<u>Wrongful Dismissal:</u>	
<ul style="list-style-type: none"> ❖ Added citation for test for Constructive Dismissal - Nair v Laqardère Sports And Entertainment UK Ltd [2020] EWHC 2608 (QB). No substantive change in the law, just citation for authority added. 	27
<ul style="list-style-type: none"> ❖ Added reference to Flatman v Essex CC (UK/EAT/0097/20) confirming that an employer cannot “cure” a breach with subsequent conduct, once this has been committed. 	29
<u>Unfair Dismissal</u>	
<ul style="list-style-type: none"> ❖ Revisions to section of the guide on Conduct Dismissals and Criminal Offences – we flag this as a point for students to review as some nuance has been added to our previous notes here. 	39
<ul style="list-style-type: none"> ❖ Added reference to - Sandwell & West Birmingham Hospitals NHS Trust v Westwood (UKEAT/0032/09) re gross misconduct and warnings pre-dismissal. This case fleshes out the fact that “gross misconduct”, in the context of justifying a dismissal without notice, is a mixed question of law and fact: as a matter of law it connotes deliberate wrongdoing or gross negligence. Relatively minor update. 	44
<ul style="list-style-type: none"> ❖ Added reference to Gwynedd Council v Barratt [2021] EWCA Civ 1322 re redundancy dismissals. A lack of a right to appeal against a redundancy decision will not necessarily by itself lead to the dismissal being unfair, but it is a relevant factor which the tribunal will consider. Relatively minor update. 	45
<u>Unfair Dismissal – Remedies</u>	
<ul style="list-style-type: none"> ❖ Amendment to note on Loss of Statutory Rights confirming that employees may, exceptionally, also be awarded up to half a week’s net pay for the statutory minimum period of notice to which the employee had been entitled at the end of employment. This is a substantive update which we recommend students review. 	52
<ul style="list-style-type: none"> ❖ Added reference to Hakim v The Scottish Trade Unions Congress (UKEATS/0047/19) re failure to mitigate; confirms that the tribunal must be able to justify the level of percentage reduction applied. Relatively minor update. 	53
<ul style="list-style-type: none"> ❖ Changes made to Order of Adjustments to the Compensatory Award to reflect changes made to the CLP textbook. 	54

❖ Note that the order of adjustments has changed in light of the most recent update having (arbitrarily!) changing the order of its list. This is a substantive amendment which students should note.	
Remedies for Redundancy:	
❖ Added note on the <i>Defence to a Protective Award for Failure to Consult</i> .	65
❖ We flag this to students as some detail has been added here to our previous notes.	
Direct Discrimination, Indirect Discrimination, and Disability Discrimination	
❖ Added reference to Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23 re discretion to extend time for bringing a discrimination claim.	67; 80; 98
❖ Revised notes on the protected characteristic of Gender Reassignment, adding reference to Taylor v Jaguar Land Rover Ltd (ET/1304471/2018) .	67
❖ More detail has been added here which we recommend students review.	
❖ The language used in our guide reflects the language of the statute, which is now considered by many to be outdated.	
❖ Added reference to Foraster v CGD Europe and others (UKEAT/0105/20) re threshold for a belief to not be worthy of respect in a democratic society. Beliefs that are “offensive, shocking or even disturbing to others” will not necessarily be sufficient.	68
Direct Discrimination:	
❖ Added summary of Disability protected characteristic.	69
❖ Added reference to Allay Ltd v Gehlen (UKEAT/0031/20) re the reasonable steps defence and requirement to keep training of employees up to date.	73; 87
❖ Added reference to Lee v Ashers Baking Co Ltd and Others [2018] UKSC 49 re whether less favourable treatment was because of a Protected Characteristic.	71
❖ Added reference to: Royal Mail Group Ltd v Efobi [2021] UKSC 33 re shifting burden of proof. Additional citation only.	71
Remedies for Discrimination:	
❖ Added reference to Steer v Stormsure Ltd [2021] EWCA Civ 887 re no right to interim relief for discrimination.	75
❖ Added reference to Secretary of State for Justice v Plaistow (UKEAT/0016/20 & UKEAT/0085/20) re potential for the tribunal to award career long losses.	75
Disability Discrimination:	
❖ Added reference to encouragement for tribunals to adopt a purposive interpretation of the meaning of “disability” seeking to give effect to the stated or presumed intention of Parliament per Goodwin v Patent Office [1999] ICR 302 .	99
❖ Added note referencing (Secombe v Reed in Partnership Ltd (UKEAT/0213/20) emphasising that the long-term requirement relates to the effect of the impairment, rather than the duration of the impairment itself.	99
❖ This is a substantive update which we recommend students review.	
❖ Added reference to Mallon v AECOM Ltd [2021] IRLR 438 suggesting that an employer cannot defend a claim by suggesting that reasonable adjustments could be made by third parties.	102
❖ This is a substantive update which we recommend students review.	
❖ Added reference to Robinson v Department for Work and Pensions [2020] EWCA Civ 859 re the reasons for unfavourable treatment is not assessed on a “but for” causation basis.	104
❖ This is a substantive update which we recommend students review.	
❖ Expanded notes on whether the employer had “knowledge” of the Claimant’s disability.	104- 105
❖ This is a substantive update which we recommend students review.	
❖ Added reference to A Ltd v Z (UKEAT/0273/18) reflecting updated textbook paragraphs on when an employer will be deemed to not have knowledge of a disability.	105

<u>TUPE</u>	
❖ Added reference to ISS Facility Services NV v Govaerts & Atalian NV (Case C-344/18 and McTear Contracts Ltd v Bennett & ors (UKEATS/0023/19)) . A contract of a transferring worker can be transferred to multiple transferees in proportion to the work acquired by each of the transferees.	110
❖ Guide added on <u>Taxation of Awards for Termination of Employment</u> . ❖ This is a fairly niche area but students may find it useful.	126
❖ Guide added on the <u>Employment Law fallout from the Coronavirus Job Retention Scheme (CJRS – “Furlough”)</u> . ❖ It is not clear to what extent institutions are assessing temporary changes in the law brought about by the Covid-19 pandemic, but is included for completeness.	128
❖ Added nested PDF bookmarks to assist navigation.	