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Recruitment, Contracts and Handbooks – For Charities



1. Recruitment

Recruitment – Introduction

- The main legal issues to consider in recruitment are:
 - Discrimination.
 - Data protection.
 - Vetting applicants – the Right to Work, DBS checks and the Rehabilitation of Offenders.
 - Contractual issues – making and withdrawing offers.
 - Handbooks and Policies

Recruitment – Discrimination

- Applicants can bring discrimination claims
- Related to a 'Protected Characteristic' (e.g. age, race, sex).
- Claims can cover the advertisement process, the selection procedure and the decision on whether to offer employment.
- EHRC guidance on recruitment and selection:
 - Have selection criteria that can be objectively assessed, if possible.
 - Consider how to reach the widest possible recruitment pool.
 - Assess candidates in a consistent way.
 - Avoid stereotypical assumptions.
 - Think about arrangements (such as working hours or days) that may affect people differently.

Recruitment – Disability Discrimination

- Pre-employment enquiries about health.
 - Must have a clear justification to ask about disability, health or sickness absence, and generally this should be done only once a (conditional) job offer has been made.
 - A role can be offered subject to satisfactory health checks/Occupational Health reports where appropriate.
- The duty to make reasonable adjustments:
 - Employers are allowed to ask about disability and health in order to consider adjustments to the interview and selection process, but not the job itself.
 - If the arrangements put an applicant at a substantial disadvantage because of their disability, the employer must make reasonable adjustments.
 - This can apply to the way in which interviews are conducted, pre-employment tests or assessments.

- **The Right to Work?**

- Civil penalty, up to £20,000
- Criminal offence, unlimited fine and/or up to 6 months' imprisonment (5 years' on indictment)

- **DBS checks:**

- For those working in positions of trust, with children or vulnerable adults

- **Rehabilitation of Offenders Act 1974 – “spent convictions”:**

- A conviction is spent if an individual does not reoffend. A spent conviction depends on the type of sentence and the length of time that has passed
- A failure to disclose a spent conviction cannot be held against the applicant

- **Personal data**
- **Special Category data**
- **Necessary?**
- **Secure?**
- **Subject access request**
- **Data retention**



- **Writing**
- **Typical conditions?**
 - Satisfactory references
 - Proof of qualifications
 - Satisfactory DBS check
 - Satisfactory Occupational Health clearance
- **Withdrawing offers**
 - Breach of contract
 - Discrimination
- **Trial Period?**



2. Contracts of Employment

Employment status – what kind of contract?

- Employees
- Workers
- Directors or trustees
- Zero-hours staff
- Self-employed consultants
- Agency workers
- Volunteers

Contracts – Key Employment Rights

- Self-employed consultants
 - Potentially some discrimination and whistleblowing protection.
 - Breach of contract.
- Workers also have the following key rights:
 - Working time and holidays.
 - National Minimum Wage.
 - Discrimination and whistleblowing.
- Employees have additional rights:
 - Unfair dismissal.
 - Statutory redundancy payments.
 - Family leave.
 - Statutory minimum notice periods.

Contracts – Section 1 Statement

- What is 'Section 1'?
- Is it a different document to the contract of employment?
- Who is entitled to a section 1 statement and when?
- What is the punishment for not complying with section 1?

Contracts – What has to be included under section 1?

- Names of the parties and job title
- Date of continuous employment
- Pay arrangements (including pension and any other benefits)
- Place and hours of work
- Notice period and any probationary period which applies
- Holiday entitlement
- Sick pay entitlement
- Certain information relating to disciplinary and grievance policies
- Whether the employee has to work abroad for more than one continuous month
- Collective agreements
- Training and paid leave

Contracts – What additional terms should we consider including?

- Clauses giving flexibility to the employer e.g. mobility clauses, right to vary terms with notice
- Confidentiality
- Restrictive covenants:
 - What are they?
 - Do we need them?
 - Can we enforce them and how?
- Intellectual property
- Clauses related to directors' duties

Contracts – Notice Periods and Probation

- Statutory minimum periods of notice (for the employer giving notice):
 - More than one month's service but less than 2 years – one week.
 - One week's notice for each year of service after that, up to a maximum of 12 weeks' notice.
 - An employee with more than one month's service must give one week's notice.
- Probationary periods can be useful but bear in mind:
 - An employee with less than 2 years' service cannot bring a claim for (ordinary) unfair dismissal.
 - They may bring claims of discrimination or automatically unfair dismissal (no service requirement).
- Beware of any contractual procedures – do they apply during the probationary period?
- Keep to the agreed timescale, or extend it in advance if necessary, and keep a paper trail.
- Probationary review meetings.

Contracts – how to vary terms

- Variation by consent:
 - Is there an existing contractual right to vary the terms?
 - What sort of changes would be allowed?
 - If not, consultation/negotiations to agree to new changes.
- Imposing a unilateral variation of contract:
 - Potential breach of contract, unfair dismissal/constructive dismissal claims.
 - Changes may be 'accepted' if the employee continues to comply with the new contract.
- Dismissal and re-engagement:
 - Dismiss employees from their existing terms and offer reengagement on new, varied terms.
 - Potential unfair dismissal claims.
 - Collective consultation obligations may apply.

3. Handbooks, Policies and Procedures

Handbooks

- **Is it a legal requirement to have one?**
- **Why have a staff handbook?**
 - ✓ Information that may not be appropriate to include in the contract of employment
 - ✓ Some policies are required by law, some as a matter of good practice
 - ✓ Convenient to collate all staff policies in one place
 - ✓ Employer's policies may be more generous than the minimum legal requirements
 - ✓ Give employees a useful source of information on working arrangements
 - ✓ Guidance on staff culture
- **Contractual or non-contractual:**
 - Varying terms
 - Claims / legal rights
 - Effect of contractual procedures

- **Policies required by law:**
 - Disciplinary
 - Grievance
 - Health and safety

- **Policies that are good practice and can help avoid claims:**
 - Anti-bullying and Harassment
 - Equal Opportunity/Equality and Diversity
 - Data protection and information governance
 - Whistleblowing

- Other policies to consider:
 - Sickness/absence management
 - IT and social media
 - Performance and capability
 - Bullying and harassment/dignity at work
 - Anti-money laundering
 - Flexible working/home working
 - No smoking, drug and alcohol
 - Holidays, annual leave and different forms of family-related leave.
 - Redundancy

Questions and answers

Thank you

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