

Employing people

This FAQ sheet forms part of a series prepared by postgraduate students from the University of Manchester's School of Law, in conjunction with the Legal Advice Centre. They are intended as an introductory guide to commonly asked questions by those approaching the Manchester Enterprise Centre when seeking advice on starting up new businesses.

These guides provide only a basic overview on key issues to be considered and do not constitute legal advice. Further detailed advice should be sought as necessary from appropriate professionals such as a solicitor or accountant.

This FAQ sheet tells you the key issues that you need to think about when starting up a business and employing people. So this includes contracts of employment; different kinds of employment relationships; bonuses and benefits in kind; hiring and firing and promotion; equality and 'family friendly' rights; and other key areas. Specifically this FAQ sheet sets out to answer the following questions:

1. What should be included in a contract of employment?
2. What do you need to know about the different legal status of volunteers, interns, independent contractors and when they become an employee?
3. What are the legal issues around bonuses and benefits-in-kind?
4. What are the key legal issues around hiring, firing and promotion?
5. What are your legal obligations around pregnancy, maternity and paternity leave and other rights associated with being a parent or carer?
6. What other key issues do you need to consider?

Q1: What should be included in a contract of employment?

The term 'contract' refers to either a verbal or written contract. So, technically, once an offer of employment is made and accepted, a contract is formed whether or not it has been formalised in writing.

As an employer you are required to provide to any employees, a statement setting out certain minimum terms of employment within 2 months of them starting to work for you.

The minimum terms include:

- the employer's name
- the employee's name
- start date, including the date on which any period of 'continuous employment' began (if, for example, the employee previously worked for a company acquired by the employer)
- pay (or how it is calculated) and when it will be paid
- information about working hours
- entitlement to holidays and holiday pay
- the employee's job title or a brief description of their work
- the employee's place of work
- details of disciplinary, dismissal and grievance rules and procedures
- terms and conditions relating to sickness and injury, and sick pay
- terms and conditions relating to pensions
- notice periods the employee is obliged to give and entitled to receive if employment is terminated
- how long the employment is intended to last (unless permanent)
- any collective agreement which directly affects the employment

Other employment contract issues:

Other documents may form part of a contract. For example, some separate company policies may be contractual entitlements, so it is important to be clear if these are intended to be contractual entitlements, or discretionary. Custom and practice in a business can also become part of the contract. So if employees come to have reasonable expectations of receiving a benefit (such as a regular tea break), this could be regarded as a contractual entitlement.

Contracts also generally include implied terms, whether written or not. Examples of these include:

- Provision of a secure, safe and healthy working environment
 - Obligations on employers and employees not to do anything that might undermine the relationship of mutual 'trust and confidence' between them
 - An employee's duty to the employer to act honestly and faithfully, obey reasonable instructions and work with due diligence, skill and care
 - An employee's obligation not to undermine or compete with the employer's business.
-

Further guidance can be found at

<https://www.gov.uk/browse/employing-people>

Q2: What do you need to know about the different legal status of volunteers, interns, independent contractors and when they become an employee?

The legal status of employing people can be complex, and so you need to be aware of the basis on which people are working for you and the different rights and entitlements this gives them. So you should start by thinking about what you want your workers to do, how long you need them for and whether you think they are your employees, whether they might be 'casual' staff, whether they are contractors providing services to you or if they are people gaining work experience. Each has implications for you and creates different kinds of legal relationships.

Employees

The implications of being classed as an employee are that the individual will be protected by all existing employment legislation which includes protection for unfair dismissal, redundancy pay, as well as having other employment rights including parental/family-friendly rights, entitlements to holiday pay and limits on their working time, or protection for discrimination (in addition to those enjoyed by workers, see <https://www.gov.uk/employment-status/worker> for further guidance).

Volunteers & Interns

Employment legislation protects employees, and offers more limited rights to workers. But there can be a very fine distinction between a volunteer/intern and a worker. A volunteer/intern is generally not entitled to employment law protection. So if you offer a contract stating that the arrangement is one of a volunteering, or non-paid internship, and specifying that employment laws do not apply, this could still be interpreted differently by an Employment Tribunal if the basis of the contract were to be challenged by someone working for you.

A Tribunal would look beyond the written contract and would examine the realities of the contractual relations between the parties and the duties performed by the 'volunteer/intern'. This would mean considering the degree of control you exercised over the person, the nature of the duties and other matters, with each case being decided on the facts.

The implications of being classed as a worker are that workers have the right to be paid the National Minimum Wage/National Living Wage, the right to statutory holiday rights, and protection under discrimination legislation.

This list is not exhaustive and you should seek further information by following the links below. So this is an important area and you should be wary of having anyone working for you who is not receiving at least the National Minimum Wage/National Living Wage. You always need to pay in accordance with the contract, and think about the right to equal pay for men and women.

Further guidance can be found at:

<https://www.gov.uk/national-minimum-wage>

Contracts of self-employment

Genuinely self-employed individuals are treated differently and most of their rights are covered in a contract of self-employment/contract to provide services which you will draw up with them as an individual contractor for services. But disputes can still arise, if someone you class as a self-employed person claims they are a worker with entitlement to certain employment rights. This is a grey area, currently being tested in the courts and tribunals, and so you will need to be aware of this. As with volunteers and interns, Employment Tribunals look closely at the contractual arrangements, including the taxation arrangements, and consider the reality of the arrangements between the parties.

Zero hours contracts

A contract that does not guarantee any minimum hours of work will be a zero hours contract and someone you employ on these terms will be a worker (with the rights outlined above). But again, you need to be aware that the worker may claim that the relationship is really one of employer and employee. As an employer you cannot restrict a zero hours worker from working elsewhere.

For more guidance on this important area see:

<https://www.gov.uk/employment-status/worker>

Q3: What are the legal issues around bonuses and benefits-in-kind?

Take care if offering bonuses or other benefits 'in kind' to your employees and make sure you are clear in the contract about whether these are contractual entitlements, or discretionary. This can make a big difference if you want to change or withhold a payment or other benefit. If there is an agreement to pay a bonus, then your employee will be contractually entitled to payment and a failure to pay could lead to disputes and legal challenge (such as a claim for breach of contract or unlawful deduction of wages).

Q4: What are the key legal issues around hiring, firing and promotion?

Hiring

You can choose who to employ and how to do it, but you need to be aware of the Equality Act 2010, which prevents unlawful discrimination. This applies during the recruitment process, covering people you have not yet employed. The Equality Act covers different 'protected characteristics', including sex (also covering equal pay), race, age, disability, religion and belief, sexual orientation, pregnancy and maternity, marriage and civil partnership. Discriminating against a candidate on one of these grounds could give rise to a discrimination claim. So use fair procedures and seek further information before you start. The Equality & Human Rights Commission, in particular, gives useful guidance about this.

<https://www.equalityhumanrights.com/en/advice-and-guidance>

<http://www.acas.org.uk/index.aspx?articleid=4231>

<https://www.gov.uk/employer-preventing-discrimination/recruitment>

Firing

Before taking action to dismiss an employee, you should follow a fair procedure. ACAS provides guidance on discipline and dismissal in a Code of Practice, covering the elements of a fair procedure, which would be taken into account if an employee were to bring an unfair dismissal claim in an employment tribunal (a right available, generally, to those with at least two years' service; although discriminatory dismissals do not need this length of service). You always need a fair reason to dismiss, and these can include things like conduct, capability or redundancy. In a conduct case you should provide information about any misconduct; hold a meeting; allow the employee to be accompanied (for example, by a trade union representative); give reasons in writing; and allow an appeal.

If you are making someone with at least two years' service redundant you need to pay them redundancy pay (either the statutory minimum, or more if you have given greater contractual rights).

Further guidance can be found at:

<http://www.acas.org.uk/index.aspx?articleid=2179>

<http://www.acas.org.uk/index.aspx?articleid=1364>

<https://www.gov.uk/dismiss-staff>

<https://www.gov.uk/staff-redundant>

Promotion

The points outlined in the 'hiring' section above also apply to promotions. You can promote whoever you choose, but your procedures should be fair and you must be able to justify decisions to reject promotion applications. If you do not do this, it could result in grievances which, in some cases, could lead to claims (for example, based on discrimination).

In general, you need to be aware of your duties to employees under equality laws and, in particular, to special responsibilities towards your employment of disabled people, including the duty on an employer to make 'reasonable adjustments' to avoid disabled people being at a disadvantage. There is some funding available towards additional costs of employing disabled people through the government's Access to Work scheme.

Further guidance can be found at:

<https://www.gov.uk/access-to-work>

Q5: What are your legal obligations around pregnancy, maternity and paternity leave and other rights associated with being a parent or carer?

You must be aware of specific responsibilities towards pregnant employees and their health and safety. This includes carrying out a risk assessment, involving a workplace assessment, to identify potential risks to the pregnant employee in her duties the workplace and aim to eliminate them. Pregnant employees also have the right to take paid time off for antenatal care, and to maternity leave, maternity pay and protection against unfair treatment, discrimination or dismissal.

There are also a range of other 'family friendly' rights you need to be aware of, including paternity leave and pay, adoption leave, shared parental leave, time off to care for a dependant in an emergency and the right to request flexible working. So you will need to find out more information about the different rules applying to these rights.

Further guidance can be found at:

<https://www.gov.uk/browse/employing-people/time-off>

<https://www.gov.uk/government/publications/adoption-leave-and-pay-technical-guidance-for-employers>