

Guidance on Employing Staff

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EMPLOYING STAFF – A BRIEF INTRODUCTION FOR PARISHES

Introduction

- 1.1 There is now available on the internet a comprehensive range of information produced by the Government about employing staff and its Business Link website is particularly useful. If you have internet access you therefore have an easy source of up to date guidance. The problem is that employment law has now become extremely complex and the range of legislation applying to even the smallest of employers becomes greater every year.
- 1.2 The purpose of this note is not to set out all the information which a parish contemplating employing staff needs to know but to give an overview of the central issues and the sources of information to turn to for more detailed help.

Central Principles

- 2.1 There are some central principles which it is important to follow:

Don't discriminate unlawfully!

- 2.2 The fundamental thing to remember is that employment law applies even before you have made an offer of employment! There is legislation which makes it unlawful to discriminate against potential and current workers on the grounds of a whole range of things:

- Age
- Sex
- Gender reassignment
- Being married or in a civil partnership
- Pregnancy and maternity
- Race and ethnicity
- Sexual orientation
- Disability
- Religion or belief.

- 2.3 In recruiting for a post, you therefore need to think carefully about exactly what skills, qualifications and experience potential candidates might need to do a job. So, for example, if you are thinking of employing someone as a parish secretary you cannot assume you can have a preference for employing someone who is a Christian. There are provisions within the legislation for exemptions to meet the reasonable requirements of religious groups. However, to call on this exemption it

would be necessary for the detailed duties of the post to reflect the requirement to be a Christian. To justify a claim for exemption a post would be likely to contain a significant element of leadership, teaching or representative element. The situation is even more complex over sexual orientation and it is important you seek advice before seeking to try to use this exemption.

Make it clear in writing on what basis someone is employed!

- 2.4 It is good from every point of view that both the parish and its employee(s) understand the basis of the employment. More than this, there are some details to which employees have a legal entitlement to be given in writing if they request it, and it is sensible to issue these details as a matter of course to avoid any misunderstanding. The details required by law are:

The identity of the employer
The date the employment began
The pay (how much and when it would be paid)
Hours of work
Holidays
Pay provisions during sickness
Pension arrangements
Length of notice employee must receive and give
Title and brief description of the job
If the employment is temporary, the length of the fixed term
The place of work
Disciplinary and grievance provisions (see below).

- 2.5 The employer is not necessarily free to decide all of the above things. So, for example, there are statutory minimum provisions for holidays, notice periods (depending on years of service) and there is a minimum wage which must be paid.

Take care of your workers!

- 2.6 As employer you are responsible for making sure your staff are working in a safe environment. While you will not need a formal health and safety policy unless you employ five or more staff, it is worthwhile for some consideration of risks to be carried out and reported to a PCC meeting. In an office environment the main risks are likely to relate to electrical equipment but it is also necessary to ensure typists have an appropriate chair and that vdu screens are at a correct height etc.
- 2.7 In order to maintain effectiveness at work it is important for people to take holidays. There is a statutory minimum specified of 5.6 weeks, although it is permitted to include Bank Holidays in this allowance. Don't leave any doubt about this and specify clearly in the contract what holidays are permitted. Of course, in many parish situations staff will be part-time. This means they will have to be given a *pro rata* holiday allowance. This is complicated where people, for example, work a few hours a week at times determined on an *ad hoc* basis. You might think that a simple answer would be to pay a tiny bit extra an hour to cover notional holiday pay but the courts have ruled that this is not permitted, ie that effectively there has to be an identified holiday period with pay for this period being given at approximately the

time the holiday is being taken. Therefore, if you employ someone for 10 hours a week, ie, 520 hours a year, that person must be given the opportunity to take at least 56 of those working hours as holiday (although this could include time off on Bank Holidays if these occur on days which would normally be worked). It is important that the person supervising the member of staff keeps a record of when this leave is taken.

Employment Processes

- 3.1 In this section we look at some of the processes involved in employing staff in a bit more detail.

Recruitment

- 3.2 The starting point of any recruitment is to work out what job you want done, how many hours are required to do the job and what rate of pay you are offering (of course, making sure the hourly rate is above the statutory minimum which from October 2012 is £6.19 per hour for workers aged 21 or over). You really do need to think very carefully about what you want and it is not sensible simply to copy a job description from another parish. If you don't know exactly what you want done, it will be very hard to choose who would be suitable to do it. Once you know what you want done it is reasonably simple to draw this together into a job description. This will then make it possible to draw up a person specification which will set out what skills and qualifications a person will need to undertake the role, eg if it is a secretarial post, it is likely that the person specification will set out that a particular typing speed is required probably supported by a formal qualification. It is usually most appropriate to divide the specification into essential requirements (eg a typing speed 80 words per minute) and desirable requirements (eg a formal RSA qualification certifying this typing speed).
- 3.3 The basic principle of advertising a post is that you should seek to make any employment opportunity available to a wide range of people so that no one who might be suitable is excluded from applying. This does not mean that you have to spend vast sums of money advertising since there are usually low cost or no cost alternatives: eg web sites, job centres, local shops.
- 3.4 In considering applicants, the key is to ensure that you have the same range of information about each candidate before you make a decision. This is a good reason for using an application form since this will mean the information about each candidate is presented in the same format. This is also the key in devising interview questions: make sure you cover the same areas for each candidate so you will be able to make direct comparisons between candidates. If you ask some candidates about a particular area but not others you will be in danger of wrongly concluding that the person you failed to ask knows nothing about the area concerned. Remember discrimination law applies and you should not ask questions which could lead to the impression that you are seeking to use as a selection criterion something which is unlawful, eg if you only ask female candidates about child care arrangements then, whatever your intentions, it might easily be assumed that you are seeking to apply a criterion to female candidates which you would not apply to males.

- 3.5 It is now generally unlawful to ask job applicants about their health or any disability until after they have been offered a job. So you should not include health-related questions on application forms or in interviews. There are however a few specific circumstances when early questions about health and disability are allowed. These include to find out if any adjustments need to be made for the interview, or in relation to an intrinsic part of the job. For example, an intrinsic part of a caretaker job may be to lift and move furniture, so you can ask health questions to determine whether they are able to do that.
- 3.6 It is worth considering devising some simple tests as part of the selection procedure. So, if you are recruiting a secretary, it is helpful to give a typing test or to ask them to draft some letters. It is essential, however, that the tests are directed at skills which are essential to the job concerned but they are a good way of providing some more information to help you select the right person.
- 3.7 There are now checks which have to be carried out by any prospective employer before anyone can begin working for them. These are to make sure that employees are entitled to work in the UK. The Government has issued detailed information about how to fulfil the requirements and Business Link's interactive guide 'Check the eligibility of your workers' provides a useful summary on this. However odd (and futile) it may sound, it is mandatory that the checks are made without exception in order to avoid possible charges of discrimination.

Getting started

- 3.8 In order for an employee to be effective and perform to their full potential, it is important to get off to a good start. The best way of doing this is to ensure that a proper induction programme has been worked out before they take up their post. The essential is to put them in touch with all the information and equipment they need to do their job effectively and to let them understand the set up and meet some of the people they will be dealing with on a regular basis.
- 3.9 In one sense, induction begins when a candidate first sees an advertisement, continues through the selection process and the programme when they actually begin is simply the final stage. It is therefore very important that any information given at any point in the process is accurate and gives an accurate and full picture of the job concerned.

How am I doing?

- 3.10 When everyone is very busy it is easy to lose sight of the overall picture. It is therefore very useful for both the supervisor and the employee to sit down without interruption at some point every year and review how things have been going. At the Diocesan Office we have a formal appraisal scheme which helps to identify training needs, looks at achievements during the year and at what has gone well and what has gone badly, whether there are things within the organisation which get in the way of getting the job done and identifies any changes in the job which might mean that the job description needs updating. You do not necessarily need such a formal process: but it is incredibly valuable to be able to look at the big picture sometimes and to identify where the job has changed and developed.

Pay, national insurance and income tax

- 4.1 If your parish pays anyone for services rendered, then unless it is for reimbursement of expenses incurred or they are a self-employed contractor who supplies a legitimate invoice, it is likely that an employment relationship exists. You need to make National Insurance and income tax deductions for any employee who earns over a certain amount. For 2012/13, the relevant figures for NI are £146 per week (£632 monthly, £7592 pa) and for tax £155 per week (£675 monthly, £8105 pa). Even if they earn less than that, or are self-employed, you are obliged to provide HMRC with a certain amount of information.
- 4.2 You should contact HMRC for detailed advice on your obligations regarding reporting, tax and national insurance. They provide some guidance and contact details on this in their 'Guide to PAYE/NIC for Local Religious Centres'.
- 4.3 Employees have certain rights regarding pay, including:
- To be told when, how and how much they will be paid
 - To be paid at least the minimum wage
 - To have itemised pay statements
 - Not to have unlawful deductions made from their pay
 - Where appropriate, statutory levels of maternity, paternity, adoption and sick pay.
- 4.4 There are computer packages available to help you run your payroll, including free HMRC software. You can outsource it – most accountants offer payroll services - though obviously it will be cheaper to do it in-house if you have the resources. You can get information and advice from Business Link.

Pensions

- 5.1 Once you have five or more employees, and at least one of them is earning above the minimum earnings limit (£7592 in 2012/13) you are likely to have to offer access to a pension scheme or pay into a personal pension of their choice. More information is available on Business Link ('Know your legal obligations on pensions').
- 5.2 The law is changing in 2012. The 'five or more employees' threshold will no longer apply and if you have just one employee earning above the minimum earnings limit you will need to enrol them in a qualifying pension scheme if they aren't already in one, and contribute to that pension (unless they are under 22 or over the state pension age). This won't apply to parishes though until 2014 at the earliest as the arrangements are being phased in between 2014 -16 for employers with under 50 staff. A new national pension scheme called NEST (National Employment Savings Trust) has been set up; employers including parishes can use that one, the Church Workers Pension Fund, or another pension provider.

Changing a contract

- 6.1 Most changes to a contract of employment need the consent of both employer and employee. They can be agreed either orally or in writing but written consent can avoid later disagreement. Contracts can also be changed if an employee works under new terms without objecting to the changes, or through a 'flexibility clause' which might require them to transfer to a different location with the job. It is important that any such changes are discussed and agreed and that this is recorded somewhere.
- 6.2 A contract can be ended by the employer or the employee, normally by giving the required notice of termination. Where the employer gives notice, this is usually deemed to be a dismissal. In order for a dismissal to be fair, it must be for one of the potentially fair reasons:
- a reason connected with the employee's conduct, capability or qualifications
 - that the employee was redundant
 - that there was some statutory bar to the continuance of the employment

Whatever the reason, you need to be able to demonstrate that you have acted reasonably and in line with any procedures. We strongly advise that you seek advice before terminating someone's employment.

What if something goes wrong?

- 7.1 It is helpful to have some sort of formal process to deal with problems in an employee's performance. You can devise your own process, but it is important that it conforms to the Code of Practice issued by ACAS. This may be found at:

<http://www.acas.org.uk/CHttpHandler.ashx?id=1047&p=0>

- 7.2 Until recently there was a statutory provision which had to be followed. Although no longer in place, its principles are incorporated into the ACAS code of practice and it provided a useful structure which is still worth following. It required three steps to be carried out:

Step 1 - Statement of grounds for action and invitation to a meeting

A statement must be set out in writing and sent to the employee explaining the nature of the employee's conduct, capability or other circumstances that may result in dismissal or disciplinary action.

Step 2 - Meeting

A meeting must take place before any action is taken (except in cases of suspension). The employee must take all reasonable steps to attend and, after the meeting, the employer must inform the employee of the decision and the right of appeal.

Step 3 - Appeal

A meeting must be held and the result of the appeal notified to the employee. The appeal need not take place before the dismissal or disciplinary action takes effect.

- 7.3 The most important thing is to treat the employee fairly and that you behave reasonably as an employer. You will do this by making sure they know fully what has gone wrong, that you have heard and taken into account what they have to say and that you have then taken an objective and reasonable decision in the light of all the circumstances.
- 7.4 If you are contemplating taking disciplinary action it is very important you read the ACAS code of practice which can be obtained in either printed form or can be downloaded from the ACAS web site (see below at paragraphs 4.5 and 4.6). The comprehensive guide which ACAS also publishes suggests that good disciplinary procedures should:
- be in writing
 - specify to whom they apply
 - be non-discriminatory
 - provide for matters to be dealt with without undue delay
 - provide for proceedings, witness statements and records to be kept confidential
 - indicate the disciplinary actions that may be taken by the employer
 - specify the levels of management that have the authority to take the various forms of disciplinary action
 - provide for workers to be informed of the complaints against them and, if possible, to be given all relevant evidence before any hearing
 - ensure that, except for gross misconduct, no employee is dismissed for a first breach of discipline
 - ensure that disciplinary action is not taken until the case has been carefully investigated
 - ensure that employees are given an explanation for any penalty imposed
 - provide a right of appeal to a more senior level of management and specify the procedure to be followed.
- 7.5 While it may be difficult to apply these principles in a parish setting where there may well not be clear management structures, it is important to have thought through what would be appropriate, eg it is important that it is not the same person who took the original decision to discipline who then hears any appeal against that decision.
- 7.6 In the same way that disciplinary procedures are addressed in the ACAS code, there is similar guidance to provide a framework for staff to raise grievances. Although this may all seem a bit unnecessary if there is only one employee, there were no exemptions from the legislation no matter how small the size of the workforce when these matters were dealt with by the now repealed statutory provisions. It is therefore sensible to have some formal arrangements in place. Guidance about grievance procedures may be found on the ACAS web site (see below at paragraphs 8.5 and 8.6).

Help and Advice

- 8.1 This section deals with the sources of help and advice which are available

What HR resources does the diocese have?

- 8.2 Where the Diocese requires legal advice in employment matters it generally makes use of the firm of Lee Bolton Monier-Williams where the Diocesan Registrars (Peter Beasley and Howard Dellar) are based.

Business Link

- 8.3 The most comprehensive Government sponsored web site containing information for employers is provided by Business Link. There is useful information, advice and guidance on virtually every aspect of employing staff and a number of interactive tools are provided. The Business Link web site may be found at:

<http://businesslink.gov.uk>

- 8.4 Although there is useful information on other parts of the web site, all the basic information is in the section entitled "Employment and Skills" which is accessed directly at:

<http://www.businesslink.gov.uk/bdotq/action/layer?topicId=1073858787&r.s=tl>

ACAS

- 8.5 The ACAS web site is an invaluable resource and can be found at:

<http://www.acas.org.uk>

- 8.6 The *ACAS Code of Practice on disciplinary and grievance procedures* may be downloaded from the site and there is advice on many aspects of employing staff and some online tools and training packages. The ACAS helpline on 08457 47 47 47 is able to give guidance on employment law matters and this is a free service. Acas also provide a comprehensive guide on the whole area of discipline and grievance which can be downloaded from:

<http://www.acas.org.uk/CHttpHandler.ashx?id=1043>

The Church Urban Fund

- 8.7 The Church Urban Fund has produced a very useful guide to the issues surrounding employing staff and their website includes a comprehensive set of example documents. All this can be found at:

<http://www.cuf.org.uk/working-together/just-employment>

Other Sites

- 8.8 Although their main resources are subscription only, the following sites do have some useful employment law information:

<http://www.cipd.co.uk>

<http://www.xperthr.com>

- 8.9 It is possible to get a free electronic subscription to regular email updates from Personnel Today magazine and these link to various web based articles which contain employment law and good practice advice. You can sign up at:

<http://www.personneltoday.com>

In conclusion

- 9.1 It is very important to emphasise again that this note is not intended to give comprehensive advice about everything you need to know about employing staff. It should also be borne in mind that employment law is changing all the time and it is always important to seek out the most up to date information and guidance. However, it is hoped that it does provide a brief overview of the main issues involved and some of the sources of help available.