

Employment law considerations for start-ups

When starting a business, a range of legal requirements must be met. Although the laws covering employment are extensive, the main issues for small and start-up businesses can be straightforward if the correct approach is taken from the outset. By sticking to a few rules, you can avoid most of the pitfalls and prevent problems arising.

Contracts of employment

Employers are obliged by law to provide employees, whose employment is to continue for more than one month, with a written statement containing certain required particulars of employment, not later than two months after their employment begins.

This statement must detail job title, place of work, main duties/responsibilities, pay (plus any bonuses, pensions, etc), working hours, holiday entitlement and notice period. You must also include details of your discipline and grievance procedures.

You can reserve the right to amend the job description and place of work. However you cannot change the terms of the contract without the employee's agreement.

It is important to put all important terms in writing. Without a written agreement, you will not have the following advantages:

- *flexibility* - for example the ability to move an employee to a different role
- *certainty* - if anything is unclear, this could lead to disputes.

It is also vital that contracts include provisions covering confidentiality. Whilst they are employed, an employee has an implied duty to keep any business information or trade secret confidential. However, there is only a limited implied right following termination of employment, so it is recommended that you put an express obligation to this effect in the contract of employment.

The General Data Protection Regulation (GDPR) also requires businesses to have certain safeguards in place to control the way in which it processes any personal data which it may hold. See our GDPR factsheet for further information.

All start-ups should consider the inclusion of provisions covering the ownership of intellectual property (IP). By law any IP created by any employee during their employment will remain the sole property of the company. However, it is recommended that, where an employee's role is likely to involve the creation of substantial IP rights, a detailed IP clause is included in their contract of employment.

Employers should also consider what post-termination restrictive covenants should be included in order to best protect the business's interest, staff and client base. Restrictive covenants are only enforceable if they are no wider than necessary to protect the legitimate business interest of the employer. It is important that you obtain specialist legal advice on the preparation of any covenant, so that it is tailored specifically to your business and industry.

For senior employees or directors, employers should aim to provide a more comprehensive document known as a service agreement, which is considered to be a heavy duty type of employment contract.

We can guide you through the process of determining the types of employment contracts that suit your business and accurately reflect the arrangements you have with your employees (at all levels).

Key employment policies

Having set procedures for recruiting and managing staff does not just make the processes easier for you and your company – many are required by law. You must be aware of the rules and regulations about your employees' rights and other key elements of employment law.

Detailed below are two of the key policies that should form the basis of your staff handbook:

Disciplinary & grievance

All employers (irrespective of size) are required to follow the ACAS Code of Practice on disciplinary and grievance procedures. Businesses are required by law to provide details of the procedures they have in place and must make them easily accessible to employees.

It is a good idea to have written procedures in place that comply with the ACAS code while still giving you a degree of flexibility. Any policy should state that the procedures are non-contractual.

The policy should cover the following areas:

- confidentiality
- investigation process
- suspension (in the case of disciplinary procedure)
- conduct of hearings
- the right to be accompanied at hearings
- penalties and effect of warnings (in the case of disciplinary procedure)
- the conduct of and right to an appeal.

This list is not exhaustive and you should obtain specific legal advice on the preparation of disciplinary and grievance procedures, tailored to your business and industry.

Having such policies can also reduce the risk of unfair dismissal claims.

Equal opportunities

Employers must not discriminate at any stage of the recruitment process or during employment. All employees should be treated equally and in accordance with their legal rights.

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Businesses are also legally responsible for acts of discrimination by their employees.

An equal opportunities policy can help to set minimum standards of behaviour and reduce the risk of legal action. An effective policy should discourage discriminatory attitudes and behaviours, and make job applicants and employees feel confident about equality of opportunity.

It is crucial that the policy is implemented with proper training and that appropriate action is taken in the event of breach. Taking such action can help you avoid liability for any discrimination or harassment committed by an employee.

Employers need to ensure that any policy is suitable and relevant to their activities. The principal aim of the policy should be to provide a positive message to employees and others that you value equality and diversity, and take a proactive stance against discrimination.

Our expertise

We can prepare bespoke policies tailored to your business ensuring that they comply with the relevant employment legislation, and ensuring that your position is protected. We can also provide equal opportunities training to your staff.

Contact

Please contact the lead partner in our employment law team:

Matthew Clayton matthew.clayton@willans.co.uk

Willans LLP | solicitors
28 Imperial Square, Cheltenham
Gloucestershire GL50 1RH

01242 514000
www.willans.co.uk
Twitter @WillansLLP
LinkedIn WillansLLP