

RECRUITMENT

Your business is up and running. You are looking to expand and are considering taking on additional members of staff.

Recruiting and retaining the right employees is not always straightforward and there are number of legal and practical issues to consider. Employees are a key asset in every business. Investing up front and spending time and money attracting the right people is time and money well-spent. Recruiting the wrong candidate is costly all round: involving a lowering of staff morale, wasting management time and increasing turnover costs.

It is essential to establish a fair and objective selection process for hiring new staff; one which complies with relevant legislation. In particular, businesses should ensure that no applicant is discriminated against and 'reasonable adjustments' are made for disabled job applicants.

Employees or contractors?

One early consideration is whether to hire employees or engage contractors. This will depend on the needs and circumstances of your business. An employee works under a contract of employment and usually works a minimum number of hours per week under your control, whilst a contractor is self-employed and engaged under a contract for the provision of specific services (for example, expertise on a particular project).

Each has advantages and disadvantages.

Your organisation will owe greater legal obligations to employees, such as the right to family friendly benefits. Employees also benefit from numerous employment protection rights such as the right not to be unfairly dismissed following two years' continuous service. The positives of the employer-employee relationship include more certainty, greater control over the employee and employees owe several implied duties to their employer such as the duty of fidelity.

The main benefit of engaging contractors is that your relationship is more flexible. For instance you owe fewer legal obligations to them, and contractors are responsible for paying their own taxes. The negatives of hiring contractors can be that you have less control over what they do and how they do it, and in turn contractors owe fewer duties and obligations to you.

Pay and benefits

In order to attract, retain and motivate talented individuals, you will need to consider how to incentivise them. The first consideration will be the profitability of your business and what it can afford. At the very minimum, you will need to ensure that your remuneration packages meet the national minimum wage as well as providing equal pay conditions for men and women. You may also want to consider alternative options such as offering employees ownership of shares (equity), commission, or bonuses, which can often enhance performance and encourage loyalty.

Business Protection

It is important to ensure that a written contract is put in place with employees/contractors as it forms the basis of your relationship and sets out the rights and obligations of the parties. Given the nature of the Science and Technology sector, you will have a great deal of business interests to protect from your competitors.

The following clauses, if drafted carefully, can assist in protecting your business:

- ▶ **Confidentiality clauses:** given the importance of certain knowledge and information to your business, express clauses should be included to prevent individuals from making use of or disclosing confidential information to third parties or your competitors
- ▶ Contracts should also include a **clause dealing with intellectual property** to ensure that your business owns any intellectual property created by employees/contractors during the term of their employment

- ▶ You may wish to include appropriate and tailored **restrictive covenants**, restricting the activities of employees/contractors after the termination of your relationship (including for example, setting up in competition and/or soliciting or dealing with customers or suppliers and poaching other employees).

Effective management

Once you have hired a team, you will then need to successfully manage your relationship with them in order to facilitate their performance and create good working relations. You should ensure that your business complies with statutory rights such as paid holiday and maternity/paternity leave and implements policies which outline the standards expected. At a minimum, these should include policies relating to disciplinary / grievance procedures and rules, as well as health and safety.

Collaboration in Action

We recently advised a newly formed life sciences group on its employment contracts and on an incentivisation scheme for its key employees. The incentivisation scheme (an employee shareholder scheme) was established to enable key managers to subscribe for shares in the group and to benefit from the beneficial tax treatment available for such schemes. This kind of arrangement can be a very useful tool for companies looking for a way to clearly align the interests of pivotal employees with shareholders. We helped advise on the feasibility of the scheme as well as designing, drafting and implementing it. Our specialist advice and guidance enabled our client to put their vision into practice, motivating those employees who play a crucial role in their company. In such a competitive labour market, shares in a company are very attractive and can convince indispensable employees to invest and be part of the growth of a company.

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