

Essential HR

The Basics of Employing People

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Workshop Outline

- How to ensure a fair recruitment process
- The minimum requirements for contracts of employment and essential policies and procedures
- Employers and employee's obligations during the employment relationship
- Managing the employment relationship
- Termination of the employment

Recruitment

- Job adverts
 - Avoid discriminatory wording – 9 protected characteristics
- Interviews
 - Anything you say or write down can be used in evidence
 - Avoid discriminatory questions or any questions which indicate a particular bias towards certain candidates
- Job offers
 - Once a job offer has been made and accepted, it is a binding contract
 - If the offer is contingent on something e.g. satisfactory references, make this clear.

Recruitment

- Medical History /Questionnaire
 - Only ask health questions if it's a requirement for the job
- Right to work in the UK
 - Onus on the employer to ensure employee has the right to work
- References
 - Good practice to request references and make job offers conditional on receiving satisfactory references
 - Obligation on employers to provide an accurate reference

Terms and Conditions

- The contract of employment may be made up of:
 - Job offer
 - Written Statement of Terms and Conditions of Employment
 - company procedures, policies and documents referred to in the statement - for example, disciplinary and grievance procedures
 - Employment laws, such as those relating to maternity rights, unfair dismissal and annual leave
 - Collective agreements
 - Some rules which are too obvious to be written into the statement. For example, an employee will not steal from their employer.

Changing Terms and Conditions

- Contracts can only be changed with the agreement of both the employee and the employer (consent) so you need to:
 - talk to the employee/s and try to reach an agreement.
 - explain the reasons behind the change - this may help them to accept your decision
 - agree any changes. This can be done verbally or in writing, but to avoid future misunderstanding you should put it in writing within one month of the change taking effect.

Changing Terms and Conditions

- If you can't agree to the change(s), you have three options:
 - Impose the change (unilateral variation), but the employee could claim for breach of contract at a civil court or for constructive dismissal or unfair deduction of wages at an employment tribunal.
 - Terminate the existing contract and offer to re-engage the employee on the new terms. But this does equate to a dismissal - If the employee has been working with you for two years or more, they could claim unfair dismissal.
 - Keep talking and try to reach a compromise. You might be able to offer the employee an incentive to agree to the change.
 - Collective Consultation?

Basic Policies and Procedures

- The procedures we recommend you have are:
- **Disciplinary & Grievance Procedures**
 - Outline the consequences of failing to meet the expected conduct
 - Explain what the employee should do if they have a complaint or concern about work
- **Absence policy**
 - Indicate what an employee should do if they are unable to attend work due to illness or any other reason.
 - Explain the consequences if the employee's attendance falls below what is expected. Consider short term and long term absence.

Basic Policies and Procedures

- **Family Friendly Leave**
 - Paid Leave: Maternity Leave, Adoption Leave, Paternity Leave, Shared Parental Leave
 - Unpaid Leave: Parental Leave, Time off for Dependants
- **Flexible Working**
 - Right to make a flexible working request
- **Equal Opportunities**
 - Nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation
 - Direct and indirect discrimination, harassment, victimisation

Basic Policies and Procedures

- **Dignity at Work**
 - Protection from bullying and harassment
- **Data Protection**
 - Rights and responsibilities when storing, using and sharing information about employees
 - Privacy Statement

Pay

- Minimum Pay Requirements
 - **National Minimum Wage** (NMW) - the minimum pay per hour most workers under the age of 25 are entitled to by law
 - **National Living Wage** (NLW) - the minimum pay per hour most workers aged 25 and over are entitled to by law

Pay

- **Equal Pay**
 - There is an equality clause in every employment contract which provides that employers must give men and women equal treatment in their terms and conditions of employment if they are employed to do:
 - 'like work' - work that is the same or broadly similar
 - work rated as equivalent under a job evaluation study
 - work found to be of equal value in terms of effort, skill or decision making.
- **Automatic Pension Enrolment**
 - Every employer in the UK must enrol eligible employees into a workplace pension and contribute to it.

Leave and Absence - Sick Pay

- **Sickness absence and Sick Pay**
 - Self Certification for first 7 days
 - Fit Note after 7 days
 - Fit note may contain notes/recommendations
- Employees who earn more than £116 per week qualify for statutory sick pay (SSP) if they have been off work sick for 4 or more days in a row.
- SSP is paid for a maximum of 28 weeks. The current rate is £92.05 per week.
- Employees can't get less than the statutory amount, but some employers pay more through a company sick pay scheme (or 'occupational scheme')
- No obligation to pay anything other than Statutory Sick Pay but may pay contractual pay

Leave and Absence - Annual Leave

- **Holidays**

- All workers are entitled to 5.6 weeks paid holiday per year (this is known as statutory entitlement).
- Part-time workers are entitled to the same amount of holiday (pro rata) as full time colleagues.
- Employers can set the times when workers can take their leave - for example a Christmas shut down.
- If employment ends workers have the right to be paid for any leave due but not taken.
- There is no legal right to paid public holidays.

Leave and Absence - Annual Leave

- **Holidays**

- Workers must take at least 4 weeks of statutory leave during the leave year, they may be able to carry over any remaining time off if their employer agrees.
- When workers are unable to take their leave entitlement because they're already taking time off for different reasons, such as maternity or sick leave, they can carry over some or all of the untaken leave into the next leave year.
- Holiday Pay - overtime and commission payments

Leave and Absence – Maternity Leave

- **Maternity Leave**
 - Pregnant employees are entitled to 52 weeks Statutory Maternity Leave if they give the correct notice to the employer. Employees don't have to take 52 weeks if they don't want to, however, the first 2 weeks following the birth must be taken or 4 weeks for those who work in a factory.
 - 39 weeks could be paid which may be Statutory Maternity Pay, Maternity Allowance or contractual maternity pay.
 - Should return to same position at the end of maternity leave

Leave and Absence – Other Leave

- Employees may also be entitled to the following leave
 - Paternity Leave
 - Adoption Leave
 - Parental Leave
 - Shared Parental Leave
 - Dependants Leave

Discipline and Grievance

- Disciplinary situations include misconduct and/or poor performance.
- Grievances are concerns, problems or complaints that employees raise with their employers.
- Most procedures are based on the ACAS Code of Practice – minimum standards
- Fairness, Transparency & Reasonableness are key

Discipline and Grievance – Disciplinary

- Handling disciplinary issues in the workplace
 - Establish the facts of each case
 - Inform the employee of the problem
 - Hold a meeting with the employee to discuss the problem
 - Allow the employee to be accompanied at the meeting
 - Decide on appropriate action
 - Provide employees with an opportunity to appeal

Discipline and Grievance - Grievance

- Handling grievances in the workplace
 - Employee must inform the employer of the nature of the grievance
 - Hold a meeting with the employee to discuss the grievance
 - Allow the employee to be accompanied at the meeting
 - Decide on appropriate action
 - Allow the employee to take appeal if not resolved
- Overlapping grievance and disciplinary cases

Termination of Employment

- An employment contract can be terminated at any time by either party, it could be by way of
 - Resignation
 - Dismissal
 - Retirement
- Both the employee and employer are normally entitled to a minimum period of notice on termination of employment.
- Notice periods should be one of the main terms and conditions of employment and included in the employee's written statement.

Termination of Employment - Notice

- There are two types of notice period: **statutory** and **contractual**.
- Statutory notice is the minimum legal notice that can be given. Employers should give the employee:
 - one week's notice if the employee has been employed by the employer continuously for one month or more, but for less than two years;
 - two weeks' notice if the employee has been employed by the employer continuously for two years, and one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks

Termination of Employment - Notice

- Dismissal Without Notice
 - Employers may dismiss someone without notice on the grounds of gross misconduct.
 - Gross misconduct occurs when an employee has committed a serious act such as theft, violence, physical abuse, serious breach in health and safety or gross negligence.
 - Employers should give employees a clear indication of the type of issues that could constitute gross misconduct, and it is still important to follow a fair procedure as for any other disciplinary offence.

Termination of Employment - Dismissal

- Dismissal
 - Employees have the right not to be unfairly dismissed.
 - In most circumstances employees will need to qualify before they can make a complaint to an employment tribunal:
 - Two years for employees starting employment on or after 6th April 2012.
 - However, there is no length of service requirement in relation to 'automatically unfair grounds'.

Fair dismissals

- A dismissal is normally fair if an employer can show that it is for one of the following **potentially fair** reasons:
 - a reason related to an employee's **conduct**
 - a reason related to an employee's **capability** or **qualifications** for the job
 - because of a **redundancy**
 - because a **statutory duty or restriction** prohibited the employment being continued
 - **some other substantial reason** of a kind which justifies the dismissal.
- **Provided** the employer acted **reasonably**

Fair dismissals

- The test is, whether or not, in the circumstances (including the employer's size and administrative resources), the employer acted reasonably in treating the reason as a sufficient reason for dismissal .
- Acting reasonably varies slightly according to the reason for dismissal but essentially means adopting a fair procedure.
- A fair procedure will always include a right of appeal against the decision to dismiss.

Fair Procedure - Conduct

- Investigate properly
- Inform the employee of all the allegations, with adequate notice
- Follow your disciplinary procedure and give the employee the opportunity to state their case
- Ensure the employee is aware of their right to be accompanied
- Conduct the disciplinary hearing in good faith
- Offer a right to appeal against the decision

Fair Procedure – Capability – Ill Health

- Long term ill health absence / frequent absence
 - Obtain a medical report/all necessary medical information
 - Discuss with the employee (likely to be several meetings)
 - Ascertain whether the employee is likely to return to work in the foreseeable future (without frequent absence)
 - Consider alternative working arrangements
 - Final (dismissal) meeting – consider right to be accompanied
 - Offer a right to appeal against the decision

Fair Procedure – Capability - Performance

- Performance
 - Meet with the employee to discuss expected performance standards
 - Give opportunity to meet those standards and set targets for improvement
 - Give support and/or training as necessary
 - Conduct review meetings to review progress
 - Continued failure to meet standards – issue disciplinary warnings (follow disciplinary procedure – warning, final written warning, dismissal)
 - Ensure the employee is aware of their right to be accompanied at each meeting
 - Offer a right to appeal against the decision

Fair Dismissal - Redundancy

Redundancy is where a dismissal is wholly or mainly attributable to:

- the fact that the employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed, or to carry on that business in the place where the employee was so employed,

or

- the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.

Fair Procedure - Redundancy

- Consider alternatives to redundancy
- Inform staff of the proposal (no final decision at this stage)
- Consider timetable depending on number of redundancies
- Consult meaningfully
- Choose redundant staff – fair and objective selection criteria / voluntary
- Consider alternative employment within the organisation
- Consider right to be accompanied at meetings
- Outline notice and redundancy pay
- Offer right to appeal against the decision.

Fair Procedure - Redundancy

Examples of fair selection criteria:

- skills / experience / qualifications
- attendance record (you should ensure this is fully accurate and that reasons for and the extent of the absence are known)
- disciplinary record (you should ensure this is fully accurate)
- standard of work performance
- aptitude for work.

Fair Dismissal – Some Other Substantial Reason

Some other substantial reason – a reason of a kind such as to justify the dismissal of an employee holding a position which the employee held.

Examples:

- a necessary business reorganisation e.g. Changes to working practices as an alternative to redundancy
- pressure from a customer or third party
- personality clashes or a breakdown in the working relationship between employees
- a genuine and reasonable belief that the employee no longer had the right to work in the UK
- Short term absences

Automatically Unfair Dismissals

A dismissal will be automatically unfair if it results from **unlawful discrimination** or is for one reason sets out with the Employment Rights Act 1996. Some examples are:

- Jury service
- Family-related reasons (pregnancy, childbirth, family leave and time off)
- Health & Safety
- Sunday working
- Working time
- Asserting a statutory right
- A public interest disclosure (whistle blowing)
- The transfer of an undertaking
- Trade union membership or activities

Remedies for Unfair Dismissal

- If someone feels they have been unfairly dismissed, they may bring a claim before the Employment Tribunal.
- Two years' continuous service is required except where the dismissal is alleged to have been for an automatically unfair reason.
- In addition to making a declaration that the dismissal was unfair, the tribunal can make an order to re-instatement, re-engagement or compensation. Can increase award if not complied with.
- Compensation is primarily linked to loss of earnings and, except for cases of automatic unfair dismissal, is capped at the lower of either the statutory maximum (£83,682) or 52 weeks' pay.
- Compensation uncapped if resulting from discrimination

Questions

- Any Questions?



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