

Taking on your first employee - financial and legal issues

Introduction

Upon starting a business you will probably have less work than you would like. But, with expansion and increased workload you will soon lack enough time to do the work yourself without working all hours.

The obvious solution is to take on your first employee – simple?! Not quite – you will no longer be on your own but will soon become an “employer”.

This is a quantum leap for any small expanding business and there are a number of issues to be considered before taking the plunge:

Attracting the right candidate

You can use your own business connections, advertise yourself or use an agency.

The agency option is an easy one but beware of high fees and commission structures before entering into arrangements, particularly resolving an early departure of the employee. Many agency disputes are with first time employers who did not understand terms and conditions for payment of agency commission.

Interviewing the candidate

You must not discriminate against race, religion or gender. Being accused of discrimination can result in hefty compensation claims.

All employees are entitled to the same pay for the same work. It is illegal to pay a woman less than a man for the same work.

It is also illegal to discriminate against the disabled. You might have to make reasonable changes to your workplace to enable those with disabilities to work.

You also need to be mindful of maternity and paternity rights and the likelihood of such claims arising, which can be particularly difficult for a business employing only one person.

Setting the salary level - the cost to your company

Rather than having a fixed amount in mind, think about a range of salaries that you would pay, depending upon age and experience.

For a small company it might be more effective to pay a little more for somebody who has extensive or relevant experience for the specific job you have in mind. This will avoid having to train an inexperienced person which could be costly.

In addition to the gross salary, you will also be responsible for employer's national insurance at the rate of 12.8% and possibly Class 1A national insurance if you provide benefits in kind as part of the salary package.

Contract of employment

You should provide your employee with a contract of employment, stating at the very least their job description, salary, hours of employment, holiday entitlement, sickness policy, pension provision (all businesses with more than five employees must offer access to a plan), notice periods and disciplinary procedures.

You may consider engaging a solicitor to draft the employment contract for you, in order to avoid future problems. This must be done within the first two months of employment.

Payroll matters

You will need to establish a payroll scheme with the HMRC.

If you have an accountant, you could instruct him to deal with the payroll for you or alternatively, telephone HMRC New Employer helpline on 0845-60-70-143, who will register your business and send you the necessary pack and information required.

You will also need to prepare payslips and make payments of PAYE/NIC to the Collector of Taxes.

Your accountant is probably the easiest solution but if you wish to do it yourself, you should purchase a software package to make the calculations for you.

Employer's insurance

You are by law required to have in place an employer's liability policy.

This is very simple to arrange and any insurance broker will be able to put a policy in place for a premium in the region of £200 per year.

Health & safety matters

Health & Safety regulations have snowballed in the last few years and there is little doubt that employees are becoming more aware of their rights.

The Health & Safety Executive (HSE) is responsible for enforcing standards and heavy fines and prosecution are possible in the event of failure to comply.

Get some legal advice from the outset and start talking to the HSE and the small business service at the Department of Trade and Industry. Information packs are available from the HSE and they have an information help line.

Religious holidays

You must allow your staff to take the religious holidays, although they would normally count as annual leave.

In a recent case, an employee was awarded £10k in compensation, owing to a dispute over the taking of a religious holiday.

Such an award could easily destroy a small business employing one person and it is therefore vital that you are aware of this and similar rights.

Disciplinary and dismissal

The whole area of disciplinary procedures and dismissal of an employee for any reason is a legal minefield for a small employer, who will usually not have the resources or knowledge to comply with the wealth of regulations and employee rights.

In the event of any problem arising, you should seek qualified legal advice, preferably from a specialist solicitor dealing with employment matters.

Substantial claims have been awarded for unfair dismissal, constructive dismissal and discrimination of various kinds and the awards given to employees can be substantial.

Claims for unfair dismissal are limited to employees who have been employed for more than one year.


Alternatives to full time direct employment

In order to avoid some of the above issues, you could consider the alternative of engaging self employed, part time or agency workers.

Each of these alternatives may avoid some of the above issues but your first and foremost need is to consider what is the most appropriate method for your company's circumstances.

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