

LPC BUDDY

Employment Law
2021 / 22



THE DEFINITIVE, DISTINCTION QUALITY STUDY GUIDE
FOR THE LPC

CUT DOWN YOUR READING.
EASE YOUR EXAM STRESS.
GET THE GRADE YOU NEED.



Preview file only.

Features available in the full version of LPC Buddy, such as copying, pasting, and printing, have been disabled



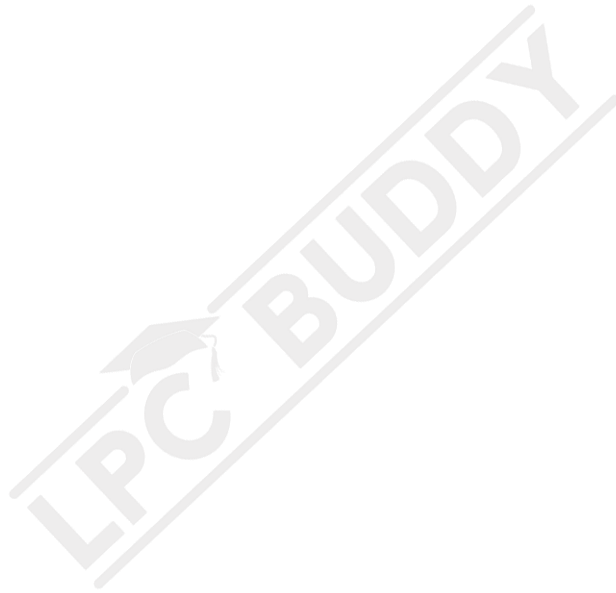
Employment Law

1. Definition of an Employee, Contracts of Employment	
Definition of an Employee	p.1-3
Implied Terms in Employment Contracts	p.4-7
Restraint of Trade Clauses	p.8-12
Written Statement of Terms	p.13-18
2. Wrongful Dismissal	
Wrongful Dismissal	p.19-27
Remedies for Wrongful Dismissal	p.28-31
Wrongful Dismissal Flowchart	p.32
3. Unfair Dismissal	
Unfair Dismissal	p.33-42
Unfair Dismissal Remedies	p.43-48
Unfair Dismissal Flow-Chart	p.49-51
4. Redundancy	
Redundancy	p.52-56
Redundancy Flow-Chart	p.57
Remedies for Redundancy	p.58-59
5. Direct Discrimination	
Direct Discrimination	p.60-66
Remedies for Discrimination	p.67-69
Direct Discrimination Flow-Chart	p.60-66
6. Indirect Discrimination, Harassment and Victimisation	
Indirect Discrimination	p.71-78
Indirect Discrimination Flow-Chart	p.79
Harassment	p.80-83
Harassment and Victimisation Flow-Chart	p.84
Victimisation	p.85-87
7. Disability Discrimination	
Disability Discrimination	p.88-94
Disability Discrimination Flow Chart	p.95-96
8. TUPE	
TUPE	p.97-107
TUPE Flow-Charts	p.108-109
9. Settlement	
Recording Settlements	p.110-112
Overlapping Claims	p.113

Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook paragraphs and other notes in this guide. ❖ Orange Text – Forms to file with Companies House
----------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

www.lpcbuddy.com

support@lpcbuddy.com





1. Definition of an Employee, Contracts of Employment

Definition of an Employee	p.1-3
Implied Terms in Employment Contracts	p.4-7
Restraint of Trade Clauses	p.8-12
Written Statement of Terms	p.13-18

Definition of an Employee

❖ Employment Law, 1.3

<p>Employee</p> <p><u>Employment Law, 1.3.2</u></p>	<p>❖ s230(1) ERA 1996: An “Employee” is “An individual who... works under... a contract of employment”.</p> <p>➤ s230(2): A “Contract of Employment” is “a contract of service... whether express or implied and (if it is express) whether oral or in writing”.</p>	
<p>Identifying a Contract of Service</p> <p><u>Employment Law, 1.3.2</u></p>	<p>The Multiple Factor Test</p>	<p>❖ A contract of service is identified using the “Multiple Factor” Test in <u>Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433:</u></p> <p>❖ Three conditions are required:</p> <ol style="list-style-type: none"> 1. <u>The servant agrees to provide work in consideration for a wage.</u> 2. <u>The servant agrees, expressly or impliedly, that he will be subject to the master’s control in a sufficient degree.</u> <ul style="list-style-type: none"> ▪ (Does the employer <i>have “the power of deciding the thing to be done, the way... the means... the time... and the place?”</i> – McKenna J, <u>Ready Mixed Concrete</u>) 3. <u>The other provisions of the contract are consistent with it being a contract of service.</u> <ul style="list-style-type: none"> ▪ E.g. ability to delegate may be indicative that there is NOT a contract of service. <p>❖ The Court will look at the true nature of the agreement, not just what is written down:</p> <ul style="list-style-type: none"> ➤ <u>Autoclenz Ltd v Belcher [2011] UKSC 41</u> ➤ The Supreme Court held that car valets were employees. ➤ Written terms in the agreement providing (a) that the valets were required to notify whether or not they were turning up for work, and (b) that they could send a substitute in their place, were not reflective of the true relationship between the parties.
<p>Workers</p> <p><u>Employment Law, 1.3.3</u></p>	<p>❖ A “worker” is (per s230(3)):</p> <ul style="list-style-type: none"> ➤ An employee (see above) <ul style="list-style-type: none"> ○ i.e. An individual who has entered into a contract of employment. But ALSO: ➤ <u>Someone who works under any other contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract (who is not a client or customer of the individual).</u> <p>❖ Therefore:</p> <ul style="list-style-type: none"> ➤ All employees will be “workers” (s230(3)). ➤ “Workers” can also be those who are not “employees” but are (s230(3)): <ul style="list-style-type: none"> ▪ Individuals who have entered into a contract with another party for work or services. ▪ Which they undertake to perform personally. 	

	<ul style="list-style-type: none"> ○ A right of “unfettered substitution” in the Contract is not consistent with “personal performance”, however a conditional right may be (this depends on the nature of the condition) - see Pimlico Plumbers Ltd v Smith [2017] EWCA Civ 51 (upheld by the Supreme Court in [2018] UKSC 29 (see below)). ▪ Where the other party is not a client/customer. 						
<p>Workers vs Self-Employed</p>	<ul style="list-style-type: none"> ❖ The distinction between workers and self-employed is significant as certain statutory rights apply to “workers” as well as employees, but not “self-employed” e.g. <ul style="list-style-type: none"> ➢ National Minimum Wage Regulations 1999 ➢ Working Time Regulations 1988 ➢ Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 <p>Key Identifying Factors</p> <table border="1" data-bbox="337 632 1511 1913"> <tr> <td data-bbox="337 632 548 1331"> <p>Personal Performance</p> </td> <td data-bbox="548 632 1511 1331"> <ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court upheld the decision of the EAT and Court of Appeal that a plumber was a “worker”, and not “self-employed”. ❖ To qualify as a “worker” it was necessary for Mr Smith to have undertaken to perform his work personally. ❖ The Court considered that Mr Smith had done so: <ul style="list-style-type: none"> ➢ The terms of Mr Smith’s contract referred to personal performance (these referred to ‘your skills’ etc.). ➢ There was only a very limited right of substitution in the contract. <ul style="list-style-type: none"> ○ Mr Smith had an ability to essentially “swap shifts” with other Pimlico plumbers. ○ This right was significantly curtailed and the substitute had to come from the ranks of those bound to Pimlico in similar terms. ➢ The tribunal was entitled to hold that the dominant feature of Mr Smith’s contract in such circumstances was an obligation of personal performance. </td> </tr> <tr> <td data-bbox="337 1331 548 1797"> <p>Not a Client / Customer</p> </td> <td data-bbox="548 1331 1511 1797"> <ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court also held that factors within Mr Smith’s contract suggested he was not a client/customer of Pimlico. ❖ Most significantly, Pimlico exercised tight control over Mr Smith, including controlling: <ul style="list-style-type: none"> ➢ Mr Smith’s attire ➢ The administrative aspects of any job ➢ “Severe” terms as to when and how much it was obliged to pay him ➢ The suite of covenants restricting his working activities following termination. </td> </tr> <tr> <td data-bbox="337 1797 548 1913"> <p>Cases re Particular Companies</p> </td> <td data-bbox="548 1797 1511 1913"> <ul style="list-style-type: none"> ❖ Uber drivers: Workers and not self-employed contractors - Uber BV v Aslam and Others [2018] EWCA Civ 2748 (upheld in [2021] UKSC 5). </td> </tr> </table>	<p>Personal Performance</p>	<ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court upheld the decision of the EAT and Court of Appeal that a plumber was a “worker”, and not “self-employed”. ❖ To qualify as a “worker” it was necessary for Mr Smith to have undertaken to perform his work personally. ❖ The Court considered that Mr Smith had done so: <ul style="list-style-type: none"> ➢ The terms of Mr Smith’s contract referred to personal performance (these referred to ‘your skills’ etc.). ➢ There was only a very limited right of substitution in the contract. <ul style="list-style-type: none"> ○ Mr Smith had an ability to essentially “swap shifts” with other Pimlico plumbers. ○ This right was significantly curtailed and the substitute had to come from the ranks of those bound to Pimlico in similar terms. ➢ The tribunal was entitled to hold that the dominant feature of Mr Smith’s contract in such circumstances was an obligation of personal performance. 	<p>Not a Client / Customer</p>	<ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court also held that factors within Mr Smith’s contract suggested he was not a client/customer of Pimlico. ❖ Most significantly, Pimlico exercised tight control over Mr Smith, including controlling: <ul style="list-style-type: none"> ➢ Mr Smith’s attire ➢ The administrative aspects of any job ➢ “Severe” terms as to when and how much it was obliged to pay him ➢ The suite of covenants restricting his working activities following termination. 	<p>Cases re Particular Companies</p>	<ul style="list-style-type: none"> ❖ Uber drivers: Workers and not self-employed contractors - Uber BV v Aslam and Others [2018] EWCA Civ 2748 (upheld in [2021] UKSC 5).
<p>Personal Performance</p>	<ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court upheld the decision of the EAT and Court of Appeal that a plumber was a “worker”, and not “self-employed”. ❖ To qualify as a “worker” it was necessary for Mr Smith to have undertaken to perform his work personally. ❖ The Court considered that Mr Smith had done so: <ul style="list-style-type: none"> ➢ The terms of Mr Smith’s contract referred to personal performance (these referred to ‘your skills’ etc.). ➢ There was only a very limited right of substitution in the contract. <ul style="list-style-type: none"> ○ Mr Smith had an ability to essentially “swap shifts” with other Pimlico plumbers. ○ This right was significantly curtailed and the substitute had to come from the ranks of those bound to Pimlico in similar terms. ➢ The tribunal was entitled to hold that the dominant feature of Mr Smith’s contract in such circumstances was an obligation of personal performance. 						
<p>Not a Client / Customer</p>	<ul style="list-style-type: none"> ❖ Pimlico Plumbers Ltd v Smith [2018] UKSC 29: The Supreme Court also held that factors within Mr Smith’s contract suggested he was not a client/customer of Pimlico. ❖ Most significantly, Pimlico exercised tight control over Mr Smith, including controlling: <ul style="list-style-type: none"> ➢ Mr Smith’s attire ➢ The administrative aspects of any job ➢ “Severe” terms as to when and how much it was obliged to pay him ➢ The suite of covenants restricting his working activities following termination. 						
<p>Cases re Particular Companies</p>	<ul style="list-style-type: none"> ❖ Uber drivers: Workers and not self-employed contractors - Uber BV v Aslam and Others [2018] EWCA Civ 2748 (upheld in [2021] UKSC 5). 						

		<ul style="list-style-type: none"> ➤ The Supreme Court emphasised that Uber exercised <u>significant control over drivers</u> and noted the following factors, in particular, as being indicative of them being “workers”: <ul style="list-style-type: none"> ○ Uber dictates the fee for a ride and therefore <u>controls how much drivers are paid.</u> ○ Contract terms are imposed by Uber and <u>drivers get no say in what these are.</u> ○ The driver’s <u>choice about whether to accept requests for rides is constrained by Uber:</u> <ul style="list-style-type: none"> ○ E.g. the driver’s rate of acceptance and cancellation is monitored and, if too many trip requests are declined / cancelled, the driver will be logged off of the app for ten minutes. ○ Uber exercises <u>significant control over the way in which drivers deliver their services.</u> <ul style="list-style-type: none"> ○ E.g. any driver who fails to maintain a required average “Uber rating” will receive a series of warnings and, if their rating does not improve, eventually have their relationship with Uber terminated. ○ Uber <u>restricts communications between passenger and driver to the minimum necessary to perform the particular trip</u> and takes active steps to <u>prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride.</u> ❖ <u>Deliveroo riders: not workers</u> on the basis they can appoint a substitute and therefore there is no personal service – (R (IWGB) v Central Arbitration Committee [2018] EWHC 3342 (Admin)).
<p><u>Zero Hours Contracts</u></p> <p>Employment Law, 1.3.3 – Subheading “the Gig Economy”.</p>	<ul style="list-style-type: none"> ❖ It can be difficult to demonstrate that those operating under zero-hours contracts are employees: <ul style="list-style-type: none"> ➤ To be an employee, there must be a “contract of employment”. ➤ A key factor in determining whether “a contract” exists at all is <u>mutual obligations being owed between the parties</u> - Stephenson v Delphi Diesel Systems Ltd [2003] ICR 471. ➤ The absence of: <ul style="list-style-type: none"> ▪ (a) a stipulation as to minimum hours and ▪ (b) any future commitment (key features of Zero-hours contracts) will generally be indicative of an <u>absence of mutuality of obligations</u> ▪ Nethermere (St Neots) Ltd v Gardiner and Another [1984] ICR 612. ❖ In St Ives Plymouth Ltd v Mrs D Haggerty [2008] WL 2148113 [1] the EAT found that while there was a zero hours contract, <u>there were mutual obligations</u>, such that Ms Haggerty was an employee. 	

Implied Terms in Employment Contracts

- ❖ [Employment Law, 1.6 – 1.7](#)
- ❖ A number of terms are **implied into a Contract of Employment by both (a) the Common law, and (b) Statute**. These implied terms and their effect are explained below.

Obligations on an Employer

<p><u>Duty to Pay Wages and Provide Work</u></p> <p>Employment Law, 1.7.1.1</p>	<ul style="list-style-type: none"> ❖ Generally, an employee has <u>no right to work</u>. ❖ This means that an employer <u>does not breach the contract of employment if the employee is kept idle</u> (Turner v Sawdon [1901] 2 KB 653). ❖ <u>Exceptions</u> <ul style="list-style-type: none"> ➤ Workers <u>whose livelihoods depend on publicity</u> e.g. actors and singers. ➤ <u>Employees who are paid by commission</u> or <u>piece workers</u> (i.e. they are paid per unit produced). ➤ Employees who are: <ul style="list-style-type: none"> ▪ In a <u>“specific and unique post”</u>. ▪ Where the skills necessary for the proper discharge of their duties <u>require frequent exercise</u>. ▪ Where the terms of the contract impose an obligation to work the hours necessary to do the job in a full and professional manner. ▪ William Hill Organisation Ltd v Tucker [1998] IRLR 313. ▪ In William Hill, the employee was the only “Senior Dealer” in William Hill’s fixed odds compiling department – the post was unique to him. ▪ This exception will potentially catch <u>senior employees. It is unlikely to catch junior employees</u>.
<p><u>Deductions from Wages</u></p> <p>Employment Law, 1.8.3.2 / 1.11.1</p>	<ul style="list-style-type: none"> ❖ s13 ERA 1996: An employer may not make a deduction from wages unless: <ul style="list-style-type: none"> ➤ It is <u>authorised by statute</u> e.g. PAYE, NI contributions. ➤ It is <u>authorised by the contract</u>. ➤ The worker has <u>previously consented in WRITING</u> to the making of the deduction. ➤ OR ➤ An employer is <u>recovering overpayment of wages</u> or expenses paid by mistake to the worker (s14(1)).
<p><u>Duty to Indemnify an Employee</u></p> <p>Employment Law, 1.7.1.2</p>	<ul style="list-style-type: none"> ❖ The employer must <u>indemnify an employee for expenses and liabilities</u> incurred in the course of employment. ❖ In re Famatina Development Corporation Ltd [1914] 2 Ch 271
<p><u>Duty to take reasonable care of the employee’s safety and working conditions</u></p> <p>Employment Law, 1.7.1.3</p>	<ul style="list-style-type: none"> ❖ Employers are under an implied duty to <u>provide adequate plant and premises, competent fellow workers and a safe system of work</u>. ❖ Wilsons & Clyde Coal Co Ltd v English [1938] AC 57

<p><u>Duty of mutual trust and confidence</u></p> <p>Employment Law, 1.7.1.4</p>	<ul style="list-style-type: none"> ❖ Employers must not: <ul style="list-style-type: none"> ➤ “Without reasonable and proper cause ➤ Conduct themselves in a manner calculated or likely to ➤ <u>Destroy or seriously damage the relationship of mutual confidence and trust between employer and employee”.</u> ➤ Woods v WM Car Services (Peterborough) Ltd [1983] IRLR 413, (CA). ❖ Breach of this implied term will <u>AUTOMATICALLY BE REPUDIATORY</u> i.e. it will give the employee a right to terminate the contract. <ul style="list-style-type: none"> ➤ Morrow v Safeway Stores [2002] IRLR 9. ❖ <u>Examples of Breach:</u> <ul style="list-style-type: none"> ➤ <u>Unjustified imposition of a final written warning</u> <ul style="list-style-type: none"> ▪ Stanley Cole (Wainfleet) Ltd v Sheridan [2003] IRLR 52. ➤ <u>Serious breach of the employer’s duty to make reasonable adjustments</u> <ul style="list-style-type: none"> ▪ Greenhof v Barnsley Metropolitan BC [2006] IRLR 98. ➤ <u>Sex discrimination</u> <ul style="list-style-type: none"> ▪ Shaw v CCL Ltd (UKEAT/0512/06). ➤ <u>Use of foul and abusive language</u> <ul style="list-style-type: none"> ▪ Horkulak v Cantor Fitzgerald International [2003] IRLR 756 ▪ Frequent use of such language does not ‘sanitise its effect’ so as to remove its power to offend. ➤ <u>Raising performance concerns when employee was on a period of sick leave due to depression</u> <ul style="list-style-type: none"> ▪ Private Medicine Intermediaries Ltd v Hodkinson and Others (EAT/0134/15) 								
<p><u>Duty to Take Reasonable Care Giving References</u></p> <p>Employment Law, 1.7.1.5</p>	<ul style="list-style-type: none"> ❖ Employers are under an implied duty to take <u>reasonable care in compiling or giving a reference</u> and in verifying the information on which it is based. ❖ A failure to do so may render an <u>employer liable for economic loss</u> suffered as a result of a negligent misstatement. ❖ Caparo Industries v Dickman [1990] 2 AC 605 								
<p><u>Duty to Notify on Termination Without Notice</u></p> <p>Employment Law, 1.7.1.6</p>	<ul style="list-style-type: none"> ❖ An employer must notify an employee in clear terms that the contract is ended. ❖ Soci�t� G�n�rale v Geys [2013] IRLR 122 								
<p><u>Duty to Give Reasonable Notice</u></p> <p>Employment Law, 1.7.1.7 / 2.3.3</p>	<ul style="list-style-type: none"> ❖ Employers are required to <u>give notice for at least the Statutory minimum periods</u> set out in Employment Law, 2.3.3 (s86(1) ERA 1996): <table border="1" data-bbox="467 1644 1511 1801"> <thead> <tr> <th>Period of Continuous Employment</th> <th>Notice</th> </tr> </thead> <tbody> <tr> <td>1 month – 2 years</td> <td>1 week</td> </tr> <tr> <td>2 years – 12 years</td> <td>1 week for each year</td> </tr> <tr> <td>12 years+</td> <td>12 weeks</td> </tr> </tbody> </table>	Period of Continuous Employment	Notice	1 month – 2 years	1 week	2 years – 12 years	1 week for each year	12 years+	12 weeks
Period of Continuous Employment	Notice								
1 month – 2 years	1 week								
2 years – 12 years	1 week for each year								
12 years+	12 weeks								
<p><u>Working Time Regulations</u></p> <p>Employment Law, 1.12</p>	<ul style="list-style-type: none"> ❖ Where the Working Time Regulations apply, workers are entitled to: <ul style="list-style-type: none"> ➤ <u>Work an average of 48 hours a week in a 17 week period (which may be extended for up to 52 weeks), unless they specifically opt out (Reg 4).</u> 								

	<ul style="list-style-type: none"> ➤ <u>11 hours of rest between working days (Reg 10).</u> ➤ <u>A minimum of one 24 hour period of rest in a seven day period (1 day off per week) (Reg 11)</u> ➤ <u>A 20-minute break where a working day is longer than 6 hours (Reg 12).</u> ➤ <u>5.6 weeks' paid leave per year (Reg 13).</u> <p>❖ Most of these rules are subject to exceptions e.g. for workers in emergency / armed services.</p>																		
<p><u>National Minimum Wage Regulations</u></p> <p><u>Employment Law, 1.8.3.1</u></p>	<p>❖ <u>Employees are entitled to a Minimum Wage paid at the following rates:</u></p> <table border="1" data-bbox="464 688 1511 1203"> <thead> <tr> <th><u>Age</u></th> <th><u>Hourly Wage</u> <u>(5 April 2021 – 6 April 2022)</u></th> <th><u>Minimum Annual Wage</u> <u>(Assuming 40 Hour Week)</u> <small>(Wage x Hours per Week x 52)</small></th> </tr> </thead> <tbody> <tr> <td>23+ (The National Living Wage)</td> <td>£8.91</td> <td>£18,532.80</td> </tr> <tr> <td>21 – 22</td> <td>£8.36</td> <td>£17,388.80</td> </tr> <tr> <td>18 – 20</td> <td>£6.56</td> <td>£13,644.80</td> </tr> <tr> <td>Under 18 + Finished School</td> <td>£4.62</td> <td>£9,609.60</td> </tr> <tr> <td>Apprentice</td> <td>£4.30</td> <td>£8,944.00</td> </tr> </tbody> </table> <p>❖ You can check the applicable rate here: https://www.gov.uk/national-minimum-wage-rates</p>	<u>Age</u>	<u>Hourly Wage</u> <u>(5 April 2021 – 6 April 2022)</u>	<u>Minimum Annual Wage</u> <u>(Assuming 40 Hour Week)</u> <small>(Wage x Hours per Week x 52)</small>	23+ (The National Living Wage)	£8.91	£18,532.80	21 – 22	£8.36	£17,388.80	18 – 20	£6.56	£13,644.80	Under 18 + Finished School	£4.62	£9,609.60	Apprentice	£4.30	£8,944.00
<u>Age</u>	<u>Hourly Wage</u> <u>(5 April 2021 – 6 April 2022)</u>	<u>Minimum Annual Wage</u> <u>(Assuming 40 Hour Week)</u> <small>(Wage x Hours per Week x 52)</small>																	
23+ (The National Living Wage)	£8.91	£18,532.80																	
21 – 22	£8.36	£17,388.80																	
18 – 20	£6.56	£13,644.80																	
Under 18 + Finished School	£4.62	£9,609.60																	
Apprentice	£4.30	£8,944.00																	
<p><u>Statutory Sick Pay (SSP)</u></p> <p><u>Employment Law, 1.8.3.3</u></p>	<p>❖ There is <u>no obligation on an employer to pay an employee their salary</u> whilst they are off work sick, they must pay the employee <u>SSP</u>.</p> <p>❖ SSP must be paid for <u>up to 28 weeks in any three years</u>.</p> <p>❖ As a result of Covid-19, the Government announced that SSP is <u>payable from day 1, not day 4</u>. Previously an employee <u>was only eligible if they had been off work for more than three consecutive days</u>.</p> <p><u>Rate of SSP</u></p> <p>❖ <u>6 April 2021- 5 April 2022: £96.35 per week</u></p> <p>❖ <u>You can check the applicable rate here – ask your tutor which rates apply to the exam.</u></p> <p>❖ Note that there is a <u>possibility that an implied duty to pay an employee's salary whilst they are ill may arise through custom and practice</u> e.g. if an</p>																		

employer usually pays his staff their salary when they are off sick for a set period of time.

Obligations on an Employee

<p><u>Duty to Give Personal Service</u> <i>Employment Law, 1.7.2.1</i></p>	<ul style="list-style-type: none"> ❖ An employee may not delegate performance of his duties. ❖ This is a key factor when determining whether someone is an employee or not.
<p><u>Duty to obey reasonable orders</u> <i>Employment Law, 1.7.2.2</i></p>	<ul style="list-style-type: none"> ❖ The employee is under a contractual duty not wilfully to disobey a lawful order ❖ Laws v London Chronicle Ltd [1959] 2 All ER 285
<p><u>Duty of reasonable care and indemnity</u> <i>Employment Law, 1.7.2.3</i></p>	<ul style="list-style-type: none"> ❖ The employee is under a duty to exercise reasonable care and skill in the performance of his duties. ❖ Employee will <u>breach this duty if he is negligent and will be liable to indemnify his employer.</u> ❖ Lister v Romford Ice and Cold Storage Co Ltd [1957] AC 555.
<p><u>Duty of fidelity or good faith</u> <i>Employment Law, 1.7.2.4; 1.7.2.6-1.7.2.8</i></p>	<ul style="list-style-type: none"> ❖ Employees have a duty to: <ul style="list-style-type: none"> ➢ <u>Keep information confidential</u> and ➢ <u>Not to compete with their employer.</u> <p><u>Examples of Breaches</u></p> <ul style="list-style-type: none"> ❖ Copying customer contact details and sales figures. <ul style="list-style-type: none"> ➢ Crowson Fabrics Ltd v Rider and Others [2007] EWHC 2942 (Ch). ❖ Deliberately misleading an employer about their intention to work for a competitor. <ul style="list-style-type: none"> ➢ Kynixa Ltd v Hynes and Others [2008] EWHC 1495 (Comm). ❖ Working for a competitor where this causes particular harm to an employer. <ul style="list-style-type: none"> ➢ Hivac Ltd v Park Royal Scientific Instruments Ltd [1946] Ch 169). ❖ Making a list of existing customers with the intention of using it after the termination of the employment relationship: <ul style="list-style-type: none"> ➢ Roger Bullivant Ltd v Ellis [1987] ICR 464 ❖ Trying to memorise a list of existing customers with the intention of using it after the termination of the employment relationship: <ul style="list-style-type: none"> ➢ Robb v Green [1895] 2 QB 315 ❖ Revealing trade secrets or information which is by its nature confidential, or has been impressed upon the employee as being confidential. <ul style="list-style-type: none"> ➢ Faccenda Chicken Ltd v Fowler [1986] 1 All ER 617.
<p><u>Duty not to make secret profits</u> <i>Employment Law, 1.7.2.5</i></p>	<ul style="list-style-type: none"> ❖ An employee must not make a secret profit. ❖ If an employee does so, he can be compelled to account to his employer for the profit made. ❖ Boston Deep Sea Fishing and Ice Co v Ansell (1888) 39 Ch D 339

- ❖ Note that the **protection of some of the implied terms lasts beyond the contract of employment e.g. duty not to reveal trade secrets or confidential information.**