

Employing people



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Also available in Welsh. Also available in large print format.

1: Introduction

Deciding to employ someone for the first time can be a daunting decision. Getting it right from the outset can ultimately save you time and money and help to avoid potential disputes.

This guide has been produced to offer clear and informative advice on your obligations as an employer and some tips on best practice.

1.1 Preparation

Whatever the size of your organisation, preparation is essential when employing people. Any changes to your workforce can cause serious disruption unless you are prepared. Employment decisions should not be made in haste and specialist advice should be sought to ensure your actions or decisions do not result in extra costs for your organisation and that you comply with current employment legislation.

The most important employment planning decision is how many employees you need. You then need to know what your responsibilities are.

Planning your workforce is your starting point. Think about your employment needs in advance – not just for now, but for next month and for next year. Review your decisions regularly and anticipate fluctuations in demand. This will help you decide if you need to employ people full-time or part-time.

1.2 Where to start

There are a number of legal considerations when taking on an employee. Before recruiting or appointing you need to ask:

- How long will the work last?
- Will it be permanent or fixed term?
- What type of employment relationship will they have?

The following definitions aim to explain the different employment relationships, your obligation as an employer and your employees' obligations to you.

PERMANENT EMPLOYEES

Permanent employees can be either full time or part time and are employed without a predetermined time limit.

FIXED TERM EMPLOYEES

Fixed term employees are employed for a predetermined time; until a specific task/project has been completed; due to the availability of funding, to cover a busy period of work; or to cover another employee's absence. Fixed term contracts can be extended but after 4 years of continuous employment fixed term employees are classed in law as permanent.

Fixed term employees must not be treated less favourably than permanent employees doing the same job, or largely the same job, unless there is good reason to do so.

Fixed term employees have the right to:

- the same pay and conditions;

- the same or equivalent benefits package;
- access to an occupational (company) pension scheme (except if the fixed term contract is for less than two years);
- be informed about permanent employment opportunities; and
- be protected against redundancy or dismissal.

CASUAL / ZERO HOURS WORKERS

Casual workers are not usually part of the permanent workforce but supply their services on an irregular or flexible basis or have a 'minimum guaranteed hours' contract. They are usually brought in to work when additional support is required and if it is mutually convenient for both the worker and the organisation. The employer is not obliged to offer work. There is no responsibility for the employee to accept the work.

EMPLOYMENT AGENCY / TEMPORARY STAFF

Agency or temporary staff are engaged through an agency and supplied to the organisation. The organisation should have a contract with the agency NOT the staff BUT legal responsibilities still apply to the organisation as the end employer. Agency rates will include National Insurance payments, holiday pay, sick pay and an administration fee and the Agency must pay the worker the National Minimum Wage.

SELF EMPLOYED - FREELANCERS / CONSULTANTS / CONTRACTORS

These types of workers carry the minimum of employer obligations.

Self employed workers usually run their own business and take responsibility for its success or failure; have several customers at the same time; can decide how, when and where they work; are free to hire other people to do the work for them or help them at their own expense; and provide the main items of equipment to do their work. They are contracted to provide services to the organisation over a certain period of time for an agreed fee.

Self employed workers are liable for paying their own tax and national insurance contributions on a self employed basis. They complete a Self Assessment Tax Return and should hold their own insurance. They still have the right to be paid National Minimum Wage at the current rate.

PAY

An organisation must consider how they will pay their employees and provide a detailed pay statement stating the gross pay and any deductions, including National Insurance and tax. Employees must be paid on the date and by the means stated in their contract of employment. Employers need to register with HM Revenues and Customs (HMRC) and make sure any deductions are forwarded on to HMRC. Employers also have to pay an employer's National Insurance contribution.

PENSIONS

Every employer with at least one member of staff has legal duties relating to pensions, which include putting those who meet certain criteria into a workplace pension scheme and contributing towards it. More information can be found here: <http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx>

Employers must comply with legislation regarding the National Minimum Wage.

EMPLOYMENT POLICIES

If an organisation has 5 or more employees they are legally required to provide written policies on certain issues e.g. disciplinary, grievance, health & safety. However, all employers are encouraged to have policies and procedures in place as best practice.

- They can be part of an Employee Handbook (see Section 4) or in a separate document.
- They must be referred to in the contract of employment.
- You must make employees aware they exist and make sure they have access to them.

INSURANCE

Even if an organisation only has one employee they need to have valid Employers Liability Insurance and a valid certificate will need to be displayed at all times. An employer may also need other insurances depending on what the employees are doing e.g. driving a works vehicle.

HEALTH & SAFETY

All employers must provide a safe and secure working environment for all workers, employees, contractors, temporary or agency workers. It is best practice to have a clear written health & safety policy and where appropriate up to date risk assessments and relevant training.

1.3 Advisory organisations and further support

ACAS

ACAS stands for Advisory, Conciliation and Arbitration Service. They help with employment relations by supplying up-to-date information, independent advice and high quality training, and working with employers and employees to solve problems and improve performance.

Tel: 08457 47 47 47 www.acas.org.uk

HMRC

HM Revenue & Customs (HMRC) ensure the correct tax is paid at the right time, whether this relates to payment of taxes received by the department or entitlement to benefits paid.

You can contact HMRC to register as an employer. They also give free help and advice to employers about taking on staff. They have an online employment status indicator tool as well as a National Insurance calculator and Pay As You Earn (PAYE) tax calculator.

www.hmrc.gov.uk/employers

2: Recruitment

2.1 Do you need to recruit?

Before you employ someone, make sure that you actually need a new employee. Employing someone means you have a duty to pay them and to provide them with work. You should consider all alternatives before committing, to avoid any costly mistakes.

You might be able to:

- Share work among existing employees;
- Ask part time employees if they would consider full time work;
- Improve efficiency by rearranging tasks;
- Offer overtime to existing employees;
- Adopt flexible working arrangements;
- Hire temporary workers from an agency;
- Outsource this work to another business – e.g. website design, accountancy, cleaning; and/or
- Engage a consultant/contractor to do the work – especially if it is a project lasting for a specific period of time – they are responsible for their own PAYE liabilities – they are not employed by you, but it is still important to have a contract/terms of work.

2.2 Recruitment Policy

When you are ready to recruit there are a number of steps you should follow in order to ensure that you are compliant with the requirements set out by The Equality Act 2010. There is a brief overview of the act at [Appendix A](#). It is best to have a recruitment policy that clearly defines your commitment to the Act. A Model Recruitment Policy is included at [Appendix B](#).

2.3 Defining the role

You need to start by writing a job description and person specification for the role. An Example Job Description and Person Specification can be found at [Appendix C](#).

The job description should set out a clear idea of the job and should contain the major parts of the job and its main purpose.

A person specification identifies the skills and personal qualities you would be looking for in the ideal candidate. The person specification should be linked directly to the job description. This helps to ensure that a person's ability to do the job is considered, not unrelated personal characteristics.

Be careful to stay compliant with The Equality Act 2010. By law an employer may not discriminate on grounds of age, race, sex, marriage, disability, sexual orientation or religion or belief. All stages in the recruitment process must treat all races and both sexes equally. For example generally you cannot specify that you want a woman or that you want someone of a certain age. There are however, certain circumstances under which you can specify that being of a certain race or gender is a requirement for the role. Employers can stipulate essential health requirements but may need to justify doing so and that it would not be reasonable to waive them.

2.4 How to recruit

Once the job has been clearly defined, the search for the right person can begin. This will depend on the nature of the role, the skills required and your budget. You should consider who you want to reach and what medium they are likely to use to search for vacancies.

Internal recruitment may be the cheapest and most reliable method.

There are a number of employer recruitment services providing free, nationwide recruitment and advisory services including advertising your vacancy, selecting appropriate candidates and providing

information on suitable school leavers and other young people who may qualify for wage subsidies and training grants.

Within Wales these include:

- Jobcentre Plus - The Employer Direct service, run by the Jobcentre Plus, supports employers with a vacancy advertising service. Tel: 0845 601 2001
- Careers Wales - Careers Wales provides a range of free services tailored to Welsh employers including work experience, placements and recruitment of 16-19 year olds. www.careerswales.com
- GO Wales - GO Wales offer a variety of services to help employers recruit and retain graduate staff including work experience placements for students or graduates, support for staff training and advertising a vacancy free of charge. www.gowales.co.uk

Most local authorities also offer support to employers through a range of government work programmes. You will need to contact your local authority jobs/employment team.

Employment agencies and recruitment consultants can also assist, however you should agree the terms in advance and understand exactly what support they will provide. Do their fees include advertising? Will they be handling all the administration? Will they attend the interviews? This can be a cost effective way to recruit, especially if you are recruiting for a professional or management role. The administration involved in managing a recruitment project can be very time consuming.

External advertisements in local, national and industry publications often attract a large number of applicants. Costs vary and are usually negotiable. Their advertising departments will usually give advice on layout but you will need to think about the content of your advertisement, for example a brief job description, pay and conditions, qualifications required, career prospects, how to apply and a closing date. The aim is to attract suitable applicants and reduce unsuitable applications.

There is an Example Recruitment Advert at [Appendix D](#).

Increasingly jobseekers are using the internet and applications may also be made direct via email. There are a number of online recruitment sites who charge per role advertised.

It is important to check who their target audience is, the number of 'hits' they attract and the other types of roles advertised.

Additional on-line advertising includes circulating the vacancy through Facebook, Twitter, LinkedIn and other social networking sites.

If your vacancy is better suited to Agency Staff then you should contact a reputable employment agency with details of your vacancy. Remember that any Agency Staff will be employed by the agency and not you, but you still have a duty of care towards them and a number of legal obligations.

2.5 Selection

You need to be aware that a candidate applying for a job might be able to make an employment tribunal claim against you if they believe you didn't select them for a job because you discriminated against them unlawfully. It is imperative that every step of the recruitment process complies with the Equality Act 2010.

Methods of job selection can include:

- Asking candidates to complete an application form;
- Interviewing a shortlist of candidates;

- Asking candidates to pre prepare a presentation;
- Selection days where you bring lots of candidates together and ask them to complete specific tasks to see how they work as a team;
- Aptitude, achievement and intelligence tests; and/or
- Occupational tests – you may ask a candidate for a hairdresser's role to cut a models hair.

2.6 Application forms

An application form can be used to ask for information relevant to the job and it can help weed out unsuitable applicants and provide a sound basis for an interview. It can provide a useful 'pen picture' of the applicant, especially for those who have little training or interviewing experience. However, application forms should not require a higher standard of English than is required to do the job. There are limits under the Equality Act as to when you can ask questions about health or disability.

Such questions can no longer be included on an application form and can only be asked when you make a conditional or unconditional job offer to anyone; or include them in a pool of successful candidates to be offered a job when a vacancy arises.

You can only ask a candidate before these stages if they will be able to take part in some form of selection test or if you will need to make a reasonable adjustment to the interview or test for any disabled applicants.

You can also ask about health or disability if:

- you want to monitor the diversity of your applicants;
- you want to take positive action to enable you to recruit more disabled workers; and/or
- the job in question is one for which having a particular disability is an occupational requirement and you want to establish that the person has that disability.

An Example Application Form is at [Appendix E](#).

2.7 Interviews

An interview is one of the best ways to judge whether someone is the best person for the job and to secure his or her agreement to take it. As the employer it is your opportunity to find out if the applicant can do the job. The applicant is given the opportunity to find out about your organisation, the job, how much it pays and other employment terms.

Remember as this is a two-way exchange of information it is not just the applicant who is being judged – a badly prepared interviewer can create an unfavourable impression of the company.

- Consider who will be best placed to conduct the interviews; it may be good to include the line manager or a potential colleague of the candidate.
- Plan where the interviews will take place; you need somewhere private and quiet. Will the next interviewee arrive and know where to go, do you need a receptionist to meet and greet them?
- Prepare questions in advance to ensure each interview is the same and fair.
- Make notes of the answers given so you do not forget.
- Put the interviewee at ease; stress will mean an ineffective interview and possibly the posting of the

wrong candidate.

- Use 'How' and 'What' questions to prompt good examples. Try to get the interviewee to do 90% of the talking.
- Give the interviewee a chance to ask their own questions.
- At the end of the interview give them a timescale in which they can expect to hear from you with the outcome of the interview.

During or after the interview process you can complete a scoring matrix which will help determine the successful candidate. You need to give a weighting to each skill that you require for the role, as defined in the job description and person specification. Your questioning should ascertain to which level the candidate has the skill which you can mark accordingly and total to see if you have a clear favourite.

Appendix F includes an Example Interview Scoring Matrix.

The Data Protection Act 1998 provides that candidates may request interview notes in certain circumstances. Full details are available from the Information Commissioner at www.ico.gov.uk.

3: New starters

3.1 Offer of employment

Once you have decided on the successful candidate you will need to make an offer of employment. This is usually done by letter, but can be done by email or phone and then followed up with a letter confirming the posting.

An offer letter needs to clearly state the following:

- Which role and with which company the employment is being offered at.
- When you would like them to start work, for how many hours and which days a week.
- What they should wear.
- Where they need to report for work and to whom.
- If the offer is subject to satisfactory references.
- If the offer is for a trial period or probationary period.

You may wish to send a letter with a tear off slip for them to sign and formally accept your offer of employment. **Appendix G** includes an Example Job Offer Letter.

3.2 References and checks

Now that you have chosen a candidate you are ready for them to start work. You should obtain references, usually before making the offer permanent. It is usual to request a reference from the current employer and a past employer or character reference.

It is best practice to obtain the new employee/successful candidate's permission before approaching their current employer. The tear off slip mentioned in the offer letter can also state that by signing they agree to you contacting their previous employer for the reference. **Appendix H** includes Example Reference Check Form.

ENTITLEMENT TO WORK IN THE UK

You are legally bound to check entitlement of every worker regardless of their race, ethnic or national origin, colour or nationality

Generally citizens of the UK, Channel Islands, the Isle of Man, EEA and Swiss nationals are eligible. You should ask the new employee to prove their right to work in the UK by providing you with a copy of their passport showing that they are an EU citizen and that they have a valid Visa/work permit. You should keep a copy securely in their personnel file.

CRB CHECKS

If your business involves employing people who work in Regulated Activity with children or vulnerable adults or in any other area covered by the Exceptions Order to the Rehabilitation of Offenders Act, you can ask all employees and volunteers to apply for a Criminal Records Bureau (CRB) check.

To submit a CRB check and receive CRB application forms, you must either register with the CRB or use the services of a CRB registered umbrella organisation. Registration costs and therefore unless you are likely to submit a high number of CRB check requests you may be better paying for the services of a registered umbrella organisation. There are many available and you can find out if your vacancy requires a criminal record check by looking on the Home Office website: www.homeoffice.gov.uk

The Criminal Records Bureau charges a fee to process criminal records checks. The individual being checked is responsible for the cost. However you, as an employer, can offer to pay this fee on behalf of an applicant at your discretion.

If you have any volunteer workers they can get a CRB check free of charge.

It can take up to 4 weeks to get the check back so for some vacancies you will not be legally able to start your employee at work until this has been cleared.

3.3 Employment contracts

All employees have a contract of employment which forms the basis of the employment relationship. In simple terms, an employee agrees to work for an employer in return for wages. A contract is made when the offer of employment is accepted.

Independent contractors who will be self employed are fundamentally different from an employee or worker and most of the employee rights do not apply. You should issue them with a separate contract of works or similar document.

A number of rights and duties, enforceable through the courts, arise as soon as an offer of employment is accepted. However, most rights and duties, particularly statutory ones, apply only when the employee starts work; and a number of them require specific periods of service to have been worked. For instance, there is a service qualification of one year for most unfair dismissal claims to an employment tribunal. Most employment contracts (except those for apprenticeships) need not be in writing to be legally valid; a verbal agreement can be sufficient. However, writing down the terms of the contract can minimise later disagreements. The Employment Rights Act 1996 requires employers to provide most employees, within two calendar months of starting work, with a written statement of the main terms of the contract.

A contract of employment must contain the following information:

- Business name
- Name of employee
- Job title and brief job description/job purpose
- Date employment started (and any period of continuous employment)
- For fixed term employment, the date when it is expected to end
- How much you will pay them
- Frequency and method of payment
- Normal working days/hours
- Normal place of work
- Holiday entitlement
- Sick leave and pay
- Information on the pension scheme
- Notice period to terminate employment
- Details of any relevant collective agreements
- Details of the disciplinary and grievance procedures

Appendix I includes a Model Contract of Employment which can be tailored to your organisation.

It is good practice to keep all your staff records in one place. You should keep one signed copy of the employment contract in the employee file and give the employee a copy to keep.

You should also keep the following documents in personnel files – paper or electronic:

- Personal details - name, sex, date of birth, address, education, qualifications, previous experience, tax code, National Insurance number, emergency contact, details of any job-related disability
- Employment details – date employment began, date present job started, job title, basic pay, overtime and other premiums
- Absence details – sickness, lateness, authorised, unauthorised
- Details of accidents
- Details of disciplinary action
- Details of performance management/appraisals
- Training details.

Please note that you will need to comply with the Data Protection Act 1998 and register with the Information Commissioner at www.ico.gov.uk. Employees are entitled to request copies of any specific personal data held or processed by the organisation and the organisation can charge a fee of £10 for providing copies of such data – please refer to the Section 4: Employee Handbook.

3.4 Induction

The term 'induction' is generally used in a workplace context to describe the whole process whereby employees adjust to their jobs and working environment. Every organisation, large or small, should have a well-considered induction programme. Employees who have a well thought-out induction are more likely to stay with the organisation. The induction programme has to provide all the information that new employees need, the length and nature of the induction process depends on the complexity of the job and the background of the new employee.

A good induction programme contains the following elements:

- Description of where the facilities are
- Introduction to the team/department, setting out how their role fits in and contributes to the team/department/organisation's strategy and goals
- Description of other functions/departments within the organisation
- Introduction to key senior employees
- Overview of health and safety information - this is a legal requirement
- Explanation of key terms and conditions of employment
- Details of the organisation's history, its products/services, its culture and values
- Clear outline of the job/role requirements

All staff, both full and part time need an induction programme, as well as people returning from career breaks, long-term absence or maternity/paternity leave.

If a new employee does not have an effective induction they may get off to a bad start and never really understand the organisation itself or their role in it.

This may lead to:

- poor integration into the team/organisation;
- low morale, particularly for the new employee; and
- loss of productivity.

In extreme cases, employment may be terminated early, either through resignation or dismissal.

Early termination results in:

- additional cost for recruiting a replacement;
- wasted time for the inductor;
- lowering of morale for the remaining staff;
- detriment to the leaver's employment record;
- having to repeat the unproductive learning curve of the leaver; and
- damage to the company's reputation.

The line manager is responsible for a new recruit's induction, but would not be expected to cover all the elements personally.

A typical allocation of induction tasks could be:

- Line manager/supervisor: explain the departmental structure, the requirements of the job, the purpose and operation of any probationary period and the appraisal system.

- Safety officer: explain health & safety issues.
- Nominated colleague: provide an escorted tour of the department and introduce fellow workers; then give day-to-day guidance in local procedures for the first couple of weeks.
- Senior manager(s): give an overview of the organisation, its history, products/ services, quality systems and culture.
- Mentor or 'buddy': sometimes inductees are allocated a colleague, not their immediate line manager to be a point of contact for advice on cultural issues as well as work protocol and performance.

It is important to keep a checklist of the areas of induction training received, ideally countersigned by the new starter. This helps to ensure all employees receive all the information they need. This checklist can be a vital source of reference later in employment - for example to check an employee has been briefed on policies, or to produce evidence of training in the event of a health & safety inspection.

One of the first steps of induction should be getting the employee to complete a new starter form which should have details of their next of kin to contact in an emergency, their name and address and their National Insurance number. This should be filed in their personnel file.

An Example New Starter Form is included in [Appendix J](#).

An Example Induction Checklist is included in [Appendix K](#).

3.5 Probationary periods

It is normal for new starters to be employed for a probationary period during their initial employment. This is to give them time to adapt to the new role and prove that they are capable of fulfilling the requirements for the role. This can also give them the chance to see if they want to continue with the role and if it is meeting their expectations.

A standard probationary period is usually three months. This gives a satisfactory time in which to assess their suitability for the post long term.

During a probationary period employment may be terminated at any time without notice. You may extend a probationary period at your discretion as long as the contract of employment states so.

4: Employee handbook

As mentioned in Section 1, if you employ 5 or more employees it is a legal requirement to set out your disciplinary rules and discipline and grievance procedures in writing, as well as your health & safety policy.

We would encourage all employers to have policies and procedures in place for all aspects of employment with their organisation. Even though you may not be legally bound to produce them they are a powerful tool in staff management. Many procedures are not contractually binding (unless stated) however they clearly set out what is acceptable or required by employees and as such can reduce the need for future disciplinary and legal action.

Clarifying policies and procedures may also increase productivity and morale, as well as help employee retention; employees who feel they are respected and treated fairly are generally happier and as a result more productive in the workplace.

Key policies can form part of the contract of employment however disciplinary and grievance procedures

are required to be set out either in an Employee Handbook or as a specific written document to which all employees have equal access. Copies should be kept in a staff room or on an intranet. Whatever happens, they must be accessible by all.

The following key policies are included in the Appendices:

- APPENDIX L Disciplinary and Grievance Policy
- APPENDIX M Bullying and Harassment Policy
- APPENDIX N Capability Policy
- APPENDIX O Diversity and Equality Policy
- APPENDIX P Absence and Sickness Policy
- APPENDIX Q Parental Leave Policies
- APPENDIX R Dependant Leave Policy
- APPENDIX S Compassionate Leave Policy
- APPENDIX T Flexible Working Policy
- APPENDIX U Data Protection and Confidentiality Policy
- APPENDIX V Model Redundancy Policy

The following policies may also be considered, depending on the requirements and culture of an individual organisation:

- Home working Policy
- Travel Policy
- Benefits Policy
- Drugs and Alcohol Policy
- IT / Use of Email / Internet Policy
- Social Networking Policy
- Lone Working Policy
- Sabbatical Leave Policy
- Smoke-free Policy
- Whistleblowing Policy
- Mobile Phone Policy

5: Performance management

Effective performance management requires:

- communicating what needs to be done;
- a planned time and means for ensuring that it happens; and
- a way to evaluate if it has happened.

5.1 Setting targets

You should give your teams and individual employees set objectives and communicate them clearly. When deciding on targets it's useful to consider if they are SMART. This is a useful acronym to help make targets effective for your business.

- S Specific
- M Measurable
- A Attainable
- R Relevant
- T Time-bound

Once targets have been set and communicated to staff you will need to give them a period of time to achieve them, at the end of which you will need to evaluate their performance. This is usually every 12 months however this timescale should be adjusted to suit the needs of your organisation or individual employee.

5.2 Evaluating performance

It is best to implement a performance management system. This can be as formal or informal as you like, however a formal performance management system is an essential part of the Capability, Disciplinary and Grievance Procedures as illustrated in [Appendices L and N](#).

A formal performance management system, where objectives and reviews are documented correctly, is effectively an evidence trail of the continuous support, training opportunities and timescales you will have given to employees that are consistently underachieving and eventually will be the proof that they are not capable of achieving the standard required for the role, supporting any disciplinary action which may result in dismissal.

You will also find that employees are encouraged and motivated as they feel valued by a performance management system. Individual achievements can be recognised and employees are able to identify their own training needs through self evaluation.

It is therefore good practice to implement a performance management system.

There are three main groups of performance management systems.

Many systems incorporate at least two of these:

- Performance reviews - discussion about progress and further development to improve current performance.
- Potential reviews - discussion about opportunities for progression, capability for future work and how this can be achieved by identifying developmental needs and career aspirations.
- Reward reviews - these are usually separate from the performance management system.

With the emergence of performance management, the main change to how appraisals are used is the establishment of clearer links between individual objectives and organisational goals. A reward review interview may be arranged between manager and employee at a later date.

There are three main types of appraisals:

- objective-setting
- competency frameworks
- 360-degree appraisals

5.3 Using competencies

Competencies describe not only 'what' employees need to be able to do to perform well within a role but also what they should be able to do.

There are three ways in which competencies can be used:

- core competencies - apply to the organisation as a whole
- generic competencies - shared by a group of similar roles
- role-specific competencies - unique to a particular role

Assessment of performance using a competency structure can help support a transparent and consistent appraisal scheme. A competency-based approach can be applied across the full range of HR and development processes.

5.4 360-Degree feedback

360-degree feedback involves a number of stakeholders providing feedback on an employee's performance against various performance targets/objectives.

There are a number of ways in which 360-degree appraisal is implemented in organisations. Data can be generated from the employee's manager, from their team or colleagues, and from external and internal customers and suppliers. A self-assessment process may also be incorporated using, for comparison purposes, the same criteria as the other generators of feedback. Feedback can be obtained through questionnaires or by face-to-face discussions.

5.5 Key elements of appraisal

Whatever the approach, an appraisal process will follow these key elements:

- preparation;
- discussion and feedback; and
- feedback and ongoing review.

Preparation begins before the employee and manager meet for the appraisal discussion. Each individual is given time to reflect and prepare in order to contribute fully to the discussion. Also, the employee needs an opportunity to review his or her performance against their current objectives, their aspirations for the future and what help or support they need in order to reach their future objectives.

The discussion element explores:

- past performance;
- current performance;
- future performance; and
- agreement of objectives and development required.

Within the review of past performance some thought should be given to factors over which the employee has some degree of control, e.g. motivation, skills and knowledge, and factors outside the employee's control, e.g. budget changes. These factors will have had some effect upon the achievement or non-achievement of objectives.

Constructive feedback from the manager is crucial to a successful appraisal scheme. It is helpful for both the manager and the employee to use impartial data or evidence of past and current achievements to keep the discussion positive and objective. The appraisal discussion is also a useful opportunity to update the job description.

Agreeing future objectives using the SMART acronym (see above) provides an opportunity to discuss career aspirations and development needs. A page that provides space for comments and a summary of agreed outcomes is useful for both manager and employee.

The discussion element is often viewed as the main activity of an appraisal scheme. Yet feedback and the review of performance by both manager and employee should be seen as ongoing and not just as an annual exercise. This continuous feedback process will eliminate any surprises and enable managers to deal more effectively with poor performers.

5.6 Poor performance

Appraisal schemes should not be used as a disciplinary mechanism to deal with poor performers. This should form a separate review procedure and not be seen as part of the regular appraisal process.

The appraisal form is not the place to record details of verbal or written disciplinary warnings. These should be recorded separately as part of the disciplinary procedure. It may, however, be considered necessary to record unsatisfactory performance within a specific space on the appraisal form and would have definite advantages from a legal point of view. The manager at specified target dates could then review improvements in performance.

5.7 Evaluating performance management

To ensure that performance management is delivering what it was expected to deliver it is essential to evaluate the process.

This evaluation should show that the performance management process effectively:

- supports the organisation's objectives;
- defines and establishes individual objectives;
- relates to job responsibilities, competencies and performance expectations;
- encourages personal development; and
- addresses company policies and procedures.

Such an evaluation may identify whether a fair and consistent approach has been used across the organisation.

6: Leavers

6.1 Redundancy

It is advised that you obtain legal advice as soon as you identify a possible redundancy situation. Template letters have not been provided as these should be issued with full legal advice obtained.

From time to time organisations may require fewer employees to work because of economic, technological or business-related reasons. This could result in employee redundancies.

It is best to have a policy to lay out how your company will manage impending employee redundancies and, if necessary, any decision to implement proposed redundancies. It should be your intention to avoid redundancies wherever possible and if they are unavoidable, to mitigate their effect. You should show commitment to full employee consultation and to provide appropriate support to staff should redundancies take place.

This procedure should also apply to any situation where fewer employees are required due to a reorganisation of work. A Model Redundancy Policy is included in [Appendix V](#).

ALTERNATIVES TO REDUNDANCY

Before making any compulsory redundancies you should first take all reasonable steps to identify feasible alternatives to meet the needs of the business.

These should include:

- restriction of external recruitment
- reduction in overtime
- introduction of possible short-time working or temporary lay-offs
- introduction of flexible working hours/days
- 'ring-fenced' internal recruitment and redeployment to alternative work
- consideration of terminating or restricting the engagement of temporary/agency staff
- voluntary reduction in remuneration
- voluntary redundancy and 'bumping' (see section below).

VOLUNTARY REDUNDANCY

In the event of proposed redundancies you should invite all affected staff to apply for voluntary redundancy. Employees who are not directly affected by the redundancy proposal may also apply. The application period should be limited to a specific period of time. You can at your absolute discretion accept or reject any application and you are under no obligation to discuss your reason(s) with the applicant.

When an application for voluntary redundancy is accepted, the employee will be notified in writing and invited to a meeting with a relevant manager to discuss the next steps and the redundancy payment that is available. Whether any enhanced redundancy payment or other severance entitlements are available will depend on the circumstances of each case.

Once the employee's application has been accepted and the employee has agreed to the redundancy

payment offered at the meeting, you are under no obligation whatsoever to accept a withdrawal of his or her application.

When an application for voluntary redundancy is accepted you may explore the possibility of 'bumping' the employee into a job that is to be made redundant. This will enable the employee who might otherwise be made redundant to be 'bumped' into an alternative job that is not to be made redundant. You don't need to make any guarantees that any 'bumping' will take place, but you should take reasonable steps to investigate the feasibility of such a process.

COLLECTIVE CONSULTATION

When there is one or more recognised trade union you must carry out meaningful consultation with the relevant union/s in respect of proposed redundancies.

This will take place in accordance with the following timescales:

- a minimum of 30 days' consultation where between 20 and 99 proposed redundancies are to take place at one establishment over a 90 day period; or
- a minimum of 90 days' consultation where 100 or more proposed redundancies are to take place at one establishment.

Individual employees will also be consulted separately, as appropriate.

Where there are existing (elected/appointed) employee representatives you will carry out meaningful consultation with you relevant appropriate employee representative in respect of proposed redundancies. This will take place in accordance with the timescales shown above..

Individual employees will also be consulted separately, as appropriate.

Where there are no employee representatives, where 20 or more redundancies are to take place at one establishment within a 90 day period, you will arrange for the election of employee representatives by secret ballot of the affected workforce.

Where an insufficient number of representatives are elected, you will arrange for the appointment of employee representatives.

Individual employees will also be consulted separately, as appropriate.

In all cases you must be committed to providing full and proper information to trade union/employee representatives during the consultation process. Furthermore, adequate time should be provided for them to consult the employees whom they are representing and to respond to proposals and other information presented to them during the consultation process. Wherever practicable you will endeavour to incorporate the views of trade union/employee representatives into its management of the proposed redundancies.

Information provided will include the:

- reason(s) for the proposed redundancies;
- numbers and categories of employees affected, specifying those whom it is proposed to make redundant;
- proposed method of selecting those for redundancy;
- proposed method of carrying out the redundancies;

- time period over which the redundancy dismissals will take place; and
- proposed method of calculating redundancy payments (where non-statutory payments are to be made).

INDIVIDUAL CONSULTATION

You should enter into individual consultation with all employees provisionally selected for redundancy who are 'at risk'. Each employee should be given information about the proposed method of redundancy selection, including any selection criteria to be used. They will be informed subsequently of the basis for their selection and be invited to make representations to their relevant manager about their redundancy selection before any final decision about who is to be given notice of dismissal is taken.

Every employee who will be dismissed for purposes of redundancy should be invited to an individual meeting with their relevant manager. At this meeting they should be told that they are to be dismissed. You should inform them of the appropriate time scales and redundancy payments that are available. Any other severance payments should be explained to them.

REDUNDANCY SELECTION

The selection criteria to be used in the case of redundancy may change from time to time to reflect the needs of your business. The criteria to be used must be fair and robust in application.

ALTERNATIVE WORK

You should make every reasonable effort to identify and offer suitable alternative work to those employees whom you propose to make redundant. In the first instance, these employees should be notified of all existing vacancies when they are notified of their selection for redundancy. They should be given the opportunity to discuss these vacancies with the relevant manager(s). Further meetings may be necessary for the employee and relevant manager(s) to explore the individual's suitability. Any offer of suitable alternative work which is accepted by the employee will be subject to a statutory trial period of four weeks.

If the new position is subsequently deemed unsuitable by you the employee's employment will be terminated at the end of the trial period. S/he will receive a statutory redundancy payment based on the date on which their original job became redundant. In these circumstances, should another suitable alternative job be available, the employee will be offered that job and be subject to a further trial period of four weeks.

Should you consider a vacancy to be suitable as an offer of alternative work, but the employee unreasonably refuses that offer, or, having taken up the offer resigns from that position before the end of the trial four week period, the employee will forfeit their right to a statutory redundancy payment.

Any period of four weeks may be extended by you because of the need for re-training without affecting the employee's right to a statutory redundancy payment. You should reserve the absolute right to make a decision about the employee's termination of employment. Special consideration should be given to providing suitable alternative work for those on maternity leave on the date of their proposed redundancy dismissal.

You have a duty to seek suitable alternative work for redundant employees up to and including the date of the employee's termination of employment. You can reserve the right to select the best candidate for any job where there is more than one suitable candidate and may apply appointment selection criteria. During any period of redundancies you must 'ring-fence' any vacancies as being open only to internal candidates unless there are circumstances where you reasonably believe there are no suitable internal candidates.

TIME OFF TO LOOK FOR WORK/UNDERGO TRAINING

Any employee under notice of redundancy dismissal who has at least two years' continuous service should be granted reasonable time off to look for alternative work with another employer. This will also include reasonable time off to attend interviews or to undergo training for alternative work. Appropriate time off will be arranged with the employee's line manager.

SUPPORT FOR REDUNDANT EMPLOYEES

The organisation should make every reasonable attempt to support any employee who is made redundant. Depending on resources available at the relevant time outsourced support may be arranged.

STATUTORY REDUNDANCY PAYMENTS

Those employees with two or more years' continuous service with your organisation will be entitled to receive a statutory redundancy payment. This will be calculated according to their age, length of service and final gross weekly pay subject to the statutory maximum (based on the maximum rate of a week's pay at the time of the redundancy dismissal).

6.2 Notice and termination of employment

The law gives all employees the right to a minimum amount of notice.

This period of notice is:

- one week for employees who have worked for their employer for one month but less than two years; or
- two weeks if the employee has worked for their employer for two whole years; and
- one extra week for each further whole year's employment at the date the notice period expires, up to a maximum of twelve weeks' notice in total.

The contract of employment may specify more notice than the minimum statutory requirement. However, it can never specify less.

The notice an employee should give you before resigning should be in the contract. If the contract does not specify then, as long as they have worked for one month or more, they must give you a minimum of one week's notice. If they have worked for less than one month, the notice period should be reasonable.

If the contract specifies more notice than this, then they must give the amount of notice in their contract.

If an employee leaves without giving proper notice, you may try to withhold part or all of the money owed to them. In general, employers are not legally entitled to withhold money owed, unless the contract of employment allows for it.

If an employee works their normal working hours in their notice period, they are entitled to be paid their normal pay.

Employees may not be able to work during the notice period because they are:-

- willing to work but are given no work to do;
- on holiday; or

- off work through sickness or injury.

If an employee does not work during the notice period for one of the reasons above, the law says they should usually still get their normal pay. However, there is an exception to this rule. If their contract specifies at least one week's notice more than the statutory minimum then they lose their legal right to be paid during the whole of the notice period. If you dismiss an employee without giving them the notice they are entitled to either by law or by their contract, you should pay them in lieu of notice. 'In lieu' means 'instead of'. This is also called severance pay. The only exception to this is when you dismiss an employee because of gross misconduct.

The amount of pay in lieu of notice will depend on how much notice the employee is entitled to. They should get pay in lieu at the rate of their normal wages.

When making an employee redundant you may decide to waive your right for the redundant employee to work his or her contractual notice.

If this situation is brought about by you or the organisation then a payment in lieu of notice will be made. Depending upon whether there is a payment in lieu of notice clause in the employee's contract of employment, the payment will be made free of income tax and National Insurance contributions up to a sum of £30,000.

If this situation is brought about by the employee you will consider whether you are prepared to agree to a shorter notice period. The employee may serve statutory counter notice. It is normal practice for you to accept such notice, unless there are exceptional circumstances.

6.3 Exit interviews

Employees may leave your company by resignation. In these circumstances it is best practice to conduct exit interviews. These are frank discussions about their reasons for leaving your company.

You could be losing a very valued member of your team and not know why. You can use the information from the interview to review policies, procedures and business practice.

The interview will need to be conducted by someone that the leaver will give honest feedback too, this may be you or a line manager or even an external consultancy.

There is an Example Exit Interview Form at [Appendix W](#).

6.4 References

Usually, an employee does not have a right to a reference from a previous employer.

However, you do have to provide a reference in some situations, for example:

- if the contract says you have to give them a reference; or
- where the reference is needed by a regulatory body. This might be a body like the Financial Services Authority so they can make sure people employed to give financial advice are qualified to do this.

Previous employees can make a request under the Data Protection Act to see any reference written about them. You will then need to work out whether you can show them the reference, in line with the Data Protection Act.

You have a duty to write an accurate reference about any previous employee, and should not mislead a future employer who is asking for the reference. Some information should not be included in a reference, unless the employee agrees to it. This is information like medical records, or information about spent

criminal convictions.

You must not give information in a reference or another document, for example, an e-mail, which is inaccurate, or which is deliberately wrong or misleading. If you do then the employee may be able to take action against you.

7: THE LAW

The Employment Rights Act 1996 and subsequent amendments

<http://www.legislation.gov.uk/ukpga/1996/18/contents>

- Deals with the rights that most employees are entitled to when they work including unfair dismissal, reasonable notice before dismissal, time off rights for parenting, redundancy and more.
- Amended in 1997 to include the right to request flexible working.
- Sets out the main terms of an employment contract and that it must be provided to an employee within eight weeks of the start of their employment.
- Includes legalities of wages and payment, setting out the rights to paid time off for public duties, ante natal care and training.

The Employment Protection (Part-time Employees) Regulations 1995

<http://www.legislation.gov.uk/uksi/1995/31/contents/made>

- Requires employers to provide a written statement of the main terms and conditions of employment to all employees irrespective of whether they are considered to be full or part time including those who work less than eight hours per week.

The Working Time Regulations 1998

<http://www.legislation.gov.uk/uksi/1998/1833/contents/made>

- Sets out a default rule, which although employees may choose to opt out, that workers may work no more than 48 hours per week.
- Grants a mandatory right to paid annual leave of at least a minimum of 28 days (including bank holidays and public holidays).

The National Minimum Wage Act 1998 and subsequent amendments

<http://www.legislation.gov.uk/ukpga/1998/39/contents>

- Applicable to ordinary workers, that is, anyone who has a contract to do work, except for a consumer or a client. Expressly included are those working through job agencies so that the agencies' charges must not eat into a worker's basic entitlement. Home-workers are also included expressly.
- Exclusions include au pairs, family members in family business, fishermen who are paid in a share of profits, unpaid volunteers and prisoners.
- The hours that are used in a national minimum wage calculation are dependent upon work type as defined within the National Minimum Wage Regulations 1999. The different work types are time work, salaried hours work, output work and unmeasured work.

- The principle is a very basic one: that hours worked should never as a whole be paid below the minimum.
- Excluded from "worked" are periods when the worker is on industrial action, time travelling to and from work and absent periods.
- When a worker is required to be awake and available for work, then they must also be paid, however this does not prevent so called "zero hour contracts" being used i.e. no guaranteed hours, with no obligation to accept work.

The National Minimum Wage (NMW) is set annually by Government, with different levels depending on age and for apprentices – current rates are published through Directgov: http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_10027201

The Access to Medical Reports Act 1988

<http://www.legislation.gov.uk/ukpga/1988/28/contents>

- Relevant in the context of recruitment, health screening during employment, time off for medical reasons and dismissal for medical reasons.
- Covers medical records held by employers as well as records held by doctors.
- Gives an individual the right to have access *"to any medical report relating to the individual which is to be, or has been, supplied by a medical practitioner for employment purposes or insurance purposes"* Gives individuals the right to refuse consent for any medical report (as defined) to be supplied by a doctor to an employer or insurer, plus other rights.
- Employees and prospective employees should not be sent for medical examination without first being informed of their rights under the Act.

The Equality Act 2010 and subsequent amendments

<http://www.legislation.gov.uk/all?title=equality%20act>

- Brings together for the first time all the legal requirements on equality that the private, public and voluntary sectors need to follow.
- Affects equality law at work and in delivering all sorts of services and running clubs.
- Replaces all the existing equality law including:
 - The Equal Pay Act 1970
 - The Sex Discrimination Act 1975
 - The Race Relations Act 1976
 - The Disability Discrimination Act 1995

Please refer to **Appendix A** for an over view of The Equality Act 2010.

The Employment Relations Act 2004 and subsequent amendments <http://www.legislation.gov.uk/ukpga/2004/24/contents>

- Mainly concerned with collective labour law and trade union rights including:

- Measures to tackle the intimidation of workers during recognition and de-recognition ballots by introducing rules which define improper campaigning activity by employers and unions and by clarifying what "reasonable access" unions have to the workers in the bargaining unit;
- Measures to improve the operation of the statutory recognition procedure; Provisions to increase the protections against the dismissal of employees taking official, lawfully-organised industrial action by extending the "protected period" from 8 to 12 weeks; exempting "lock out" days from the 12 week protected period; and, defining more closely the actions which employers and unions should undertake when taking reasonable procedural steps to resolve industrial disputes; measures to simplify the law on industrial action ballots and ballot notices;
- Measures to widen the ability of unions to expel or exclude racist activists and others whose political behaviour is incompatible with trade union membership;
- Measures which ensure that union members have clear rights to use their union's services, and cannot be induced by employers to relinquish essential union rights or dissuaded from seeking union recognition;
- Measures to improve the operation of some individual employment rights such as a clarification of the role of the companion in grievance and disciplinary hearings; and technical changes to flexible working legislation concerning protections from unfair dismissal;
- New protections for employees who are dismissed or who suffer other detriment because they are summoned or have been away from work on jury service;
- Measures to improve the enforcement regime of the national minimum wage.

The Rehabilitation of Offenders Act 1974 and subsequent amendments

<http://www.legislation.gov.uk/ukpga/1974/53/contents>

- Enables some criminal convictions to be ignored after a rehabilitation period. The rehabilitation period is automatically determined by the sentence, and starts from the date of the conviction. After this period, if there has been no further conviction the conviction is "spent" and, with certain exceptions, need not be disclosed by the ex-offender in any context such as when applying for a job, obtaining insurance, or in civil proceedings.
- For adults, the rehabilitation period is 5 years for most non-custodial sentences, 7 years for prison sentences of up to 6 months, and 10 years for prison sentences of between 6 months and 2½ years.
- For a young offender (under 18) the rehabilitation period is generally half that for adults. Prison sentences of more than 2½ years can never be spent.
- Other sentences have variable rehabilitation periods.

The Immigration, Asylum and Nationality Act 2006 and subsequent amendments

<http://www.legislation.gov.uk/ukpga/2006/13/contents>

- Introduces civil (not criminal) penalties in the form of fines for employers who take on people over the age of 16 who are subject to immigration control (that is, have no entry clearance or leave to remain, or no valid permit to work in the UK).
- An employer should therefore check that all new job applicants have a national insurance number, or that their passport gives valid permission for them to work in the UK.

8: Useful contacts

Advice Conciliation and Arbitration Service (ACAS) - Helpline

For both employers and employees who are involved in an employment dispute or are seeking information on employment rights and rules. The Helpline provides clear, confidential, independent and impartial advice to assist the caller in resolving issues in the workplace.

Tel: 08457 47 47 47

www.acas.org.uk

Welsh Government

www.wales.gov.uk

Trades Union Congress (TUC)

Federation of trade unions in the UK, representing the majority of trade unions.

www.tuc.org.uk

The Equal Opportunities Commission (EOC)

Independent statutory body established to help eliminate discrimination, reduce inequality, protect human rights, build good relations and to protect, enforce and promote equality across the nine "protected" grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

www.equalityhumanrights.com

Disability Wales

The national body for disability organisations in Wales providing guidance and support; championing the rights, equality and independence of *all* disabled people regardless of physical or sensory impairment, learning difficulty or mental health condition.

www.disabilitywales.org

Chartered Institute of Personnel and Development (CIPD)

Europe's largest HR and development professional body. As an internationally recognised brand with over 135,000 members across 120 countries, supports and develops those responsible for the management and development of people within organisations. Membership is required to access some of the services.

www.cipd.co.uk

Learndirect

An e-teaching organisation established to raise skills and qualifications needed for employability.

www.learndirect.co.uk

Wales Council for Voluntary Action (WCVA)

Represents and campaigns for voluntary organisations, volunteers and communities.

www.wcva.org.uk

9: Further Information

The guide has been produced for the Social Business Wales project. Social Business Wales is funded by the European Regional Development Fund and Welsh Government. It is delivered by the Wales Co-operative Centre and is part of the Business Wales service.

Social Business Wales aims to support social businesses with aspirations to grow. For further assistance, please contact:

Business Wales: <http://business.wales.gov.uk/> Tel: 03000 6 03000

Or visit the online toolkit <https://business.wales.gov.uk/socialbusinesswales/>

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