

Business briefing: Hiring an employee

Employment

This business briefing provides an overview of the law in this area and highlights the key legal issues a business needs to consider when recruiting a new employee.

You should talk to a lawyer for a complete understanding of how it may affect you.

Before advertising

Make sure all staff involved in the recruitment process have had equal opportunities training (and they continue to receive it while working for the business).

Draw-up the following documentation:

- A job description, which sets out the title and main purpose of the job, the place of the jobholder within the business and the main tasks or responsibilities of the post.
- A person specification, which details the experience, expertise and qualifications, skills and abilities necessary for the job in question. Split the requirements 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 open to part-time, home working, flexible working or job sharing. If a business specifies that the job is full-time, it may need to be able to justify its decision.

The advertisement

Should the job 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”).

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

The application

Use a standard application form to compare individual applicants’ answers against the selection criteria, and to 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 a business is making redundancies, it 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.

Pre-employment health questions

In most cases, a business cannot ask potential recruits questions about their health (for example, businesses should avoid asking questions about an applicant’s sickness absence record).

However, there are some circumstances where a business is entitled to ask health-related questions. For example, 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. Businesses can also check whether an applicant has any special requirements it needs to take into account when arranging interviews, such as wheelchair access.

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 ask for an interview to be conducted at a particular time.

Ideally, ask all shortlisted candidates the same or similar questions to compare answers and to avoid the possibility of a discrimination claim.

Avoid asking questions about a candidate's 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 the 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.

If requested, it is good practice to provide feedback to unsuccessful candidates. A failure to do so could indicate a decision 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.

A 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, ensure the applicant confirms they are not bound by any enforceable restrictive covenants from their previous job; otherwise the former employer could sue the business (most likely along with the applicant). 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. We frequently draft, advise on and are involved in disputes over the enforceability of such covenants.

The contract

Consider whether the contract should be permanent or for a fixed term. If a business decides that a fixed-term contract is appropriate, it may need to justify why it 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 should, for example, they should be allowed access to a company bonus scheme or instead receive an equivalent benefit.

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.

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 the business was unable to assess their performance adequately, it may want to extend the period.

Call us for more information
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