

Protecting your business

Recruitment

Key contact



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“Its ‘highly professional and knowledgeable’ team is led by the ‘thorough and friendly’ Catherine Daw.”

The Legal 500

Top tips for businesses on how to protect their organisation during the recruitment process.

Why is it important for recruitment to be managed properly?

From a business perspective it will help to ensure that the best person for the job is selected.

It will also help to avoid and defend claims for discrimination. Remember, an individual does not have to be employed to bring a claim under the Equality Act 2010.

A claim for discrimination by a job applicant may be against the business and any employees and recruitment agents responsible for the alleged discrimination.

Your business may be brought into legal action if your new recruit breaches a previous contractual agreement not to work with certain customers or in a particular area.

Potential pitfalls and recommend best practice

Discrimination

Discrimination under the Equality Act 2010 (EA) in relation to one of the nine protected characteristics, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, is covered in

the recruitment process in relation to:

- arrangements for offering employment;
- the terms of offer of employment;
- not offering employment, and;
- harassing an applicant.

‘Arrangements’ are broad and can include application forms, physical arrangements, location and timing of interviews and job person and specifications. For example, you may wish to make sure it is clear that applicants who are disabled can approach the organisation at any stage to discuss reasonable adjustments for the recruitment process, such as an interview in a place convenient for them, as otherwise they could complain of discrimination.

A job description should specify the main purpose of the role, the tasks that the successful candidate will be expected to carry out and the scope of the role. The description must not be seen to be discriminatory in any way and therefore should be considered carefully.

Person specifications should include the required knowledge, experience, aptitudes and personal qualities. The recruitment process should be designed to test these areas. A job application form should allow the candidate a chance to demonstrate that they have these requisite skills.

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It will minimise the risk to your business if any equality and diversity monitoring form is anonymised and completion is voluntary. The underlying focus of collecting this data is to promote equality and diversity in the work force and this should be borne in mind at all times.

Candidates should be informed if any health checks or references are required if they are offered the position. Health related questions asked prior to a job offer being made can only be asked in certain limited circumstances.

A job offer should specify how long the job offer is open for in order to avoid confusion. It should also say, if applicable, that the offer is subject to conditions e.g. satisfactory references. If a written statement of terms and conditions is not provided at this point, it must be provided within two months of the successful candidate starting, if employment is going to last for at least a month.

Data Protection

Job applicants are data subjects and provide personal data, frequently personal sensitive data, to you. As the data controller your business will need to ensure that the handling of such information is in accordance with the governing requirements (note that changes in this regard are shortly to be introduced making practice more stringent and penalties higher).

Advertising

All forms of advertising including emails, direct mail, signs in shops, company notice boards, radio, newspapers and magazines and the internet are covered by the EA. A business should not discriminate in its arrangements for advertising or not advertising or in relation to the content of the advertisement.

You may minimise arguments of discrimination by:

- Advertising through several different means for example a mixture of publications and internet. This will ensure that as many people as possible have access to the opportunity.
- Not giving instructions to discriminate or causing or inducing a third party to discriminate.
- Stating the organisations commitment to equal opportunities.
- Taking care over the wording of advertisements. Inappropriate wording could give rise to the risk of a claim and/or be used in evidence against the business.

Choosing the successful candidate

- It is helpful for applications to be considered by more than one person to minimise successful arguments of bias.
- Interviews should be conducted, where possible, by more than one person and the interview panel should ideally be the

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same for all candidates.

- Avoid asking for personal information which is irrelevant to the job. This could lead to claims that an applicant didn't get the job for reasons other than their ability.
- Create a fair scoring system by which candidates can be assessed and select a candidate for the job based on this score and make sure that the candidate is aware of the system and how it will work.
- Ensure that any restrictive covenants which the employee is bound by are considered and steps taken to minimize the impact of them.

Making an offer

Consider carefully whether the offer letter will form part or all of the contractual terms (once accepted by the employee) or whether you intend to have a separate more detailed contract to be provided upon acceptance.

If a separate contract is to be provided ensure that there are no inconsistencies between the documents.

Certain minimum particulars must be provided to an employee within two calendar months of beginning employment.

How can we help?

Brachers can advise on all stages of the recruitment process including drafting documentation and working with you to minimise the numerous risks that this process may pose to your business.

Our separate HR consultancy, KentHR can provide practical support in conducting interview processes or sitting on recruitment panels.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.