Employment - Overview to UK Employment Law

The Basics for Overseas Businesses

UK employment law is complicated. Individuals can be classified as employees, workers or independent contractors. Whilst independent contractors have no employment rights, workers are offered some, but not all, of the same protections as employees. On the whole, individuals are normally deemed employees and therefore entitled to full employment rights. However, employees need at least 2 years’ continuous employment before they can claim unfair dismissal which provides greater legal flexibility for employers when dismissing staff than many countries in the EU. See our QuickGuide “Dismissing an Employee fairly”

Contract of Employment

All employees and workers are entitled to a written statement of their terms and conditions of employment which must be provided on or before the first day of commencing employment. For employees, we recommend that a contract of employment is provided to them to protect the business and clearly set out the relationship between the parties.

The contract should include:

- **General** – Names of employer; place of work; job title; hours and days of work, including detail on whether they may be varied and how; details of any probationary period; pension arrangements (see below); and information on any training provided by the employer.

- **Salary** – Salary is usually paid in arrears in 12 equal monthly installments. It is compulsory for tax and national insurance payments to be deducted at source under a Pay As You Earn (PAYE) scheme. Individuals must be paid at least the national minimum wage or national living wage (“minimum wages”). The current minimum wages are as follows:
  - Apprentices (aged under 19 or aged 19 or over and in the first year of their apprenticeship) - £4.15 an hour
  - Individuals under 18 - £4.55 an hour
  - 18-20 years - £6.45 an hour
  - 21-24 years - £8.20 an hour
  - 25 and over - £8.75 an hour

**Workers hourly rates will increase again on 1 April 2021.**

- **Entitlement to any paid leave, including:**

  - **Sick Leave** – Employees are not legally entitled to receive their salary whilst off sick. However, if the employee is ill for 4 or more days (including weekends), they would be entitled to Statutory Sick Pay, which is currently £95.85 per week, this normally increases from 6 April each year. Statutory Sick Pay is reviewed on an annual basis. Please note that some companies will continue to pay salary for a specified amount of days per year on a discretionary basis.

  - **Holidays** – 28 working days holiday must be provided as a legal minimum. Normally the 28 days includes public holidays. In some instances, custom and practice may assume longer holidays.

  - **Other Leave** – other paid leave entitlement such as statutory leave should be referred to in the contract.

- **Notice Period** – Both employees and employers are under an obligation to provide each other with some notice upon terminating the employment agreement. Longer periods of notice are often agreed in the contract of employment particularly for senior employees. If the contract of employment is silent on notice periods there are minimum legal requirements which are as follows:

  - Employers notice periods range from 1 week to 12 weeks depending on length of service of the employee.

  - Employees are only required to give one week’s notice irrespective of their length of service.

  - **Disciplinary and Grievance procedure** – The business should have a disciplinary procedure (to deal with performance or conduct issues arising) and a grievance procedure (to deal with employees complaints) in place and the rules applying to these are complex and change frequently.

  - **Other Benefits** – Whilst not legally required if you do provide other benefits (such as private health insurance/death in service) they should be included. Details of incentives such as bonuses or commissions should also be clearly defined

Other items which might be considered for inclusion

Job description; reporting structure; confidentiality provisions, restrictions following termination and protecting the goodwill of the business should be considered and incorporated.

Disclaimer:

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Further information

Pensions: Companies are required to have contributing pension schemes. Employers are obliged to automatically enroll their qualifying employees in a qualifying workplace pension scheme and make contributions to their employees’ pensions every pay period.

Benefits: Businesses are not obliged to provide any benefits such as living allowances, private health care, death in service or pension contributions. If benefits are provided, they are taxable and should be referred to in the contract.

Claims in the Employment Tribunal: Claims in the UK are common as an ex-employee can issue a claim without having to prove merit. Even if a claim against an employer is unsuccessful it is rare for the employer to recover the costs, they have incurred in defending the claim.

The most common claim is for unfair dismissal, but an employee needs 2 years’ continuous employment to bring an unfair dismissal claim at the employment tribunal. In the UK employers must have a statutory or fair reason to dismiss the individual (conduct, capability, redundancy, retirement (about to be repealed), statutory illegality and “some other substantial reason”) and must follow a set statutory fair procedure to terminate employment (or even to discipline an employee). If this is not followed the individual may have a right to issue a claim that they have been unfairly dismissed. The maximum award for unfair dismissal, from 6 April 2020 until 5 April 2021, is £88,519 or 52 weeks’ gross pay if lower.

Discrimination: If an employee succeeds in a discrimination claim (for example, on the grounds of gender, race, age or disability) a Tribunal award is uncapped so can be very expensive.

Maternity/Adoption/Paternity/Parental leave: Maternity leave of up to 52 weeks is permitted in the UK. 39 weeks of which the employee will be entitled to Statutory Maternity Pay (SMP). SMP consists of 90% of the employee’s average weekly wage for the first 6 weeks and then either the prescribed rate or the earning-related rate, whichever is lower, for the remaining 33 weeks. The prescribed rate is currently £151.20 per week and the earnings-related rate is 90% of the employee’s normal weekly earnings. Please note that in the UK a pregnant woman can take a whole year off work and then is entitled to return to work in the same/similar role.

Similar rules apply for adoption leave.

Parents who are employees are entitled to 18 weeks, per child, of unpaid parental leave which can be exercised up until a child’s 18th birthday.

Paternity leave of up to 2 weeks can be taken at the prescribed rate (currently £151.20 per week) or the earnings-related rate, whichever is lower.

Shared parental leave enables some parents to shared leave in the first year of their child’s life or in the first year of adoption.

Paperwork: Having appropriate offer letters, reference checks (including checking the employee is entitled to work in the UK – by seeing a passport / checking the correct visa documentation) and a full contract of employment is highly recommended.

People represent the highest cost to most businesses and carry the highest risk, so please obtain advice to reduce the risk exposure.

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