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recruiting

This briefing highlights the key legal issues to be aware of when recruiting new employees/workers 2.



Before recruiting

It is a good idea to draw-up a job description which sets out the title and main purpose of the job and a person specification which details the experience, know-how and qualifications, skills and abilities necessary for the job in question (split between essential and desirable for the job).

To minimise allegations of discrimination ensure that requirements for specific qualifications, working hours or times, travel, age ranges or dress codes are strictly necessary for the job in question.

Attracting candidates

Decide whether the job should be advertised internally, externally or both.

Whether you use specialist publications, local newspapers or websites think carefully when writing the advert. Discrimination applies to all areas of employment, including job adverts. For example, avoid using language that might imply only someone of a certain age would be suitable (e.g. "mature", "experienced" or "young").

Any employees absent from work (including women on maternity leave or those on long-term sick leave) should be informed of the vacancy to enable them to apply. Failure to let them know could amount to discrimination.

The application

Standard application forms are a good way of enabling individual applicants' answers to be compared against each other and the selection criteria and can be helpful in avoiding potential discrimination claims.

Only ask for details relevant to the application, do not ask for information that might suggest you intend to discriminate, e.g. date of birth, ethnicity, a photograph, whether the candidate has children.

In most cases, you must not ask potential recruits questions about their health. So do not ask a candidate to complete a pre-employment health questionnaire and do not ask questions about an applicant's sickness absence record.

There are some circumstances where a business is entitled to ask health-related questions, e.g. asking an applicant for a job in a warehouse whether they have any health problems that may prevent them from lifting or handling heavy items. You can also check whether an applicant has any special requirements it needs to take into account when making the arrangements for interview, such as wheelchair access.

More information

If you have any queries about the content of this checklist, please contact Amanda Doyle on amanda@doylelaw.co.uk.

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The interview

To reduce the risk of a discrimination claim:

- check the interview venue has access for disabled candidates;
- avoid holding interviews during religious holidays as could discriminate against applicants from that particular religion.
- Ideally, all interviewees should be asked the same or similar.
- Avoid asking questions about an interviewee's personal life unless they are directly relevant to the requirements of the job.

Keep a paper trail throughout the process to demonstrate how you reached your decision to select the successful candidate. This should include:

- selection criteria;
- notes on the short listing process;
- interview questions;
- notes of assessments of the interviewees.

It is good practice to provide feedback to unsuccessful candidates if it is requested.

The offer

The offer should be in writing, although it can be conditional on a range of criteria, provided they are not discriminatory, e.g.:

- providing satisfactory references; or
- confirmation that the employee is free to work in the UK or has an appropriate work permit or immigration approval to work.

Before making a job offer, ensure the applicant confirms they are not bound by any restrictive covenants from their previous job.

The contract

You need to consider whether the offer will form part of the contractual terms or whether you intend to have a separate more detailed employment contract. A separate contract is usually the better option.

If there is a separate contract, make sure any offer letter is stated to be conditional on the signing a full contract and that the terms of the contract will take precedence if there is

any inconsistency.

The offer letter/contract needs at a minimum to contain the following information:

- names of the employer and employee
- job title or a brief description of the work the employee will do
- start date
- whether any previous job with the employer counts towards continuous employment and when that started
- how much and how often the employee will be paid
- hours of work
- holiday entitlement
- place of work, if an employee works in different places, where these will be and what the employer's address is
- notice period
- are there any collective agreements, e.g. a collective bargaining agreement with a trade union?
- is there a pension scheme?
- who to go to with a grievance
- how to complain about how a grievance is handled
- how to complain about a disciplinary or dismissal decision
- how long a temporary job is expected to last
- the end date if it is a fixed-term contract.

Probationary periods

A probationary period can be included in the contract. This will enable the business to assess the employee and vice versa. It also gives it the flexibility to dismiss someone using a shorter notice period of at least one week.

Setting pay

The business must ensure that it meets the requirements of the National Minimum Wage and also for equal pay between men and women for like work and that the salary for any part-time position are pro rated properly, e.g. someone working 2 days per week should get the 2/5 the pay of the equivalent full time salary.

Permission to work in UK

It is unlawful for a business to employ an individual who does not have the right to work in the UK or who is working in breach of their conditions of stay in the UK.

The business should check this before an individual commences employment and to keep a record of the checks it has carried out. To check if someone can work in the UK see, <https://www.gov.uk/legal-right-work-uk>.

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