

RECRUITMENT

The importance of recruitment

The recruitment stage of employment is essential, not only because this is where the legal relationship between the prospective employee and employer begins, but because this is the point where a company has the most control over the terms and conditions of a position and the type of person it recruits to that position. It is therefore essential to ensure that care is taken over every stage of this process, from identifying and advertising a position to interviewing and offering the job to a prospective employee.

Legal obligations

Although a job applicant is not yet an employee, certain legal obligations exist at the recruitment stage. Most importantly, a prospective employee has the right to claim he or she has been discriminated against on the grounds of his/her sex; race; disability; religion or belief; sexual orientation; age; gender reassignment; marriage and civil partnership; pregnancy and maternity. Discrimination can occur in short-listing, interviewing and interview arrangements and in offering the position. The most effective way to avoid discrimination claims is to adopt a standard procedure when recruiting and to apply this procedure to all applicants, regardless of their individual circumstances. The only time you would be expected to deviate from this is when you are dealing with a disabled job applicant when the duty to make reasonable adjustments will apply.

Consider the role

It is common practice for an employer to simply advertise the role vacated by a departing employee when recruiting. However, this is a rare opportunity for the employer to change the job role and duties without risking a breach of contract claim. When deciding to recruit, give consideration to:

- **Hours.** Does the role need to be full-time? This requirement could be indirectly discriminatory on the grounds of sex. Would it be feasible and/or more flexible to recruit two job sharers to undertake the role. Alternatively, could some of the responsibilities be distributed elsewhere and a part-time employee recruited, thereby reducing the company's wage roll.
- **Salary.** Is it equal to other employees who perform the same or similar roles? If not, rectify this problem. If the duties are going to be reduced or changed does the salary need to be amended?
- **Duties.** Do these need to be expanded or reduced? Do you want the new recruit to have additional skills to be able to cover in other areas of the workforce?
- **Location.** Would you prefer the new employee to be based at a different site?

Advertise the position

When advertising a position think about the following:

- **Wording.** Avoid using discriminatory wording e.g. salesman or Saturday Girl. Do not state minimum or maximum age limits as these will be discriminatory on the grounds of age. It may also be discriminatory to seek to recruit an "experienced" person as this may preclude younger workers. The requirement for certain skills or qualifications e.g. "good English language skills" or "GCSE English" may also be indirectly discriminatory to those of certain races, ages or with disabilities. First, consider whether these are essential criteria for the job. For example, a data entry clerk who has no contact with customers does not need to have good communication skills. If they are essential, the following may be more appropriate phrases :
 - "A proven track record of"
 - "Good communication skills"
 - "GCSE English or equivalent qualification or skills".
- **Where to advertise.** Consider the type of people you want to attract. For example, it may be more appropriate to advertise for clerical positions in local newspapers and job centres where they will reach a wider range of people but for senior positions you may want to advertise in appropriate trade or professional journals and/or use a specialist recruitment agency.
- **Contact details.** Give applicants a variety of ways to contact you for an application form as this will again prevent claims of discrimination from those whose language skills are not perfect or who have disabilities. For example, give a telephone number for applicants to call, an email address for those who have access to a computer and a postal address for those who do not.
- **Set a closure date for applications.** Do not accept any applications received after the closure date (unless there are exceptional reasons as to why you should) and do not short list or invite applicants for interview before the closure date.

Application Form

Ask applicants to complete a job application form. Do not request or accept CVs as applications. By using an application form you can ensure that you get the information you need to short list candidates and that this information is identical for all applicants. As before, this will reduce the risk of discrimination claims. Keep all personal information on a detachable front sheet which the person short listing should ideally not see. However, this may not be possible in smaller companies. In any event, the personal information, e.g. name, age, sex, race should be disregarded when short listing. Be aware that there are some people who will submit two applications which are identical other than for identifying factors such as age or race and if one is short listed and the other is not, they will have a claim for discrimination.

Job Description/Person specification

These can be two separate documents or the information contained in one document. The job description should list the duties and responsibilities that are entailed in the job. However, they should be kept as flexible as possible and clearly state that these duties may be changed

or added to over time. It should also state to whom the employee will report, although with the proviso that this may change if the company requires it.

The person specification should state the essential and desirable experience, qualifications, skills and characteristics of the person doing the job. This will be invaluable in short listing for the position. However, give serious consideration to what is "essential" and what is "desirable" i.e. do you absolutely need this person to have these criteria or would you just prefer them to have these criteria? Is a particular skill or qualification or could you train a person with a view to them attaining this skill or qualification?

Ensure this document is sent to job applicants with the application form.

Short listing

When the closure date for applications has arrived, go through the job applications and compare them to the person specification. If applicants do not have the essential criteria do not short list them. If none have the essential criteria, you will have to reconsider whether your essential criteria are absolutely essential and whether you simply short list by those who have the desirable criteria. If not, you will have to start the advertising process again. If you have many applicants with the essential criteria, you may have to move on to the amount of desirable criteria which they have in order to short list. For example, if you have 200 applicants all with the essential criteria, but only 20 of them have all of the desirable criteria, you may decide to only invite those people for interview.

Do not let any personal factors interfere with your short listing criteria, for example, a person's race, age or disability. If you do you expose yourself to costly discrimination claims.

Interviewing

When inviting applicants to attend an interview either telephone them or write to them but in either case, ask them whether they have any special requirements for the interview. For example, they may have mobility difficulties and, therefore, the interview should be held in a ground floor room. They may also have sight or hearing difficulties which require them to be accompanied by a friend. If you discover that a job applicant does have a disability, this should not prevent you from interviewing them and if it does, it may expose you to a disability discrimination claim.

As far as the interview itself is concerned, draw up a list of questions and use this list for all interviews. Do not deviate from the list other than to ask clarification questions. **Make notes of all interviews!** Keep these notes for at least 6 months, preferably 12 months. This means that if you do ever receive a discrimination claim from a job applicant, you will have a record of the interview and proof that the same questions were asked to all applicants.

Do not ask any personal questions, e.g. whether a person is married, has children, has strong religious beliefs etc. These questions are not relevant to a person's ability to do a job and, again, expose you to discrimination claims.

Making a job offer

After the interview process and you have decided upon your successful applicant, write to or telephone the unsuccessful applicants and inform them that they were unsuccessful. They

may want feedback in order to aid their future job search and you should not be afraid of explaining why someone was unsuccessful. Obviously, avoid any personal reasons for your decision and limit the response to their interview technique, their skills or qualifications.

Telephone the successful applicant and inform them of your decision and explain that a written offer will be sent to them.

The job offer letter should either refer to the contract of employment or, at least, set out the basic contractual terms, e.g. hours, salary, holidays, whether there is a probationary period. Do not forget that part-time and fixed term employees have the right to be offered the same terms and conditions (albeit pro-rata) as their comparable full-time or permanent colleagues. Failure to do so will expose you to discrimination claims.

You should ask the employee to sign a duplicate of the offer letter or the contract and return it to you as their acceptance.

Most importantly, you should explain that the offer is conditional upon satisfactory references being received by the company.

You should then contact the referees. Do not simply ask for a reference, ask a list of questions.

You should also ask for evidence of the person's ability to work in the UK. Ensure you do this for all successful applicants, even if they appear to be "British". The offer letter should make it clear that the offer is conditional upon the right to work in the UK being proven.

If you work in an industry which requires a police or Disclosure and Barring Service check, make it clear on the offer letter that the offer is conditional upon a satisfactory check being received.

Withdrawing a job offer

Any job offer can be withdrawn, without risk of liability, before it has been accepted by the employee as no legal contract will have been formed.

However, if the employee has accepted the position and your reason for withdrawal is one of the conditions of the offer (e.g. references, right to work or police records check), again, as you have reserved the right to do this there is no breach of contract. A simple letter to the employee explaining the withdrawal of the job offer and reason why should suffice.

If the withdrawal of the offer is for another reason, a legal contract has been formed and the company should telephone the HR Helpline for further advice upon potential liability.

Induction Plan

When the employee starts work, do not simply "throw them in at the deep end"! Have an induction plan (whether in writing or not) in which the employee is introduced to their immediate superior and colleagues, shown around the company and familiarised with their surroundings. Carry out any necessary health and safety induction. Develop a training plan whereby the employee will be "mentored" by one or more colleagues so that they learn and familiarise themselves not only with their new duties but also the company's systems and procedures.

