

Contents

<i>Table of Statutes</i>	xxiv
<i>Table of Statutory Instruments</i>	xxxii
<i>Table of EU, Council of Europe and International Materials</i>	xxxvi
<i>Table of Cases</i>	xxxviii

1 The Institutions of Employment Law	1
Advisory, Conciliation and Arbitration Service	1
A. Advice	1
B. Conciliation	2
C. Arbitration	4
D. Enquiries	5
E. Codes of Practice	5
Certification Officer (TULR(C)A, s 254)	6
Central Arbitration Committee	6
Employment Appeal Tribunal (Employment Tribunals Act 1996, ss 20–37)	7
Employment tribunals	9
A. Territorial jurisdiction	13
B. Legal aid	15
C. Claims for breach of contract	15
D. Mediation	16
Industrial training boards	16
Equality and Human Rights Commission	17
Health and Safety Executive	18
Low Pay Commission	18
The role of the government	19
Codes of practice	19
Supreme Court	19
The impact of the European Union	20
A. Treaty of Rome	20
B. Treaty of Lisbon	20
C. Expansion of the EU	20
D. EU institutions	21
European Union law	22
A. Articles of the Treaty	22

B. Directives	23
C. Recommendations	30
D. Decisions of the Court of Justice of the European Union	31
Human Rights Act 1998	32
2 The Nature of a Contract of Employment	39
Parties to a contract of employment	39
A. Employers	40
B. Directors	42
C. Business consultants	44
D. Partners	44
E. Workers	45
F. Employees	46
Distinction between employees and self-employed persons	47
A. Contract of service	47
B. Why the distinction is important	54
Other categories of parties to a contract of employment	56
A. Office holders	56
B. Ministers of religion	58
C. Crown employees	59
D. Armed forces	60
E. Health service employees	60
F. Police	60
G. Those employees with special legal status	61
H. Temporary employees	62
I. Part-time workers	62
J. Probationary employees	65
K. Trainees	66
L. Civil partnerships	67
M. Apprentices	67
N. Those under the age of 18	68
O. Domestic servants	70
P. Foreign employees	70
Q. Posted workers	72
R. Working abroad	72
S. Offshore employment	73
T. Retainers	73
U. Fixed-term contracts	74
V. Secondment of employees	77

W. Agency workers	80
X. Casual workers and global contracts	85
Y. National security (ERA, s 193)	86
3 The Formation of a Contract of Employment	88
The contract of employment	88
Terms and conditions	93
A. Interpretation of terms	94
B. Express terms	95
C. Implied terms	97
D. Statutory terms	102
E. Collective agreements	102
F. Custom as a source of employment terms	110
G. Works/staff rules	112
Other aspects of the contract of employment	115
A. Disciplinary and grievance procedures	115
B. Job description	116
C. Variation of contractual terms	116
D. Written particulars of the contract of employment	120
E. Itemised pay statement (Employment Rights Act 1996, ss 8–10)	123
F. Holidays	124
G. Occupational pension schemes	124
4 Equality in Employment	125
Introduction	125
A. Repeals and revocations	126
Key concepts	126
A. Protected characteristics (ss 4–12, 18)	126
B. Prohibited conduct (ss 13–27)	127
Prohibited conduct	127
A. Direct discrimination (s 13)	127
B. Motive for direct discrimination	129
C. Indirect discrimination (s 19)	130
D. Comparators (s 23)	131
E. Discriminator's characteristics (s 24)	132
F. Harassment (s 26)	132
G. Victimisation (s 27)	133

Discrimination in employment	135
A. Discrimination and victimisation in employment: s 39(1)–(4)	135
B. Occupational requirements (Sch 9)	136
C. Employer and third party harassment (s 40)	136
Protected characteristics/prohibited conduct	138
A. Age	138
B. Disability	141
C. Gender reassignment	149
D. Marriage and civil partnership	150
E. Pregnancy and maternity	151
F. Race	153
G. Religion or belief	156
H. Sex	159
I. Sexual orientation	163
Common provisions	164
A. Application of the Act	164
B. Lawful discrimination (Sch 22)	165
C. Illegal contracts	165
D. Relationships that have ended (s 108)	165
E. Liability of employers (s 109)	166
F. Instructing, causing or inducing discrimination (s 111)	167
G. Aiding contraventions (s 112)	167
H. Positive action; recruitment and promotion (s 159)	167
I. Discriminatory advertisements	168
J. Job advertisements	168
K. Obtaining information (s 138)	169
L. Conduct giving rise to separate proceedings (s 140)	169
M. Unenforceable terms (s 142)	169
N. Restriction on contracting out (s 144)	169
O. Void and unenforceable terms (s 145)	169
P. National security (s 192)	170
Q. Death of a claimant	170
R. Other provisions	170
Submitting a complaint	170
A. Jurisdiction (s 120)	170
B. Time limits (s 123)	171
C. Burden of proof (s 136)	172
D. Obtaining information (s 138)	173
E. Transfer of proceedings (s 140)	173

F. Remedies (s 124)	173
G. Interest on awards (s 139)	174
Enforcement by the Commission: Equality Act 2006	175
Other protected groups	176
A. Rehabilitated persons	176
B. Access to criminal records	178
C. Unfair recruitment (TULR(C)A, s 137)	179
D. Employment of women	179
E. Employment of young persons	180
F. Adult workers	180
5 Equal Pay	181
Equality of terms (Equality Act ss 64–79)	182
Sex equality clause (s 66)	184
Equal work (s 65)	185
A. Like work (s 65)	186
B. Work rated as equivalent (s 65(4))	187
C. Work of equal value (s 65(6))	188
Defence of material factor (s 69)	190
Sex discrimination in relation to contractual pay (s 71)	192
Maternity equality clause (s 73)	192
Pay structures etc	193
Discussions about pay (s 77)	193
Gender pay gap information (s 78)	193
Jurisdiction (s 127)	193
Burden of proof (s 136)	193
Time limits (s 129)	194
Remedies (s 132)	194
Death of a claimant	195
Backdating awards	195
6 Family Friendly Rights	196
Maternity rights	196
A. Time off work for antenatal care (ERA, ss 55–57)	196
B. Risk assessment and suspension on maternity grounds	197

C. Maternity leave (ERA, ss 71–74, Maternity and Parental Leave etc Regulations 1999 as amended)	200
D. Remedies	206
E. Statutory Maternity Pay (SMP)	208
F. Maternity Allowance (Social Security Contributions and Benefits Act 1992)	209
Adoption leave (Paternity and Adoption Leave Regulations 2002)	209
A. Reasonable contact	210
B. Work during the adoption leave period	210
C. Returning to work after adoption leave	211
D. Remedies	211
E. Statutory adoption pay (SAP)	211
Parental leave (Maternity and Parental Leave Regulations 1999–2001, regs 13–21)	212
Paternity rights and adoption leave	214
A. Paternity leave (Paternity and Adoption Leave Regulations 2002, as amended)	214
B. Statutory paternity pay (SPP)	215
C. Additional paternity leave	216
To care for dependants (ERA, s 57A)	218
Flexible working arrangements (ERA, ss 80F–80I)	219
7 Employment Protection	223
Guarantee payments (ERA, ss 28–35)	223
Suspension on medical grounds (ERA, ss 64–65)	224
Time off work	225
A. For public duties (ERA, s 50)	225
B. For occupational pension scheme trustees (ERA, s 58)	227
C. For employee representatives (ERA, s 61)	228
D. For young person for study or training (ERA, s 63A)	228
E. Time off for study or training (ERA, s 63D)	229
F. Other time off work	231
Statutory sick pay (SSP)	231
A. How the scheme works	231
B. Qualifying conditions	232
C. Exclusions from entitlement	233
D. Enforcement	233
E. Self-certification of illness	234

Working Time Regulations 1998 (as amended)	234
A. The regulations	234
B. The main provisions	235
C. Exclusions	241
D. Enforcement	243
E. Sunday trading	247
F. Christmas shopping	248
G. Jury service (Juries Act 1974)	248
H. Armed Forces Reserves	249
I. Access to medical reports	250
J. Rights in insolvency (Insolvency Act 1986, s 386, Sch 6)	250
K. Payments from the National Insurance Fund (ERA, ss 182–189)	251
L. Post-employment detriment	253
8 Protection of Wages	254
General restrictions on unauthorised deductions and payments (ERA, ss 13, 15)	255
A. Statutory deduction	255
B. Contractual authorisation	255
C. Written consent	256
What are ‘wages’? (ERA, s 27(1))	257
What are not ‘wages’? (ERA, s 27(2))	259
What is a deduction? (ERA, s 13(3))	259
Excepted deductions and excepted payments (ERA, ss 14, 16)	260
Deductions and payments in retail employment (ERA, ss 17–18)	262
Complaints to an employment tribunal (ERA, s 23)	264
National minimum wage	264
A. Who qualifies for the national minimum wage	265
B. Calculating the hourly rate (reg 14)	266
C. Enforcement by the worker	267
D. Enforcement by the state	268
E. Offences (ERA, ss 31–33)	269
9 Transfer of Undertakings	270
Background	270
Who is covered by the regulations?	271
A. Transfer of an undertaking or business	272

B. Transfer of part of a business	273
C. Service provision change (reg 3(1)(b))	275
D. Transfers within public administration (reg 3(5))	276
E. Employees who work outside the United Kingdom (reg 3(4))	277
The mechanics of the transfer	277
The effect of the transfer	278
A. Contracts of employment (reg 4)	278
B. Statutory rights	280
C. Other benefits	280
D. Variation of the contract of employment (reg 4(4))	282
E. Insolvency rights (reg 8)	282
F. Permitted variations in insolvency proceedings (reg 9)	283
Dismissal on transfers (reg 7)	284
A. ETO reason (regs 4, 7)	284
Refusing a transfer (reg 4(7))	286
Employee liability information (regs 11–12)	287
Remedy for failure to notify employee liability information (reg 12)	288
Other matters	289
A. Collective agreements (reg 5)	289
B. Trade union recognition (reg 6)	289
C. Consultation on transfers (reg 13)	289
D. Election of employee representatives (reg 14)	290
E. Failure to inform or consult (reg 15)	291
10 Performance of the Contract of Employment	292
Personal nature of the contract	292
Implied duties of the employer	294
A. Implied duty of trust and confidence	294
B. Duty to provide work	296
C. Duty to pay wages or other remuneration when there is no work	298
D. Payment of bonuses, etc	299
E. Duty of confidentiality	300
F. Duty to indemnify	302
G. Duty to insure	303
H. References	303
I. The right to privacy	305
J. Duty to ensure the employee's safety	306

Implied obligations of the employee	307
A. Duty of faithful service	307
B. Duty to obey lawful and reasonable orders	309
C. Duty to use skill and care	311
D. Secret bribes and commissions	311
E. Confidential information	312
F. Public interest disclosures (ERA, ss 43A–43K)	314
G. Patents, inventions and copyright	317
H. ‘Moonlighting’	318
I. Duty of disclosure	319
J. The volcano effect	320
Employer’s vicarious liability	321
Harassment and bullying	324
11 Health and Safety at Work	327
Health and Safety at Work, etc Act 1974	327
A. Background to the legislation	327
B. Enforcement of the Act	328
C. Statutory duties on health, safety and welfare	333
D. Health and safety regulations (s 15 and Sch 3)	344
E. The impact of European law	345
F. Codes of practice (s 16)	348
G. Penalties (s 33)	349
H. Burden of proof	350
I. Corporate manslaughter	350
Compensation for injuries at work	351
A. The extent of the duty owed	351
B. Duty to unborn children	355
C. Personal nature of the duty	356
D. The threefold nature of the duty	357
E. Breach of statutory duty	361
F. Defences to an action for personal injuries	364
G. Limitation of actions (Limitation Act 1980)	367
12 Disciplinary, Dismissal and Grievance Procedures	369
Disciplinary procedures	369
A. Procedures in operation	369
B. Types of disciplinary and grievance procedures	373

C. Drawing up procedures	374
D. Composition of procedural bodies	375
E. Right to be accompanied: Employment Relations Act 1999, ss 10–15	378
F. Appeal procedures	380
Disciplinary rules	382
A. General rules	384
B. Specific rules	385
C. Special rules	385
Disciplinary powers	386
A. Fines and deductions	386
B. Suspension without pay for misconduct	387
C. Precautionary suspension	388
D. Warnings	390
E. Reprimand	394
F. Demotion	394
G. Transfer	395
H. Alternative employment	395
I. Other sanctions	395
J. Non-employment situations	395
13 Continuous Employment	397
Continuity of employment	397
Counting and computing continuity (ERA, ss 210–219)	398
Preserving continuity (s 212)	400
A. Incapable of work because of sickness or injury (s 212(3)(a))	400
B. Absent from work on account of a temporary cessation of work (s 212(3)(b))	401
C. Absent by arrangement or custom (s 212(3)(c))	403
Re-employment after unfair dismissal (s 219)	404
Weeks which do not count towards continuity (ss 215–217)	405
A. Periods spent working abroad (s 215(1))	405
B. Strikes and lock-outs (s 216)	406
C. Military service (s 217)	407
Change of employer (s 218)	407
The effect of the continuity rules	408
Continuity table	409

14 Normal Working Hours and a Week's Pay	411
Normal working hours	411
A. Employment Rights Act, ss 221–229	411
B. Contractual provisions	411
A week's pay	412
A. Quantifying a week's pay	413
B. Capping a week's pay (ERA, s 227)	414
C. The calculation date (ERA, ss 225–226)	415
15 Rights in Notice	416
Notice to be given by the employer	416
A. Giving notice	417
B. Taxation of payments	418
C. Pay in lieu of notice	418
D. Rights during the notice period (ERA, ss 88–91)	420
E. Contractual rights during notice	421
F. Dispensing with notice	422
G. Notice and time limits	423
H. Notice pay on insolvency (ERA, ss 182–186)	424
Notice to be given by the employee	424
Employer's remedies	425
Employee's remedies	426
16 Wrongful Dismissal	427
Background	427
Wrongful dismissal	429
Collateral contracts	430
Summary dismissal	430
Employment law remedies	433
A. Common law remedies	433
B. Public law remedies	438
17 Unfair Dismissal	440
Exclusions	440
What is a dismissal? (ERA, s 95)	442
A. Employer termination	442

B. Fixed-term contract expires	445
C. Completion of a limited-term contract	445
D. Constructive dismissal	446
Termination of the contract	453
A. Resignation	453
B. Constructive resignation	454
C. Implied resignation	455
D. Frustration of the contract	455
E. Consensual termination	457
Fair and unfair dismissal (ERA, s 98)	459
A. Is it fair?	459
B. Reasons for the dismissal	462
C. Dismissal for asserting a statutory right (ERA, s 104)	484
D. Other dismissals	485
E. National security	485
Written reasons for dismissal (ERA, s 92)	485
A. Adequacy of the statement	486
B. Written reasons for dismissal on grounds of maternity or adoption (ERA, s 92(4), (4A))	487
Interim relief (ERA, ss 128–132)	487
Remedies for unfair dismissal	487
A. Reinstatement and re-engagement orders (ERA, s 113)	487
B. Compensatory awards (ss 117–127A)	490
C. Compensatory award (ERA, s 123)	493
D. Reducing the compensatory award (ERA, s 123(4), (6))	499
E. Order of adjustments to compensation awards	503
F. Additional award (ERA, s 117)	504
G. Interest on awards	505
H. Recoupment of job-seekers' allowance	505
18 Redundancy	506
Provisions of the Employment Rights Act 1996	506
A. Persons covered by the Act	506
B. What is dismissal? (s 136)	507
C. Dismissal for reason of redundancy (s 139)	508
D. Transferred redundancy	512
E. Presumption of redundancy	512
F. Renewal or re-engagement (ERA, s 138)	512

G. Offer of suitable alternative employment (s 141)	513
H. Laying off and short-time working (s 147)	514
I. Time off to look for work (ERA, s 52)	515
Fair/unfair redundancy dismissals	516
A. Guidelines for good industrial relations practice	516
B. Handling redundancies	517
C. Unfair selection for redundancy (ERA, s 105)	521
D. Dismissal during the period of notice (s 140)	522
Excluded classes of employees	522
Claims for redundancy payments	523
Payments by the Secretary of State (ERA, ss 166–170)	523
Consultation on redundancies (TULR(C)A, ss 188–192)	524
A. EC Directive on Collective Redundancies	524
B. Who, and when to consult	525
What is an establishment?	526
The consultation provisions	527
A. Disclosures required by the employer	528
B. Special circumstances	529
C. Protective award (TULR(C)A, s 189)	529
Notification of mass redundancies to the minister (TULR(C)A, s 193)	532
19 Duties of Ex-employees	533
Employees who are about to leave their employment	533
Garden leave	535
Employees who have left the employment	536
A. Springboard injunctions	539
Post-employment restraints	540
A. Trade secrets and confidential information	541
B. Existing customers and connections	542
C. Working for competitors	543
D. Enticing existing employees	545
E. Reasonableness of the covenant	545
F. Interpreting a covenant in restraint of trade	547
G. Breach of contract by the employer	548
H. Restrictive covenants and transfers	549
I. Remedies for breach of contract	550
Training agreements	552

20 Practice and Procedure	553
Making a claim to an employment tribunal	553
A. Time limits for enforcing Community rights	557
B. Effective date of termination (s 97)	559
C. Submitting a claim	561
D. Employer's response	562
E. Restrictions on contracting out (ERA, s 203)	563
F. Death of the employer or employee	566
Employment tribunal procedure	567
A. Allegations of bias	568
B. Case management	569
C. Pre-hearing reviews	572
D. The hearing	573
E. Financial remedies	578
F. Reviews by the employment tribunal	579
G. Costs	580
H. Preparation time order	581
I. Wasted costs order	582
J. Appeals	582
K. Reviews by the Employment Appeal Tribunal	586
L. Vexatious litigants (Employment Tribunals Act 1996, s 33)	586
M. Further appeals	586
21 Individual Trade Union Rights	587
Rights vis-à-vis a trade union	587
A. Right not to be excluded from any trade union (TULR(C)A, s 174)	587
B. Right not to be unjustifiably disciplined (TULR(C)A, ss 64–65)	589
C. Complaints of unjustifiable discipline (TULR(C)A, ss 66–67)	590
D. Right to resign from a trade union (TULR(C)A, s 69)	591
E. Right not to be expelled from the union (TULR(C)A, s 174)	591
F. Remedies for wrongful exclusion or expulsion (TULR(C)A, ss 175–176)	592
G. Right of access to the courts (TULR(C)A, s 63)	592
H. Right to a ballot before industrial action (TULR(C)A, s 62)	592
I. Other individual rights	593
Rights vis-à-vis an employer	593
A. Access to employment (TULR(C)A, s 137)	593
B. Inducements relating to union membership or activities (TULR(C)A, s 145A)	597
C. Action short of dismissal (TULR(C)A, s 146, as amended)	598

D. Detriment and dismissal in statutory recognition cases (TULR(C)A, Sch A1)	601
E. Time off work for trade union duties (TULR(C)A, s 168)	601
F. Time off work for trade union activities (TULR(C)A, s 170)	603
G. Time off work for trade union learning representatives (TULR(C)A, s 168A)	603
H. Check-off arrangements (TULR(C)A, s 68)	604
I. Deductions for the political fund of the union (s 86)	605
J. Dismissal on the ground of trade union membership or non-membership, or trade union activities (TULR(C)A, s 152)	605
K. Dismissal in connection with industrial action (TULR(C)A, ss 237–239)	607
L. Dismissal due to industrial pressure (ERA, s 107)	612
M. Selection for dismissal on grounds of redundancy (TULR(C)A, s 153)	613
N. Compensations for dismissals (TULR(C)A, ss 155–158)	613
O. Interim relief for dismissed trade unionists or non-unionists (TULR(C)A, ss 161–166)	613
 22 The Law Relating to Trade Unions	 616
What constitutes a trade union?	616
A. Definition of a trade union (TULR(C)A, s 1)	616
B. Listing of trade unions (TULR(C)A, s 2)	617
C. Certification of trade unions (TULR(C)A, s 6)	617
D. Register of members (s 24)	621
Rules of a trade union	622
A. Disciplinary action	622
B. Conduct of union affairs	625
C. Copy of the rules (s 27)	626
Executive committee (TULR(C)A, s 46)	626
A. Election of candidates (TULR(C)A, s 47)	627
B. Election addresses (TULR(C)A, s 48)	628
C. Independent scrutineer (ss 49, 75, 100A, 226B)	628
D. Remedies (s 54)	629
Accounts, records, etc (TULR(C)A, s 28)	630
A. Right to inspect accounts (ss 29–31)	630
Offences (ss 45–45C)	631
A. Indemnifying unlawful conduct (s 15)	631
B. Remedies against trustees (s 16)	631
Political fund and political objects (TULR(C)A, ss 71–74)	632
A. Complaints over political fund ballots (TULR(C)A, ss 79–81)	633

Breach of union rules (ss 108A–108B)	634
Amalgamation and transfers (ss 97–105)	634
Employers' associations	635
A. Definition of employers' association (TULR(C)A, s 122)	635
B. Listing of employers' associations (TULR(C)A, s 123)	635
23 Law Relating to Industrial Relations	636
Trade union recognition	636
A. Voluntary recognition	637
B. Statutory recognition (TULR(C)A, Sch A1)	637
C. Employers' training policies (TULR(C)A, s 70B)	639
Collective bargaining (TULR(C)A, Sch A1, para 94)	639
A. Disclosure of information (TULR(C)A, s 181)	639
B. Legal liabilities and legal proceedings	641
Statutory protections	643
A. 'Trade dispute' (TULR(C)A, s 244)	643
B. 'In contemplation of'	646
C. 'In furtherance of'	647
Statutory protection and loss of immunities	647
A. The provisions of TULR(C)A, s 219	647
B. Loss of immunities	649
C. Immunity of trade unions (TULR(C)A, s 20)	656
D. The effect of the Act	657
Amount of damages (TULR(C)A, s 22)	658
Injunctions and interdicts (TULR(C)A, s 221)	658
A. Injunctive relief (TULR(C)A, s 20(6))	659
B. Industrial action affecting an individual (s 235A)	659
C. Industrial action and European Law	660
Legal effect of collective agreements (TULR(C)A, ss 178–179)	661
Peaceful picketing (TULR(C)A, s 220)	662
A. Sit-in	664
Union recognition	665
A. Union or non-union members only contracts (TULR(C)A, s 144)	665
B. Prohibition on union recognition requirements (TULR(C)A, s 186)	665
C. Refusal to deal on union exclusion grounds (TULR(C)A, s 187)	666
Criminal liabilities	666
A. Public Order Act 1986	667
B. Intentional harassment	668

European Works Councils	668
A. Time off work for members of a European Works Council (regs 25–27)	669
B. Protection from detriment and dismissal (regs 28–33)	670
C. Information and Consultation of Employees Regulations 2004	671
D. Pre-existing agreements (regs 8–9)	671
E. Negotiated agreements (reg 7)	671
F. Statutory default provisions (reg 18)	673
G. Enforcement (reg 22)	673
<i>Appendices</i>	675
<i>Appendix A</i>	676
Monetary awards (as at 1 February 2012)	676
<i>Appendix B</i>	678
Statutory Redundancy Pay Calculation Table	678
<i>Index</i>	681