

Recruitment and employment 1: A checklist of employers' responsibilities

*The following list is not intended to be comprehensive or to provide a definitive statement of the law. It illustrates the areas where employers need to be aware of their legal responsibilities. Legislation is changing constantly. **If in any doubt employers must seek professional advice.***

EMPLOYMENT CONTRACTS, DISCIPLINE AND GRIEVANCES

- **The contract** – exists at the point when a job is offered; contracts may be oral
- **Written statement of employment particulars** – required after 2 months; these clarify the terms of the contract
- **Disciplinary and grievance procedures** – not a legal requirement, except employers with 20+ employees must show in writing who to take grievances to
- **Discipline and grievance hearings** – employees have a right to be accompanied by a co-worker (who must be allowed time off to attend)
- **Disputes and grievances** – tribunals are not the only answer; new legislation encourages the use of grievance procedures and options to avoid tribunals.

DISMISSAL AND NOTICE

- **Periods of notice of termination** – 1 week after 1 month and 1 year per year after 2 years (up to 12 weeks)
- **Written reasons for dismissal** – must be provided in writing when requested
- **Unfair dismissal** – Dismissal is **only fair** if is related to the employee's conduct, capability or qualifications, redundancy, other *substantial* reason. It is unfair to dismiss an employee for reasons such as: pregnancy; time off for dependents; asserting a statutory employment right (even if the employee is not entitled to that right); trade union activities, jury service, acting as an employee representative, supporting a co-worker at a disciplinary hearing, failing to follow the statutory dismissal procedure.
- **Whistle blowers** are protected from dismissal for reporting wrong-doing in the workplace.

PAY

- **National Minimum Wage** –
- **Itemised pay statements** are required
- **Deductions from wages** – only statutory deductions, deductions referred to in a written contract and deductions agreed in writing by the employee are lawful
- **Redundancy pay** – statutory rates after 2 years service are related to age and length of service (one week's pay, up to a fixed limit, per year of service up to age 39; and one and a half weeks' pay, up to the fixed limit, per year aged 40 and over – up to 20 weeks maximum)
- **Statutory sick pay**
 - employees who pay National Insurance are eligible after 4 days of sickness
 - paid for up to 28 weeks

- statutory rate is paid by employers and reclaimed under PAYE arrangements, in full for small employers (employers may top up payments and bear the cost).
- **Equal pay for men and women** (and equal treatment)
- **Tax and National Insurance** – employers required to make deductions

PARENTAL LEGISLATION

Maternity rights – protection against unfair dismissal

Time off up to specified limits must be given for

- antenatal care (employers may ask to see appointment card)
- paid maternity leave – see Statutory Maternity Pay
- maternity suspension – on full pay if necessary on health & safety grounds
- unpaid parental leave – 13 weeks up to child's 5th birthday after 1 year's service, for both parents
- Adoption Leave

Pay – employees have rights to

- Statutory Maternity Pay – for up to 39 weeks from 11 weeks prior to birth (Maternity allowance may apply to women who do not qualify for SMP)
- Paternity Pay – 1 or 2 weeks after 26 weeks service, plus other qualifications

WORKING TIME AND TIME OFF

- **Working hours** – maximum 48 hours; minimum of one day off each week; night workers should average no more than 8 hours in any 24 hours, and must receive health assessments [most groups of workers are now covered]
- **Leave** – at least 5.6 weeks per year
- **Rest** – 11 consecutive rest hours required in any 24 hours; in-work rest break required if the working day is longer than 6 hours (more for workers 16 and 17 years old).
- **Time off must be allowed for:**
 - dependants in emergencies
 - work for public duties
 - trade union duties and activities
 - safety representatives
 - employee representatives
 - study or training
 - job hunting or to arrange training when facing redundancy.

ANTI-DISCRIMINATION AND HUMAN RIGHTS:

- **Discrimination** is illegal on the following grounds:
 - Sex and race
 - Equal pay
 - Disability
 - Sexual orientation and religion or belief
- **Part time or fixed term workers** may not be treated differently
- **Ex-offenders** with “spent” convictions (ie after a specified period following their conviction) must be treated fairly at appointments, for promotion, in the workplace etc.

- **Disability**
 - discrimination by all employers for reasons related to a person's disability is unlawful in all aspects of employment unless it can be justified. This includes: application forms, interview arrangements, job offers, terms of employment, promotion, training opportunities, benefits, dismissal, redundancy
 - harassment because of disability is unlawful
 - employers have a duty to make "reasonable adjustments" in the workplace for disabled people, especially existing staff who become disabled.
- **Sexual orientation and religion or belief:**
 - These new regulations comprehensively cover discrimination and harassment in all aspects of the employment relationship, and cover the *perception* of an employee's sexual orientation or beliefs (even if incorrect) and discrimination on grounds of the company a person keeps (their family and friends).
 - "Harassment" means unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment
 - Exceptions on grounds of the type of person who is needed for a particular job are limited (as they are for sex and race discrimination).
- **Human Rights Act:** Legislation is only enforceable against public sector employers – but organisations delivering public services under contract will be affected. The main issues are likely to be
 - Article 8 – the right to respect for private and family life, eg monitoring private phone calls and emails unless necessary to protect business interests
 - Article 9 – the right to freedom of thought, conscience and religion, eg action against employees who wish to practice their religion or for political views
 - Article 10 – the right to freedom of expression, eg conflicts over dress code
- **Data protection:** Depending on the type of information which is kept, employers may need to register with the data commissioner. You must check. A data protection policy is essential.

HEALTH AND SAFETY

- **Health and safety policy** – up-to-date policy required for employers with 5+ employees
- **Risk assessment** – required (and recorded by employers with 5+ employees)
- **Employers liability insurance** – insurance is vital; certificate must be displayed
- **Health and safety posters or leaflets** – must be displayed or given out
- **Injuries, diseases & accidents** – major injuries and certain events are reportable
- **Consultation with employee or employee representative** – should be carried out re changes affecting health and safety
- **Expectant mothers'** needs must be considered
- **First aid box**, and notices to say where it is, are required
- **Designated person to deal with emergencies** required. First-aiders may need to be trained to gain qualifications.

CHECKLIST FOR TRUSTEES

Does your board have satisfactory procedures for recruiting new staff?

Does your board need to check it is acting within employment law?

Does your board need to review its employment policies and practices?

Does your board regularly review the salaries and terms and conditions of service of the staff?

Does your board ensure there is adequate support and supervision for staff and volunteers?

Does a group of trustees agree an annual work-plan for the ceo and appraise his or her performance?

Do any of the trustees involved in appointing or appraising staff need support and training?



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Recruitment and employment 2: Contracts of employment

The legal position:

- A legal contract exists once an offer of employment is made to a prospective employee and accepted – irrespective of whether it is in writing;
- a written statement of the main terms and conditions (the written contract) must be given to all employees within two months of their beginning work, or within four weeks if they are already an employee.

The principal statement must include:

- Names of employer and employee;
- date employment began;
- date continuous service began;
- job title;
- rate of pay and pay period;
- hours of work and any arrangements for overtime;
- holiday entitlement and pay;
- a place of work.

The statement must contain or refer to documents which detail:

- Rules on sickness, absence and sick pay arrangements;
- pension arrangements;
- maternity entitlements;
- amount of notice required of employee and employer;
- job title;
- any collective agreements which directly affect terms and conditions of employment;
- grievance, appeals and disciplinary rules;
- the date when the contract will end (if the contract is for a fixed term).

Although not a legal requirement, many organisations also include statements on other issues in their contracts of employment:

- Maternity and paternity leave;
- dependency and compassionate leave;
- time off for public duties;
- allowable expenses;
- redundancy notice and pay.

Recruitment and employment 3: Good practice

The importance of good practice: We all have the capacity on occasions to be quite appalling employers. And there is no consistent pattern to the way we get things wrong. It is entirely possible for the same board of trustees to overlook their worker's rights, provide poor and even dangerous working conditions, and yet be incapable of sacking an employee who has become a liability to the voluntary organisation. Organisations should provide positive models of good employment practice, and this especially applies to organisations whose objectives include confidence building and community regeneration in disadvantaged areas. Trustees have more than a mere legal obligation to know the law.

Taking precautions: The law in some cases is complicated, particularly on maternity leave entitlement and unfair dismissal. Legal action against a community group can be seriously damaging for its reputation, and many voluntary sector organisations make costly pay outs to staff rather than face tribunals. It is far better to take steps which avoid problems in the first place, even if they may cost money.

Trustees should as a minimum ensure that:

- A member of staff or a trustee is made responsible for collecting relevant information on employment legislation and their responsibilities;
- specific information and advice is sought on more complex issues before the organisation takes action.

Larger groups may contract with specialist advisors to ensure that guidance is always available before any action is taken.

Following good practice: As well as legal responsibilities, trustees have a variety of other moral responsibilities as employers. All voluntary organisations are strongly advised to ensure that employment arrangements conform to guidance on good practice which is provided by organisations such as WCVA, the Commission for Racial Equality, ACAS and the Equal Opportunities Commission.

Written policies: The following written policies are now widely regarded as essential:

- Equal opportunities policy;
- health and safety statement or policy – this is a legal requirement for employers with more than 5 employees;
- staff appraisal and review policy;
- a staff development and training policy;
- disciplinary policy – a legal requirement for companies with more than 20 employees;
- grievance procedure;
- harassment policy.

Recruitment and employment 4: A recruitment checklist

Action	Example timings
<i>Decisions to be made by the Board/Management Committee</i>	<i>week 1</i>
Ensure equal opportunities policy is in place;	
ensure there are appropriate standard terms and conditions of employment for all staff (or a policy to follow if there are variations);	
discuss job descriptions and person specification in detail for appointments manager and senior staff;	<i>week 2</i>
set wage/salary for new post;	
decide how the appointment will be made (eg an appointments panel or personnel subcommittee who can see through the whole process) and what powers this group will have in making the appointment eg – does the full Committee need to ratify?	
appoint a members panel to carry out the recruitment.	
<i>First meeting of appointments panel</i>	<i>week 3</i>
Finalise written job description and person specification;	
set application deadlines and interview dates;	
decide where to advertise;	
arrange placing the job adverts – what to say, who will place them;	
agree contents of job application form, if any;	
decide what other information applicants must provide – CV, statement of interest in the post etc;	
decide contents of Job Information Packs to be sent to people enquiring about job, eg:	
application form	
covering letter with return date and address, interview date	
job description and person specification	
background information (say, 1 side of A4) about the organisation;	
decide how enquiries will be processed (preparation and mailing of job information packs, receiving enquiries by mail/direct phone line/ dedicated answerphone, answering queries, receiving applications);	
decide how and when shortlisted candidates will be notified.	
<i>Advertising the job</i>	<i>week 4</i>
Job adverts placed;	
job information packs completed, ready for distribution.	
<i>Second meeting of appointments panel</i>	<i>week 5/6</i>
Refer to equal opportunities policy to ensure proper procedures;	
decide venue for interviews;	
establish shortlisting process, including any initial sifting of	

applications;	
establish marking arrangements for interview candidates;	
confirm membership of shortlisting and interview panels;	
make arrangements for copying and circulating applications and materials for shortlisting panel.	
<i>Application deadline</i>	<i>week 7</i>
<i>Meeting of the panel for shortlisting</i>	<i>week 7</i>
Complete shortlisting of candidates;	
set interview day, timetable for candidates and domestic arrangements (reception, waiting area, refreshments <i>etc</i>);	
arrange for shortlisted applicants to be notified;	
agree interview content (standard questions for each candidate);	
arrange for the panel to receive necessary stationery (candidates score sheets).	
<i>Interview day tasks</i>	<i>week 8</i>
Start-of-day briefing for the panel – who does what;	
interviews;	
selection;	
arrangements for notifying all candidates.	
<i>Post-interview tasks</i>	
Notify successful candidate of the appointment, subject to references;	<i>week 8</i>
follow up references;	<i>week 8</i>
send offer letter and terms and conditions of employment; notify other trustees of the appointment;	<i>week9</i>
agree a programme of induction – identify who will be involved and set a timetable;	<i>week9/10</i>
provide worker with relevant papers about the job;	<i>week9/10</i>
worker takes up post;	<i>week 12</i>
deliver induction programme, monitor, and identify other training or support needs.	<i>week 12 onwards</i>