

Things You Should Know

Making the decision to employ staff should not be taken lightly and MUST be done with all members of the Management Committee understanding the responsibilities that employment law puts on them. The biggest cause of tribunals in the 3rd sector is breeches of employment law and, for unincorporated charities (organisations governed by a Trust Deed, Constitution or Rules) Trustees will be held personally liable.

SO KNOW YOUR RESPONSIBILITIES AND GET IT RIGHT.

And if you need help, get in touch!

The process of employing staff is really complicated. This information sheet covers some of the basic areas. It is not meant to be a final reference for all you have to do but a guide to things you should be thinking about.

A lot of the information in this document is abbreviated from LVSC document which can be viewed in full at http://www.lvsc.org.uk/shared_asp_files/GFSR.asp?NodeID=97430

Employment Status

One of the first things to consider is employment status. Is the person you are hiring an employee of the organisation or self employed (freelance)? Your organisation's responsibilities change depending on employment status. Many of the rights of employees are laid out in their statement of Terms and Conditions of Employment (see below). Other workers who are not employees still have some rights including those related to discrimination law, Health and Safety (including working hours) and minimum wage.

Cost

Employing staff is one of the most expensive expenditure items for of organisations. It is important to remember that the actual money that an employee will receive is not the whole cost of employing that person. Other costs that need to be factored in are:

- Recruitment costs
- Employers National Insurance (see www.hmrc.gov.uk/rates/nic.htm for a formula to calculate contributions)
- Administration of Payroll (this is a complex and time consuming job so many organisations decide to pay for another organisation to do this for them)
- Training and development
- Employers Liability Insurance (This is a legal obligation) (see below)
- Cover (you may still have to pay someone to cover work if a person is ill)
- Other Extra costs - other costs may go up e.g. travel, electricity, stationary etc.

Contracts

Contracts are defined by a number of things:

- The job description
- The letter of appointment
- The statement of terms and conditions.

The most important of these is the Statement of Terms and Conditions of Employment. This is commonly referred to as 'the contract'. This document sets out the main terms

and conditions of employment, and must be given to employees within the first two months of employment.

The minimum things that MUST be included in this are:

- Name and address of employer
- Name of employee
- The date employment commenced
- The title or description of the job
- The location of the job
- Pay details – including how much and how often and how paid
- Pension details
- Working hours and leave entitlements
- Details of the organisation's discipline and grievance procedures (another document can be referred to – see below)
- Details of whether the employment is permanent or fixed-term (see below)
- Details of any collective agreements that affect the contract (i.e. a union recognition agreement).

Other things it is useful to include are: Sick leave arrangements and sick pay; Entitlement to other things such as maternity or paternity leave (see below); Arrangements for deductions (this makes it easier to deduct pay if, for example, it is needed to deduct a previous overpayment; Details of how the probationary period works (see below); Arrangements for overtime or time off in lieu, if they exist; Details of entitlements to time off for other duties (see below); Maternity, paternity, parental and adoption leave arrangements (see below, as with discipline and grievance it is often advisable to refer to another document); Flexible working arrangements (see below); Reference to other policies such as Confidentiality, Health and Safety, Equal Opportunities; Notice requirements – for both employer and for the employee too.

Full details of what should go in a statement, and a sample statement, are available from the BAMER Outreach HR Advice & Support Project (Directly from LVSC's website at www.lvsc.org.uk/contracts or a simple outline contract is also available from ACAS: www.acas.org.uk/index.aspx?articleid=817

Other terms and conditions might exist too, even though they are not written down. These include statutory terms (things that the law says affects the contract) and implied terms (things that nobody wrote down but would have been agreed had they discussed them, such as carrying out the job properly, or providing a safe workplace).

Varying the Terms of a Contract

The terms that are in the written statement of terms and conditions of employment generally cannot change without the agreement of both the employer and the employee. There are some exception for this e.g. Changes to the law.

Temporary or Fixed Term Contracts

The purpose of the fixed term contract is to be explicit about any temporary period of employment, and is where a contract is for a limited time (e.g. six months), or for the duration of a specific project. If employment is for a fixed term it should be noted in the statement of terms and conditions of employment.

Employees with a fixed term contract have exactly the same rights as people with a permanent contract. They should still receive notice in accordance with the terms of the contract.

An employee on a fixed term contract should not continue to work longer than the stated end date of their contract although you can issue a new contract after the end of the first. Do bare in mind though that after the second repeat of a fixed term it becomes meaningless. Also be aware that if the repeated issuing of a fixed term contract goes over four years, by law, a permanent contract exists. As a general rule, there is no benefit at all of issuing a fixed term contract for a period of more than one year.

Part Time Contracts

A part time contract is a contract with defined hours less than a full time contract. A worker employed on a part time contract has the same rights as a worker on a full time contract, although their entitlements should be calculated on a pro rata (proportional) basis.

“Casual” Contracts

As long as the basic requirements that define an employment relationship exist (i.e. there is the obligation to provide work and the obligation to carry it out), a contract exists and the worker has rights. Even if a worker is both temporary and part time, they still have these rights.

Hours

This falls under Health and Safety and is often overlooked. Generally, the maximum number of hours an individual may work is 48 hours per week. Other rules include a maximum of 8 hours night work, a daily rest period of 11 hours, a day off each week, a minimum rest period of 20 minutes in a working period of 6 hours.

The limits around working hours can be varied or opted out of altogether if there is a formal, signed agreement between the worker and the employer. An employee must have entered into this agreement freely and they have the right to withdraw this agreement at any time. Changes to other limits can only be made if they are agreed by the whole workforce or collective agreement. Individual workers cannot opt out of these.

Good practice is to allow workers longer lunch breaks, less hours. TOIL (Time off in Lieu) could be included for staff who work overtime.

Pay

The minimum wage is set out in legislation. You must operate a **PAYE** (Pay As You Earn) system, if the employee’s earnings are above the thresholds for tax and National Insurance. (See Further Information)

You need to find out what the “going rate” is for the job you’re offering. You can do this by running a job search for similar jobs in your area through internet sites like total jobs, fish for jobs or guardian jobs. A generous rate will attract more people but you must be able to afford it.

Don't forget to take pay increments and inflationary increases into account. Build these into your budget.

Holidays

All employees are entitled to 24 days holiday a year from the day they start. This entitlement is accrued during the year (From April 09 this will increase to 28 days) This does not include public holidays (Bank Holidays).

Be realistic about what you can afford to offer in the way of holiday entitlement. If you require your staff to work Bank Holidays then you would usually give the equivalent time off on another day.

Sick Leave

All workers are entitled to time off if they are ill. The rights to sick pay depend on contractual arrangements. Most employees are entitled to Statutory Sick Pay (SSP) as long as their weekly pay is higher than the "Lower Earnings Limit." Details of rates can be found at www.hmrc.gov.uk/employers/rates_and_limits.htm

Long-term Illness

Managing long periods of illness or repetitive staff illness, or managing a worker who is so unwell that they will never be able to return to work, can be extremely challenging. In the latter case arrangements should be made for dismissal on the grounds of medical incapacity.

It is good practice to have a consistent policy for dealing with long-term sick leave. The decision when to actually implement the ill health procedure should be taken on the merits of each individual case and a decision can only be made after consultation with the worker concerned. A good ill health procedure will include a full consultation (where possible) with the sick worker, the right of the worker to representation, and consideration of medical reports.

A medical report can be sought by an employer from an employee's own doctor, and employers can also obtain reports from an independent practitioner (usually via the Occupational Health Unit of a hospital). Written permission should, by law, be gained from the employee first, and employers should note that employees have a right to see their own medical reports.

In a very, very small number of cases the medical report may reveal that the worker is perfectly healthy - in those cases an organisation should carry out an investigation and consider action under the disciplinary procedure. In the vast majority of cases the medical report will reveal the nature of the illness, the likely return-to-work date of the worker, and the future capability of the worker to carry out their normal job. This is the main point of the examination and report.

In these cases employers have a number of options, depending on the result of the report:

- In the case of long term sickness amounting to a disability, employers should consider the reorganisation, re-structuring or re-design of the job to assist the worker to be able to carry out their work

- To consider finding alternative work for the employee within the organisation (and arranging appropriate re-training), within the employee's capabilities which might be limited by their health or disability
- To do nothing - if the worker is likely to return to work within a reasonable period of time
- To consider dismissing the worker on the grounds of medical incapacity.

An organisation MUST bear in mind their equal opportunities policy. It is illegal to discriminate on grounds of disability. If it is impossible for a worker to return to their original job as they were carrying it out before, it is an organisation's primary responsibility to see what can be done to make it possible for the worker to carry on in their job (e.g. to consider flexible working arrangements, changes in duties or alterations to the organisation's custom and practice)

It is illegal to discriminate on grounds of disability: employers have an obligation under the Disability Discrimination Act to make a 'reasonable adjustment'. Employees are entitled to their contractual sick pay until a proper process has been followed and a decision has been reached that the organisation must dismiss a worker on the grounds of medical incapacity. From that moment on, once notice has been issued the worker is entitled to receive full wages throughout their period of notice, or payment in lieu of notice.

There is a statutory amount an employee will receive when off sick but your organisation could decide to pay more than this. Be realistic about what your organisation could afford and remember you will probably have to pay for someone to cover their position.

Maternity Leave

A woman who is pregnant is entitled to a year off (52 weeks) to have and look after her baby. If she has been with your organisation for 26 weeks by the 15th week before the expected week of childbirth (known as "Expected Week of Confinement or EWC) you, as the employer, have to pay Statutory Maternity Pay (SMP). Employers can claim most of this back from the state (92%) and small organisations may get a bit more.

Women on maternity leave still have the same rights and benefits (apart from pay which is as above) as their other colleagues and as they had when they are working. It is against the law to treat pregnant women differently. A woman returning from maternity leave is entitled to the same job as she left (or if that is not practical, another suitable alternative). She does not need to provide the employer with any notice of her return at the end of the 52 weeks. Dates of return can be changed if the employer is given 8 weeks notice. If the employee decides to leave after the 52 weeks, she is still entitled to the full amount of pay. She must give the statutory notice period stated in her contract.

Statutory Maternity Pay (SMP) This is the payment due to the employee during maternity leave. Details of the current rates can be found at:

- www.hmrc.gov.uk/employers/employee_pregnant.htm
- www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp
- www.lvsc.org.uk/workandparents

Just as with sick pay, you can offer more than the statutory minimum in the contract of employment but, again, remember to consider what your organisation can afford.

Paternity Leave

Fathers of newborn children are entitled to paid leave. If they have worked for 26 weeks prior to EWC (see above) they are entitled to 2 weeks leave and pay. (Statutory Paternity Pay (SPP) rates can be found at www.berr.gov.uk/employment/workandfamilies/paternity-leave/. Again, you can offer more than the statutory minimum.

Parental leave

This leave is unpaid unless the employment contract states otherwise. Amounts stated are per child. Parents who have worked for at least 1 year are entitled to up to 13 weeks leave for each child under the age of 5. The parents of disabled children, are entitled to 18 weeks leave until the child's 18th birthday. Parents adopting children are entitled to 13 weeks leave until the 5th anniversary of the child's placement with the adoptive parents or the child's 18th birthday (whichever is sooner). Leave must be taken in blocks of one week, unless the child is disabled. An employer can, if they wish, insist on being given 21 days notice of the intention to take this leave.

Adoption Leave

Employees who have worked for 26 weeks who adopt a child, are entitled to up to 26 weeks Ordinary Adoption Leave and up to a further 26 weeks of Additional Adoption Leave. When a couple adopts a child, the couple can decide which partner will take adoption leave. Paternity leave and pay may be available to the partner of an individual who adopts or to the other person in a couple who are adopting together (see above).

Employees must tell their employer within seven days of being matched with a child when they want their adoption leave to start. Statutory Adoption Pay (SAP) rates are available from: www.berr.gov.uk/employment/workandfamilies/adoption-leave/page16608.html. As with Statutory Maternity Pay and Paternity Pay this is recoverable from the State.

Other Leave

Dependents and Urgent Personal Leave

All employees have the right to 'reasonable' time off work to help people such as family members or friends who depend on them for assistance in an emergency. There is no set limit on how much time off can be taken but they can only take off the time necessary to sort out the immediate 'problem'.

This time off does not have to be paid by the employer, even though the leave may only be for a few hours during a paid working day. However some employers already give paid leave in these circumstances, perhaps up to a certain number of days per year.

Public Duties

There are some duties that employees undertake that give them an automatic right to 'reasonable' time off to undertake. Elected Union Officers have a statutory

entitlement to time off to carry out appropriate duties. There are also a number of 'public duties' for which workers are entitled to time off. This includes; Justice of the Peace; Member of a local authority; Member of the governing body of an educational establishment and there are others.

Employees are not usually entitled to pay for this time off, but could be able to claim back the money they lose from the authority they are sitting on.

Jury Duty

All employees are entitled to time off to undertake Jury Duty. There is no obligation to pay employees for this time off and they should be able to claim back these losses.

Pensions

All employers employing five or more employees, must offer a pension scheme, at the very least a stakeholder pension. A stakeholder pension provides a low cost pension that is easy to move between jobs. The pension paid will depend on how much is contributed and how well its investments do. Employers can contribute to a stakeholder pension, but there is no obligation on them to do so.

Sometimes funders will include an amount for pensions in money they give the organisation, sometimes they will not. Difficulty can arise if posts in an organisation are funded by different organisations, and some posts have pensions, and some do not. It is important that the organisation does not inadvertently discriminate because of this, and if this is the case (e.g. all the men receive a pension, but none of the women do), advice should be sought.

Managing Your Staff

In addition to the Contract and Terms and Conditions there are other issues that will affect your employees. These include:

Insurance As an employer, you are required by law to have employer's liability insurance.

Paperwork You are legally required to keep payroll and National Insurance contributions records and it is good practice to keep records of holiday and sick leave.

Supervision All staff should receive regular supervision as this is a mutually beneficial process. As an employer it means you are able to monitor the work going on in your organisation, plan how employees carry out and develop their roles and to check that your employee is coping in their role. It gives employees a chance to get guidance on aspects of their job they are struggling with and can help focus on their objectives. Supervision is also a mechanism for supporting staff and highlighting and working out any problems.

Make it clear who will supervise each employee (usually a manager or a trustee); how often supervision will take place and how it will be carried out. All supervision sessions should be properly recorded. The manager should take notes which should be written up, shared with the employee and agreed by them. The agreed version

should then be kept on file.

Performance Appraisal

A Performance Appraisal should take place once a year in the form of a personal interview. It is an opportunity for both a manager and employee to review the employee's job description. This must be properly planned and should look at performance, problems, targets and training needs. Both employers and employees should be open and frank in order to get the most from this process. Targets should be set by managers and should be realistic. This appraisal should not be used for dealing with other things like disciplinary, grievance, salaries or conditions of employment.

Organisational Policies

These are the formal written documents that outline the processes by which the work of the organisation is undertaken. All the organisations' policies will have an impact on staff. All organisations should have a minimum of these policies:

Equal Opportunities Your staff need a good understanding of Equal Opportunities and how it affects their work. It is illegal to discriminate against anyone on grounds of their gender, race, age, sexual orientation, disability, religion or beliefs. Be aware of what constitutes discrimination. (See www.lvsc.org.uk/shared_asp_files/GFSR.asp?NodeID=97430)

Health & Safety

All employers have responsibilities for aspects of Health and Safety at work. Generally this means employers have to ensure that the workplace is safe, that they have a health and safety policy (that is relevant to the organisation), and that they carry out risk assessments - a formal investigation into the risks that exist in the workplace. For further information see the CVS Health and Safety Info Sheet.

Confidentiality and Data Protection

Most organisations hold information that could be considered confidential e.g. information about clients/users, and information about the organisation itself. It is important that workers are given clear guidance as to what is, and what is not, confidential.

Managers should be clear about their obligations to ensure their personnel records are confidential. All information held about employees is covered by the Data Protection Act. This means that employers are obliged to ensure its proper, secure, safe storage, to ensure that members of staff can have access to their own files, but not access to others, and that information in those files is only given to those within the organisation who reasonably need them to carry out their duties e.g. the employee's manager.

Certain information (for example equalities information) can only be held with the person's permission. This also applies to information held by an organisation about individuals who have applied for a job. Similar rules apply when data is held about clients. An organisation holding client information should seek advice from the Information Commissioner's Office via their website at www.ico.gov.uk or helpline 08456 30 60 60.

Disciplinary & Grievance Procedures

These are the mechanisms by which the organisation deals with problems between employees and the organisation. The disciplinary procedure shows the steps the management would take in the event of a complaint against an employee or in the case of poor performance by the employee. If the employee has a problem with the way they are treated at work, the grievance policy outlines how such a complaint would be dealt with. For more information, see the CVS info sheet on Discipline and Grievance.

Further Information

- Health and Safety Information Sheet (CVS Website)
- Equal Opportunities Information Sheet (CVS Website)
- LVSC Essential Employment Menu for BAMER Organisations - http://www.lvsc.org.uk/shared_asp_files/GFSR.asp?NodeID=97430
- Info on Contracts from LVSC's website - www.lvsc.org.uk/contracts
- Info on Contracts from ACAS: www.acas.org.uk/index.aspx?articleid=817
- Sick Leave rates - www.hmrc.gov.uk/employers/rates_and_limits.htm
- Maternity rates
 - www.hmrc.gov.uk/employers/employee_pregnant.htm
 - www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp
 - www.lvsc.org.uk/workandparents
- Paternity Rates - www.berr.gov.uk/employment/workandfamilies/paternity-leave/.
- Adoption Rates - www.berr.gov.uk/employment/workandfamilies/adoption-leave/page16608.html
- Equal Opportunities - www.lvsc.org.uk/shared_asp_files/GFSR.asp?NodeID=97430)
- Employers National Insurance - www.hmrc.gov.uk/rates/nic.htm
- Department for Work and Pensions - <http://www.dwp.gov.uk> HM Revenue and Customs <http://www.hmrc.gov.uk/index.htm>
 - Charities Helpline **0845 60 55 999**

Contact CVS Hounslow

If you would like help with this or any other issue, get in touch with Clare Sewell, the Development Officer at CVS Hounslow who would be happy to help.

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