

## Exam JUS5870 International and Comparative Labour Law

### Examiners' guidance

The examination subject is:

#### **The concept of worker in the context of free movement of persons in EU law.**

Achievement requirements and syllabus for JUS5870 International and Comparative Labour Law are set out on the course homepage:

<http://www.uio.no/studier/emner/jus/jus/JUS5870/v16/pensumliste/index.html>

The subject is covered by Davies, EU Labour Law, 2012, in particular pp. 69-90.

The subject was a major topic in one lecture (two hours) on 'The worker and the employer'. Here, the concept of worker was discussed in the context of free movement of persons and contrasted with the concept of worker/employee in other areas of EU law. Slides on these topics are made available for all students in Fronter. The concept of worker/employee was also broached in several other lectures due to its fundamental importance in labour law.

The assignment requires candidates to discuss the personal scope of the concept of worker (who is a worker?) and present the main features of free movement rights for workers. Grading will depend on a concrete and overall assessment. However, some guidelines are suggested below. In general, specific reference to legislation, provisions and case-law should be credited, but is not required as long as the candidate shows an understanding of the important issues.

Candidates must be certain of the concept of worker in a free movement context as a Union law concept, and being defined by case-law. It should be credited if this is contrasted to the concept of worker/employee in secondary legislation regarding employment protection etc. which to a greater degree is left to be decided by national law.

Candidates should be able to elaborate on the *personal scope*, most importantly:

- explain how the concept is defined with reference to the 'the essential features of an employment relationship' (Lawrie-Blum),
- convey that the threshold is low, i.a. encompassing part-time work,
- explain that the concept goes beyond an existing employment relationship, encompassing persons actively seeking employment and that worker status is maintained in a period after employment.

Candidates should also include a presentation of *free movement rights*; rights of exit, entry and residence, and equal access to employment, equal terms when employed. A detailed discussion is not required, an overview shall suffice.

Indicatively, a C will require the candidate to cover these issues. A passing grade will be in danger for candidates who fail to see the concept's union law status and who misunderstand the basic criteria determining the personal scope.

On the other hand it should be credited if a candidate discusses *why* the concept of worker is so wide and goes beyond the traditional scope of employment protection: a discussion on free market objectives vs social objectives.

The assignment also invites candidates to discuss free movement of workers vs. other free movement rights for persons, such as:

- persons who are not economically active (EU-citizens, family members)
- persons who are economically active as self-employed (right of establishment)

For candidates who include these perspectives, a B or an A might be appropriate, depending on the substance of the discussion.

If a candidate includes a discussion on posted workers, it requires an explanation. Posting of workers is strictly speaking not free movement of persons, but an aspect of free movement of services. However, if properly introduced, a discussion can contribute to the overall impression.