All above board?

David Seals gives an essential run-down of employment law so that you can ensure that the day-to-day running of your practice is legal

Permission to work in the UK

Employers must refuse to hire applicants who cannot demonstrate that they have a right to work in the UK under our immigration laws. Under the Immigration and Asylum Act 1999, employers can be fined £5,000 for each employee found to be illegally employed. In the event of the employer being a company, any director, manager, secretary or similar officer of a company who consents to, or expressly or implicitly allows the offence to take place can be guilty of the offence as well as the company itself. Liability can be avoided by checking a candidate’s documents – usually their passport – to ensure they have the requisite permission to work in the UK.

Pre-employment checks

Prior to offering employment, a sensible employer will usually request to see identification documents and references. In addition, an employer may wish to carry out background checks such as health checks or a check to ensure a candidate has the specific qualifications required by the employer.

Offers of employment

An employer can either offer a candidate a conditional or unconditional offer of employment. The latter will be where an employer imposes conditions such as the provision of a satisfactory reference. If an offer is withdrawn on the basis that a condition is not met, an applicant cannot make a complaint unless it can be shown that the employment was withdrawn because of unlawful discrimination. If a candidate’s unconditional offer of employment was withdrawn then the employer would be liable to terminate on notice. This would be a week’s pay or more depending on any longer contractually agreed notice period. Employers should generally therefore ensure they make offers conditional on receipt of satisfactory references.

Data protection

An employer should only obtain such information which is necessary and relevant to the employment. Employers have a duty to make sure that any use of personal information about an employee complies with the principles of the Data Protection Act 1998. The DPA is complex and requires, among other things, that holders of personal data keep it secure and up to date and delete it after an employee leaves.

Young workers

There are special laws to protect the employment rights of young workers. These concern health and safety, hours of work and the type of work that can be done. Employers can refuse to employ applicants under the minimum school-leaving age, as it is generally illegal to employ them except for part-time or holiday work.

National minimum wage

The National Minimum Wage is the minimum amount of pay that workers are entitled to. There are three different rates. These are (currently):

- £10.15 per hour for workers aged 23 and over
- £8.93 per hour for workers aged 21-22
- £8.45 per hour for workers aged 18-20

Deductions from wages

An employer is not allowed to make a deduction from an employee’s pay unless it is either authorised by the contract of employment or the employee has agreed to it first in writing. A deduction may also be made if it is required or authorised by law, such as income tax, national insurance or student loan repayments. Usually, the employer will also be able to recover any over-payment of salary without any written agreement from the employee.

Sick pay

If an employee needs to take time off work due to illness, their pay during this period will depend on their terms of employment. An employer may elect to run a company sick-pay scheme and can offer any scheme providing it does not fall below the legal minimum of statutory sick-pay (currently £23.25 per week for most employees). An employer must provide an employee with a written statement of employment particulars within eight weeks of employment commencing, which must state what sick-pay provisions apply.

Typically, employment contracts usually set out rules regarding how the employer must be informed of any illness and the employee’s progress. An employee can usually self-certify sickness absence for the first week of their illness after which a GP’s certificate is usually required. An employer may reserve a right to refuse company sick pay in a situation where it is deemed to be unjustified to pay it, though care must be taken to avoid unlawful discrimination.

Taking time off

Employees have a statutory right to take time off (sometimes paid) in various circumstances. These include for ante natal care, where redundant employees need time-off to look for work, to care for a dependent in an emergency, jury service and other public duties.

Performance-related pay

An employer may offer performance related pay to encourage staff to work harder and/or achieve set targets or objectives. In order to avoid disputes the conditions for such payments should be clear and agreed between the employer and employee in advance.

Equal pay

Generally speaking men and women are entitled to receive the same level of pay for doing the same work. Equal pay means that you provide the same pay and benefits for men and women doing work that is:

- the same or broadly similar
- has been rated as equivalent under a job evaluation scheme
- is of equal value in terms of the effort, skills, knowledge and responsibility required.

‘Pay’ includes salary and all other contractual benefits such as bonuses and pension contributions. Individuals may complain to an employment tribunal under the Equal Pay Act 1970 up to six months after leaving the employment to which their claim relates. Normally, they may claim arrears of remuneration (which includes sick pay, holiday pay, bonuses, overtime etc as well as normal salary) for a period of up to six years before the date of their tribunal application.

About the author

David Seals works at Morrisons Solicitors LLP, a member of the ASPD. ASPD has over 27 members in the UK offering professional services to dentists. The members include major banks and firms of solicitors, accountants, financial advisers, practice valuers and sales agencies, insurance advisers and leasing and finance companies. For further information on the ASPD, its members and services, call 0800 458 6775 or visit www.aspd.co.uk.

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