

A brief guide to employing staff

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Melissa Paz

SENIOR ASSOCIATE | UK

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Engaging staff for the first time can seem daunting. This guide highlights the main points that you need to take into account. It is not, however, intended to be comprehensive and, in particular, there may be international issues to consider. You should therefore seek further advice, as required.

Establish the fundamentals

You should consider carefully whether you will be engaging the individual as an employee or as a self-employed person – and who should be engaging them, for example, a company (and if so whether a service company or an operating company), a trust or an individual.

Employment status is important for a number of reasons, including the individual's tax position and legal rights. In particular, certain important statutory rights (for example, the right not to be unfairly dismissed and the right to maternity leave and pay) apply only to employees. The category of 'worker' sits somewhere between employment and self employment (but does not include individuals who are genuinely in business on their own account). Increasingly, rights are being granted to such individuals.

It can be difficult to determine whether an individual is employed or self-employed – and the content of the contract is not conclusive. If you have any concerns about this, you should seek further advice. The guidance in this note assumes that you will be engaging an employee.

Recruit the right people in the right way

Job descriptions and interviews

It is often useful to draw up a job description to help prospective candidates assess themselves for the job. Ensure the skills and knowledge required relate precisely to the needs of the role, and avoid anything that suggests you might be discriminating (for example, using phrases like 'recent graduate' could discriminate against older people). This also applies to job advertisements.

An interview is usually the best way to judge whether someone is suitable for the job. You should ensure that preparations are made to assist disabled applicants (e.g. ease of access) and avoid questions about protected characteristics (for example, the person's marital status, or their plans to have children), which could be discriminatory.

References and other pre-employment checks

Though not a legal requirement, it is common (and advisable) to insist that your future employee provides you with satisfactory references from previous employer(s).

You should apply to the Disclosure and Barring Service (DBS) for a criminal record check if the work the employee is to do means that you are eligible to apply for one. For further information see the guidance at www.gov.uk/government/publications/dbs-check-eligible-positions-guidance.

There are various organisations that provide more thorough pre-employment screening services (for example, identity, media and credit checks) and we can provide further details on request. You might also want to consider carrying out your own general internet search (in particular, for any publicly available social media accounts).

Immigration

As an employer, you are obliged to carry out appropriate immigration checks to ensure that the employee is entitled to work in the UK for you in the proposed role. You should review and be satisfied that the employee holds the necessary paperwork and maintains appropriate records. This is a fast changing area and we suggest you check the current requirements on www.gov.uk. If you are unclear on your obligations, our specialist Immigration team can advise you in relation to this.

Pay the lawful rate

Most employees are entitled to receive a rate of pay that is at least the national minimum wage. Consult www.gov.uk or www.hmrc.gov.uk for the latest rates and details of your associated obligations (for example, in relation to what constitutes working hours and the amount of pay that may be offset against the cost of providing accommodation to an employee).

Prepare a contract of employment

By law, you must provide your new employee with a written statement of certain specified terms (such as their entitlement to holiday, sick pay and the length of their notice period) within two months of them starting employment.

That said, it is usually best practice to prepare a more thorough contract to ensure your interests are protected appropriately. In particular, you should include a well drafted confidentiality provision – for most family offices, these should protect the information of the employer and their staff, but also others such as family members, their friends and acquaintances. You should also consider termination provisions (for example, requiring the employee to return your property on termination of employment), and whether the employee should be subject to restrictions after termination (for example, in relation to non-competition).

Have clear policies

It is sensible to be clear at the outset about important policies – and setting them out in writing is the best way to do so. Some common policies are set out below, but there are numerous others you may find useful. Many employers collate such policies into a 'staff handbook', which they provide to new employees with their contract of employment.

Grievance and disciplinary policies

An employer will be expected to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures. If the ACAS Code is not followed, this can lead to increased compensation against you if an employee is successful in a tribunal claim. For details, see www.acas.org.uk.

Given the above, it can be helpful to have your own policies and procedures (which encompass the Code but are also tailored to you) for handling employee grievances and managing any performance / disciplinary issues. It is important to include clear guidance as to the type of conduct that will not be tolerated and any that is likely to lead to dismissal without notice.

Equal opportunities policy

Having an equal opportunities policy reflects a commitment to protecting employees from discrimination on grounds of sex, race, disability, sexual orientation, religion or belief and age, as well as promoting diversity. As such, it is good practice to have one.

Sickness policy

In addition to appropriate contractual provisions, having a sickness policy in place will help you to deal with absences consistently and effectively, as well as putting employees on notice as to the standards of attendance and reporting that you expect from them.

You are obliged to pay statutory sick pay once an employee satisfies certain conditions. You may wish to consider offering enhanced sick pay in certain circumstances. If so, this may be set out in your sickness policy.

Holiday policy

No minimum period of continuous service is required for an employee to qualify for statutory paid annual leave. The basic right to annual leave is 5.6 weeks (equivalent to 28 days for those who work five days a week) in each leave year, including public holidays.

The rules on annual leave are complex and beyond the scope of this note. However, there is still flexibility and you may devise a policy and/or contractual provisions that allow you to minimise disruption (for example, by requiring that appropriate advance notice be given, or requiring employees to take leave during certain periods).

Pay appropriate tax and National Insurance contributions

You must register as an employer with HM Revenue and Customs (HMRC) (www.hmrc.gov.uk). You will be responsible for deducting income tax and employee's National Insurance contributions from your employees' pay and for paying employer's National Insurance contributions. If your employees receive any benefits, this will also affect your / their tax liabilities.

There are a number of payroll providers who can assist you in relation to the collection of income tax and National Insurance contributions. We would be happy to provide you with contact details, if required.

Obtain insurances

You need to obtain employers' liability insurance and may need other insurances in certain circumstances (for example, if your employee works at home, or if they use your private car for business purposes). Check your public liability insurance if you have visitors attending connected with your employees.

Consider your pension obligations

The UK Government has introduced a new pension regime, referred to as 'auto-enrolment'. Auto-enrolment means that, rather than having to actively choose to join a pension scheme, employees must be automatically entered into one by their employer unless they opt out.

This regime is currently being phased in and, once you are affected, you need to put in place a pension scheme that meets certain requirements. A pension provider can assist you with this process and we can provide further details, on request.

Be mindful of health and safety

Health and safety is a highly regulated area, but it is crucial to be aware of the fact that this regulation can impose criminal liability on even a small business – and without any proof of intent. This means that conscientious businesses can be successfully prosecuted. Much of the legislation in this area also impacts directly on directors / owners personally – prosecutions of individuals have increased by 400% in the last five years. There are financial penalties, but also significant reputational risks which could affect any business / family arrangement as it grows.

The UK regulator, the Health and Safety Executive, provides very useful guidance for any business setting out some of the initial actions a business of any size must take, which you can view at this link: www.hse.gov.uk/leadership/smallbusinesses.htm. It is vital to undertake a thorough assessment of the risks to safety in your workplace, particularly for businesses with visitors or other stakeholders at their sites. This also applies to employers who employ domestic staff.

The Working Time Regulations give employees numerous rights relevant to their health and safety, such as the right to rest breaks. You should be clear at the outset what constitutes 'working time' and when rest breaks may be taken. Working time is broader than some imagine – for example, it includes time spent 'on call', even if the employee is sleeping (provided this is at the employer's premises or at a place determined by the employer).

Consider data protection and intellectual property

The Data Protection Act 1998 ('DPA') requires every 'data controller' who is processing personal information in the UK to register with the Information Commissioner's Office ('ICO'), subject to some very limited exceptions. Broadly speaking, if you collect, hold or take any action in respect of information about an identifiable person (either held in electronic form or in an organised paper filing system), you are likely to be processing personal data. If you believe you are processing personal data, you should consider registering with the ICO (since failure to do so when required is a criminal offence) and comply with the DPA. For more information, please visit: ico.org.uk/for_organisations/data_protection/registration.

Generally, unless otherwise agreed between the parties, intellectual property rights ('IP') written in any materials or inventions created by employees in the course of their employment will be owned by the employer. In cases where an invention was completed out of working hours and using the employee's own equipment, the IP rights could still belong to the employer if that work is considered to be a type of activity reasonably expected of the employee in their line of employment. However, this presumption is reversed when someone is retained as a freelance professional or contractor. In these cases, companies should have a written agreement outlining the terms of IP ownership. A freelancer or contractor should provide written assignment (transfer) of their IP rights, even if they have been expressly commissioned to do the work.

Should you have any questions relating to your intellectual property, our specialist IP team has expertise in dealing with these types of situations and can advise you in relation to this.

A final thought...

We hope this is the beginning of a successful employment relationship. However, if things do not work out and you are considering terminating your employee's employment, you should not act in the heat of the moment – this could lead to expensive claims and may also invalidate any post-termination restrictions (including confidentiality obligations).

In general, employees obtain the right not to be unfairly dismissed once they have accrued two years' service. However, you should not assume that because an employee has less than two years' service, you can do as you wish. In particular, ensure you act in accordance with the employee's contract of employment, and take special care when dismissing an employee who may have special protection (for example, pregnant or disabled workers, whistleblowers, or those who have invoked statutory rights such as requesting flexible working). Damages for these claims can be significant.

Authors

Melissa Paz

SENIOR ASSOCIATE | LONDON

Employment

 +44 20 7597 6100

 melissa.paz@withersworldwide.com