

HIRING AN EMPLOYEE

This note highlights the key legal issues your business should consider when recruiting a new employee.

Before advertising

- Make sure all staff involved in the recruitment process has had equal opportunities training (and they continue to receive it while working for your business).
- Draw-up the following documents:
 - a **job description** which sets out the title and main purpose of the job, the place of the job holder within your business and the main tasks or responsibilities of the post.
 - a **person specification** which details the experience, know-how and qualifications, skills and abilities necessary for the job in question. The requirements can be split between those that are “essential” for the job and those that are merely “desirable”.
- Ensure that none of the requirements in either document discriminates against any groups of employees. In particular, consider whether any requirements for specific qualifications, working hours or times, travel, age ranges or dress are necessary for the job in question.
- Consider whether the job needs to be full-time or whether it is open to part-time, home working, flexible working or job sharing. If you specify that the job is full-time, you may need to be able to justify your decision.

The advert

- Decide whether you want the job to be advertised internally, externally or both.
- Consider using specialist publications, websites and agencies to target different communities, ages and sexes.
- Think carefully when writing the advert. Protection from discrimination because of a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex or sexual orientation) covers all areas of employment, including job adverts. For example, avoid using language that might imply only someone of a certain age would be suitable (for example, “mature” experienced” or “young”).

- Ensure any employees absent from work (including women on maternity leave or those on long-term sick leave) are informed of the vacancy to enable them to apply. Failure to do so could amount to discrimination.

The application

- Using a standard application form will allow your business to directly compare individual applicants' answers against the selection criteria more easily and help avoid potential unlawful discrimination claims.
- Draw up a shortlist using the same criteria used in the job description and person specification. Every applicant should be marked against the same criteria to help avoid any potential unlawful discrimination claims.
- If your business is making redundancies you must consider applications for suitable vacancies from employees selected for redundancy ahead of external applicants. Women selected for redundancy while on maternity leave are entitled to be offered a suitable alternative vacancy (where one is available) in priority to other potentially redundant employees.

The interview

- Think when and where the interview should take place. For example:
 - check whether the interview venue has access for disabled candidates;
 - holding an interview during a religious holiday could discriminate against applicants from that particular religion; or
 - candidates with children may require the interview to be conducted at a particular time.
- Ideally, all shortlisted candidates should be asked the same or similar questions to allow you to compare their answers and avoid the possibility of a discrimination claim.
- You should not ask any questions about the candidates' personal life unless they are directly relevant to the requirements of the job (for example, it is unacceptable to ask a female candidate whether she plans to have children).
- Keep a paper trail throughout the process to demonstrate how your business reached its decision to select the successful candidate. This should include:
 - selection criteria;
 - notes on the short listing process;

- interview questions;
- notes of panellists' assessments of the interviewees.
- It is good practice to provide feedback to unsuccessful candidates if it is requested. A failure to do so could indicate your decision was based on discriminatory grounds.

The offer

- Make a written offer to the successful candidate. Consider whether to set a time limit for acceptance and specify that acceptance should be in writing.
- Your business can make the offer conditional on a range of criteria, provided they are not discriminatory. For example:
 - 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, make sure the applicant confirms they are not bound by any restrictive covenants from their previous job; otherwise your business could be sued by their former employer. Restrictive covenants are used in employment contracts to protect an employer's business by restricting the activities of an employee, generally after employment has ended.

The contract

- Consider whether the contract should be permanent or for a fixed term. If you decide a fixed-term contract is appropriate, you may need to justify why your business reached that decision.
- Remember that an employee on a fixed-term or part-time contract should not be treated any less favourably than a permanent employee (for example, they should be allowed access to a company bonus scheme or instead receive an equivalent benefit).

Probationary periods

- Your business can include a probationary period in the contract. This will enable you to assess the employee and vice versa. It also gives you the flexibility to dismiss someone using a shorter notice period of at least one week.
- Probationary periods typically last between three to six months and can be extended with the consent of the employee at the end of the term (for example, if the employee was sick and your business was unable to adequately assess their performance, you may want to extend the period).

The comments in this note are of a general nature only. Full advice should be sought on any specific problems.

More information

If you have any queries about the content of this note, please contact Christopher Gigg, Kathryn Meir or David Hardstaff.