

# Employment law – the fundamentals a retailer should know

This month, **Stuart Jackson** advises retailers on the procedures they should be employing when it comes to contracts.

## The story so far

Employment law has radically changed and is now based on an individual's human rights along with all the legal complications that these bring.

For independent SMEs (small, medium enterprises), the hardest change to swallow was the elimination of practical allowances. Previously, onerous rules or procedures were simplified or exempted for smaller enterprises but not any more. Laws apply uniformly whether one is The Royal Bank of Scotland or a local independent shop.

Ominously, the majority of recent employment law has yet to be tested for meaning in a UK courtroom. Until test cases are well established, attempts to confidently interpret the law are foiled by the number of potential outcomes.

The legislation is open to qualifications such as "reasonableness", "best practice" or "fairness", criteria that is difficult to gauge. Worse still is that a final ruling at tribunal will be by a panel of human beings applying their definition of those terms. SME owners could find themselves dealing with a complex case for which there is no absolute right or wrong conclusion.

SME owners are accordingly required to divert personal energy away from trading needs



to conduct endless employment procedures for which expensive professional advice may have to be paid. Even then the employer cannot be certain that a decision, however well qualified, is foolproof. In extreme cases, a challenge may still snatch victory.

For professional help, read solicitors, one of the remaining institutions that has defended the sense of awe it projects onto its clients. If seeking legal advice on employment law, consider these thoughts.

What is it that a solicitor sells? What is their product? The standard responses to these questions are expertise, legal templates and suchlike – wrong.

It is "time". Solicitors sell time. They charge by the hour and it is those charges that determine the profit and loss of their business in the same way that retailers sell food products. It is, therefore, a solicitor's

task, driven by their managing partner, to sell the maximum amount of time they can and supplement that income with add-on administration fees. With the exception of the rare, genuinely caring individual, mostly found in our type of market, it is naïve to believe that a solicitor's prime aim is to protect our interests. Like any other business, they are driven by sales and profit.

The complexity of employment law is such that to conduct serious cases without professional help is risky yet it can be no less risky and a lot more expensive with that assistance so be selective and maintain control of fees.

## Twin strategy

Over this issue and next I am going to focus on two areas of employment law that every retailer should put effort into getting right; contracts of

employment and disciplinary procedures.

The one field of legislation that every retailer will encounter at one time or another is discipline. Getting the dismissal process wrong can result in an automatic unfair ruling from a tribunal so watch out for this subject in March's issue.

## The contract

By issuing correct and relevant contracts to new employees, retailers are acknowledged as having met legal requirements and this will help to shield us during disciplinary action or at an employment tribunal.

The law requires that every new member of staff be issued with a minimum written statement of employment particulars within two months of their start date. It is the employer's choice whether this minimum is extended to a broader contract and if it is, any additional clauses must respect general employment law or that clause will be invalid and the contract's general worthiness negated in terms of good practice.

## The minimum "Written Statement of Employment Particulars"

The written statement must include:

- The names of the employer and the employee

- The date employment (and the period of continuous employment) began
- Job title or a brief description
- The location(s) of where the employee is to work
- Pay rate and payment schedule
- Hours of work
- Annual holiday and any public holiday entitlement along with pay details
- Entitlement and rules on sick leave and pay
- Pension schemes
- Absence from work; guidance on who to contact, how and when
- The entitlement of employer and employee to notice of termination
- Where it is not permanent, the period for which the employment is expected to continue or, if it is for a fixed term, the date when it is to end.
- Disciplinary rules specifying the name or job title of the person to whom the employee can apply and the procedure for doing so if he or she is dissatisfied with any disciplinary decision or for the purpose of seeking redress of any grievance
- Signature at the end as acknowledgement of receipt of the particulars of employment

Although it is a legal requirement to issue this minimum, should an employer fail to do so, failure itself won't carry a punishment. Instead, the legal minimum or where greater, established practice within the workplace will be adopted as the standard condition.

The failure to issue will bite when a dispute arises and the employer is found to have failed to set out its policies or indeed working conditions under law clearly.

The written statement of employment particulars can be kept to a minimum of text by referring a heading such

as holiday entitlement to the current legal minimum or to a readily available workplace manual. For clarity and good practice, it is always a better option to include all the detail within the contract.

### The broader contract

An employer can expand the minimum contract into areas not required by law. These might include: staff purchase schemes, a right to search, the use of mobile phones, Internet, email and so on. The more issues that are tackled and clarified within the law the stronger the employer's position in any dispute or disciplinary action.

A good example is to take an everyday situation in most small businesses where one employee is paid more than another although working the same job. This used to occur as a result of an individual's ability, attitude or length of service. Today, this is only possible if clear standards such as length of service are defined against pay rates within company policy and referred to in the contract.

The information contained within this article is not meant to be used in isolation; it is a general outline and opinion only. For further assistance consult a specialist or go to [www.acas.org.uk/](http://www.acas.org.uk/) or utilise an online tool that builds a minimum written statement for you at: [www.businesslink.gov.uk/bdotg/action/stmTEmpLanding?topicId=1075225309&r.li=1077561643&r.li=1073858787](http://www.businesslink.gov.uk/bdotg/action/stmTEmpLanding?topicId=1075225309&r.li=1077561643&r.li=1073858787)

### Summary

It is impossible for retailers to stay on top of employment law so put the effort into the first part, the contract. Prepare, issue, get it signed and filed. Protect yourself. **HFE**



If you have any questions for Talking Shop or would like further information on Stuart Jackson's consultancy service, contact him on 0131 315 0303 or email [stuart@forceofnature.co.uk](mailto:stuart@forceofnature.co.uk) or visit [www.forceofnature.co.uk](http://www.forceofnature.co.uk)

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