

1. Becoming an Employer Considerations and Legal Obligations

1 OVERVIEW

If you are considering employing somebody for the first time, it may be that your business is expanding and you have an increased workload to cover. This is an exciting time for you and your business and this series of factsheets will provide HR best practice to enable you to become an employer and manage employees effectively.

2 CONSIDERATIONS

Here are some key points if you are considering becoming an employer for the first time:

- Define clearly what it is you need. What are you not finding time to do that is crucial to your business? Write down what tasks the new person will be doing and what skills, experience and qualifications they will need to have. This should be your first step.
- Consider whether there is enough work to justify the role, in the short and longer term, or whether it can be managed with temporary staff or freelancers? Consider if this is a full time or part time role.
- Consider making a business case for the new role. Even if you are the only owner/manager of the business, this will help you get clear on the value that the role will bring to your business.
- Define what you will offer to your new recruit. Consider what hours of work, salary, pension contribution, holiday entitlement, benefits etc you will offer.
- Make sure you take out relevant insurances to cover your business or place of work.
- Consider your health and safety obligations. You will have a duty of care to ensure your place of work is safe and secure for your employees.
- Consider how you will run payroll.

If you already employ people, you may find that vacancies arise for a number of reasons. Maybe a member of the team resigns, retires, goes on maternity leave, takes a career break, reduces their hours, gets promoted or is dismissed. If you understand the reason why a vacancy has arisen you can determine any changes that may need to be made to the role and how best to manage the recruitment process to find the right person for the role.

It is good practice to develop a formal recruitment and selection policy to ensure correct procedures are followed consistently and that you are promoting equality of opportunity in your business. The purpose of the policy will be to ensure that you employ the most appropriate employees in a fair and consistent manner free from discrimination.

It also demonstrates that you are committed to ensuring that there is no discrimination on the grounds of age, disability, gender reassignment, marriage/civil partnership, pregnancy, maternity, race, religion or belief, sex or sexual orientation at any stage of the recruitment process in line with your legal obligations.

3 LEGAL OBLIGATIONS IN SUMMARY

Pay - The National Minimum Wage (NMW) applies to all workers and is paid at different rates according to age. There is a separate rate for apprentices, and a National Living Wage (NLW) applies to workers aged 25 and over. The minimum wage rates are reviewed annually, usually in April. Up to date rates can be found here: <https://www.gov.uk/national-minimum-wage-rates>

All workers, except those who are genuinely self-employed, are entitled to receive the NMW/NLW.

Eligibility to work - To determine whether or not a candidate has the right to work in the UK, you should:

- ask them to produce original documents showing they have the right to work in the UK;
- check that the documents do relate to them;
- keep a copy of the documents;
- ask the candidate to sign the copy and sign and date it yourself.

Criminal records check - Employers can carry out security clearances of someone depending on the nature of the role and your organisation, such as security vetting in financial services or Disclosure and Barring Service checks where the role holder is carrying out work related to children or vulnerable adults. You can only apply for checks in relation to specific roles so it is important to check that this is the case. There is more information available here: www.gov.uk/request-copy-criminal-record

Employers' liability insurance - You need employers' liability insurance as soon as you become an employer from an authorised insurer. Employers' liability insurance will help you pay compensation if an employee is injured or becomes ill because of the work they do.

Contract of employment - All new employees (whose employment is for one month or longer) must be provided with a written statement setting out the main terms of their employment within two months of starting work.

The particulars of the written statement should include:

- Name of the employee
- Name of the employer
- Place of work
- Date employment began and date continuous employment began
- Job title or brief job description
- Expected hours of work (making reference to any opt-out clause in consideration of the Working Time Directive regulations)
- Remuneration details and intervals at which remuneration is paid together with method of payment
- Holidays and public holiday entitlements.

HMRC - Register as an employer with HM Revenue and Customs: www.gov.uk/register-employer

Pension auto enrolment - You will have an obligation to automatically enroll employees into a pension scheme under the Pensions Act 2008.

Health and Safety - An employer owes a duty of reasonable care to its employees. An employer has a duty to provide employees with adequate materials and resources for the work, and to operate a safe system of work.

4 NEXT STEPS

- Carefully evaluate whether you have a long term requirement for a new vacancy.
- Develop a recruitment and selection policy to ensure you have consistent and non-discriminatory recruitment practices.
- Understand your legal obligations as an employer and obtain further assistance from relevant professionals where applicable, for example, HR, Health and Safety, pensions, insurers etc.

5 FACTSHEETS & TEMPLATES TO HELP

- How to Create a Job Description and Person Specification
- Making an Offer of Employment
- Contract of Employment
- How to Prepare for your New Employee
- Pensions Considerations
- Health and Safety
- How to Conduct an Exit Interview
- Written Statement of Employment

6 FOR MORE ADVICE AND INFORMATION

ACAS - (Advisory, Conciliation and Arbitration Service) free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. www.acas.org.uk

Achieve in Bath & North East Somerset - free recruitment support, advice and help. Matching job seekers, employers and course providers to help employers recruit, train and retain employees. www.achieveinbathnes.co.uk

Future Bright - free help & support for businesses and employees to realise their full potential. Provide access to training and development, workshops and networking. HR support to promote career progression and best practice to attract and retain staff. www.futurebright.org.uk

Bibliography - this fact sheet was produced by Rathbone HR Solutions in association with Cool Ventures Ltd in December 2018 with content sourced from; HR Inform (www.hr-inform.co.uk), ACAS (www.acas.org.uk), CIPD (www.cipd.co.uk), the pensions regulator (www.thepensionsregulator.gov.uk/en/employers), HMRC (www.gov.uk/government/organisations/hm-revenue-customs), the Information Commissioner's Officer website (www.ico.org.uk)