

DAVENPORT SOLICITORS

EMPLOYMENT LAW

BUSINESS IMMIGRATION

HR SUPPORT



**Hiring
employees**

Introduction

Before hiring an employee it is imperative that proper consideration has been given to define the role you are recruiting for and to make sure you have complied with all your legal obligations.

If it is your first time hiring an employee, you will need to register with HM Revenue and Customs (HMRC) up to four weeks before you pay your first employee. An accountant may be able to assist you with this and it can take up to two weeks to register.

It is a legal requirement for employers to obtain employers liability insurance. Employers liability insurance protects business from paying compensation where an employee is injured or dies at work. Failure to obtain employers liability insurance may result in a fine of £2,500 for each uninsured day.

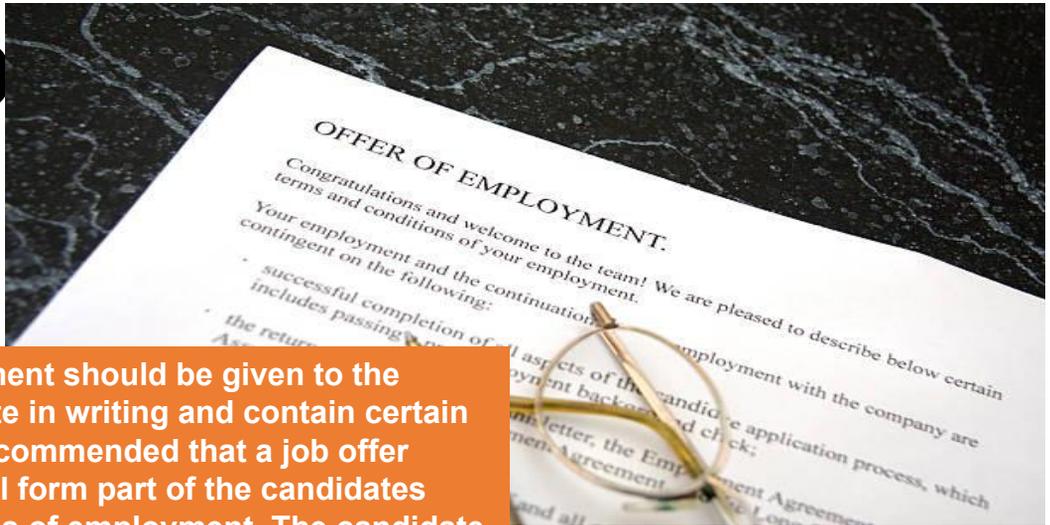
All employees are entitled to receive minimum wage. This is usually increased every April. Employees must be auto-enrolled in a pension scheme, although they should be informed of how they can withdraw from the scheme.

This guide will inform you of the practical considerations you must think about each time you hire an employee. Following a clear process, including the points raised in this guide, can provide you with protection from disputes and employment tribunal claims. However, this guide is very general and it is recommended that your employment documentation is tailored to your specific business to suit your needs as best as possible.

Checklist

Task	Date completed	Initial
Register with HMRC		
Obtain employers liability		
Offer of employment (page 3)		
Right to work check (page 4 – 7)		
Contract of employment (page 8)		
Staff handbook (page 9)		
Induction (page 10)		

Offer of emplo



An offer of employment should be given to the successful candidate in writing and contain certain information. It is recommended that a job offer states whether it will form part of the candidate's terms and conditions of employment. The candidate should be given reasonable time to consider the offer.

Timing of the offer

Making the job offer as soon as possible after a decision has been made will keep the recruitment momentum going and will reduce the chance that the candidate will accept employment elsewhere. However, this should be balanced with the need for time to reflect on each interview and no offer should be made during the interview or immediately after.

Conditional or unconditional offer

By making the job offer conditional, if the conditions are not satisfied the offer can be withdrawn without breaching the contract. The types of conditions usually attached to an offer of employment include:

- Satisfactory references
- Proof of qualifications
- Satisfactory criminal conviction checks where required for the role.

The terms and conditions of the offer

While some terms of employment will be the same for all employees, terms such as salary, seniority and benefits will depend on the role. It is advisable that the remuneration and benefits packages are determined before the vacancy is advertised. An offer of employment should be made in writing and contain certain information such as :

- The name of the candidate
- The job title
- That the letter constitutes a formal job offer
- Any conditions that apply to the offer
- The type of contract e.g. permanent
- The salary
- The hours of work
- The start date
- Any documents required before the commencement of employment, e.g. proof of right to work in the UK
- The arrangement for the first day of employment

Other considerations

Practically many employees will not resign from their current employment until they know their prospective employer agrees they have met the conditions of employment, which may delay their start date. Employers should be mindful of this and process paperwork attached to the conditions as quickly as possible.

As part of the offer of employment it is advisable that, especially where a senior individual is being recruited, that the candidate is asked to disclose any restrictive covenants under their current contract of employment which may prevent them working for another organisation. If there are restrictive covenants in place, the individual may not be able to commence employment while they are subject to them. Alternatively, the new employer may approach the candidate's current employer and negotiate a reduction in the length of the restrictive covenants.

Right to work checks



It is unlawful for employers to hire someone who does not have the right to live and work in the UK, or where working would be a breach of their conditions of stay. Therefore, an employer should check an individual has the right to work in the UK before they commence employment and a job offer should be conditional on the individual having the right to work in the UK.

Employers must take an active approach to comply with the prevention of illegal working by complying with the following obligations:

- Conducting “right to work” checks on all prospective employees before the commencement of their employment.
- Conducting follow up checks on employees who have time-limited permission to live and work in the UK.
- Keeping an up to date record of the checks they have conducted.
- Not employing an individual they know, or have reasonable cause to believe does not have the right to work in the UK.

To conduct a right to work check an employer should:

- Require the candidate to produce original documents showing they have the right to work in the UK (e.g. their passport and were applicable their visa); or
- Conduct an online check, where the candidate has shared their right to work details using the Home Office service where the candidate:
 - Has a biometric residence permit number;
 - Has a biometric residence card number; or
 - Has been granted settled status under the EU settlement scheme.

Employers should check the photo is of the candidate and that the document is valid and in date.

If an employer is sponsoring a worker under the point based system, it must comply with the sponsor management system requirements.

A employer who breaches the obligations above may be liable for a large civil penalty where they employ an individual who does not have the right to undertake the work for which they are employed and would be committing a criminal offence where they employ an individual they know or had “reasonable cause to believe” did not have the right to work in the UK.

Right to work checks must be conducted before a new employee’s induction or on their first day of employment. It is recommended that right to work checks are conducted between the time the job offer is made and the start date. If they cannot be carried out during this time, the new starter may be asked to come to the workplace before their official start time on their first day in order for the checks to be carried out. To avoid discrimination, right to work checks should be carried out for all potential employees.

It is recommended that employers conduct right to work checks on every individual they engage, regardless of the capacity they are engaged in, including, employees, workers and contractors. An employer who uses agency staff should make it clear, ideally in the contract, that the agency remains the employer and is responsible for conducting right to work checks.

Please find a template “Right to work checklist” at pages 4 -

RIGHT TO WORK CHECKLIST

Name of employee		
Date of check		
Type of check	Initial check before employment	Follow-up check on employee

You may conduct a physical document check or perform an online check to establish a right to work.

Step 1 for physical check		
You must obtain original documents from either List A or List B		
List A		
1	A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.	
2	A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.	
3	A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office, to a national of a European Economic Area country or Switzerland.	
4	A Permanent Residence Card issued by the Home Office, to the family of a national of a European Economic Area country or Switzerland.	
5	A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.	
6	A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.	
7	A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.	
8	A birth (short or long) or adoption certificate issued in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.	
9	A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.	
10	A certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.	
List B Group 1		
1	A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.	
2	A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicated that the named person can currently stay in the UK and is allowed to do the work in question.	
3	A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.	
4	A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.	

List B Group 2		
1	A Certificate of Application issued by the Home Office under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006, to a family member or a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old together with a Positive Verification Notice from the Home Office Employer Checking Service.	
2	An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in questions together with a Positive Verification Notice from the Home Office Employer Checking Service.	
3	A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicated that the names person may stay in the UK and is permitted to do the work in question.	

Step 2 Check				
You must check that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.		Yes	No	N/A
1	Are photographs consistent across document and with the person's appearance?			
2	Are dates of birth consistent across documents and with the person's appearance?			
3	Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?			
4	Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (for Students who have limited permission to work during term-times, you must also option, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed)			
5	Are you satisfied the document is genuine, had not been tampered with and belongs to the holder?			
6	Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)			

Step 3 Copy		
You must make a clear copy of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. You must copy and retain:		
1	Passports: any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.	
2	All other documents: the document in full, both side of a Biometric Residence Permit	
You must also record and retain the date on which the check was made		

Know the type of excuse you have

If you have correctly carried out the above 3 steps you will have an excuse against liability for a civil penalty if the above named person is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow-up check.

The documents that you have checked and copied are from:

List A	You have a continuous statutory excuse for the full duration of the person's employment with you. You are not required to carry out any repeat right to work checks on this person.
List B: Group 1	You have a time-limited statutory excuse which expires when the person's permission to be in the UK expires. You should carry out a follow-up check when the document evidencing their permission to work expires.
List B: Group 2	You have a time-limited statutory excuse which expires 6 months from the date specified in your Positive Verification Notice. This means that you should carry out a follow-up check when this notice expires

You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check

Home Office online right to work checking service

For an online right to work check (available in respect of those with a biometric residence permit, a biometric residence card or have status issued under the EU settlement scheme). There are three basic steps to conducting an online right to work check:

1	use the Home Office online right to work checking service (the 'View a job applicant's right to work details' page on gov.uk) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question;
2	satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work; and
3	retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.

Contract of Employment



Under section 1 of the Employment Rights Act 1996, an employee must be given a written statement of the terms of their employment before the date their employment commences. This is usually contained in an employee's contract of employment.

The Employment Tribunal understands that there is an inequality in bargaining power between the parties to an employment contract. An employer is usually in a stronger position to dictate the terms. As a result, the Employment Tribunal will look beyond the contract to the day-to-day relationship of the parties should a dispute arise. Therefore, the contract should reflect the true nature of the relationship and each party's obligations.

Type of contract of employment

There are three categories of employment contracts:

1. Fixed term: a fixed term contract will end on a particular date or on the completion of a specific task.
2. Permanent: a permanent contract can only be terminated by either party giving the required notice as stated in the contract.
3. Casual: under a casual contract the individual is not obliged to accept any work they are offered and there is no obligation on the organisation to offer work to the individual.

Express terms

An express term is one that has been explicitly agreed by the parties. While express terms can be agreed orally or in writing, it is recommended that all agreed terms are contained within the contract of employment. As of April 2020, employment contracts must include:

- The employer's name
- The employee or worker's name
- The start date and the date that the employee's 'continuous employment' commenced
- The job title, or brief job description
- The employee's address and the address at which they shall work
- The salary, how often and when it will be paid
- The hours and days the employee is required to work and if they are variable
- Holiday entitlement and holiday pay and any other paid leave they are entitled to
- The amount of sick leave and pay the employee is entitled to
- Any benefits they are entitled to, i.e. company car
- The amount of notice required to terminate the contract or how long the job is expected to last
- Details of the employee's probationary period
- Whether the employee will be required to work abroad and any terms that will apply when abroad
- Details of any training that must be completed

Implied terms

Implied terms are those that have not been set out at the time the parties entered into the contract of employment. In common law, these terms are ones that are so obvious they are not required to be included in the contract as they are assumed to have been incorporated, for example the duty of trust and confidence between the parties. It should be noted that a Tribunal will not imply a term because it is reasonable to do so, it will only be implied when the Tribunal can conclude it was the intention of the parties at the time the contract was entered into.

Signing the contract

For there to be a binding contract of employment, there must be intention to create legal relations. Therefore, it is advisable that new employees are required to sign and return a copy of their employment contract before their employment commences, to show intention. A copy of the signed contract of employment should be kept on the employee's personal file.

Staff handbook



Policies which are included in a staff handbook are to set out the standard of behaviour expected by staff, assist with the running of the Business and to protect the employer by making sure the legal rights associated with the employment relationship are understood.

Well written staff handbooks provide employees, managers and directors with clear guidance explaining their rights and responsibilities. A staff handbook is different to a contract of employment and is usually non-contractual. The benefit of having non-contractual policies is that a breach of contract claim cannot be brought if they are not followed and they do not usually require employees to consent to the amendments.

A good way to start a staff handbook is to provide an introduction to the business. This can set the tone of the workplace and detail the culture, values and objectives of the business.

There is a minimum requirement of information an employer must give their employees in writing to inform them of their legal rights and how to assert their rights. The following policies are usually contained within the staff handbook:

- Disciplinary procedure
- Grievance procedure
- Sickness absence
- Health and safety
- Whistle blowing
- Data protection

In addition to the above there are policies that are not mandatory but their inclusion may assist in meeting other legal obligations or the policies would assist in the smooth running of the business as they are sector specific. Therefore, businesses may consider including the following:

- Bribery
- Equal opportunities
- Family leave, such as maternity, paternity and adoption.

Staff handbooks should be industry specific and tailored for each individual business. If the business is regulated or certain acts are required for insurance compliance, this should be detailed in the staff handbook.

Induction



When a new employee starts, it is recommended that the employer has a procedure in place to ensure the new starter has all the information they require and know

The impression an employee gets when they commence work for a new organisation can have a lasting impact on how the employer is viewed. Therefore, a welcoming and informative experience, making a positive impression, is likely to aid the employee with settling into their new position.

The best inductions are achieved through good planning with various members of the employer who the new starter will come into contact with.

The length, nature and content of an induction will depend on the job role and size of the employer. Therefore, a one size fits all approach should not be taken. However, the following are issues that should be addressed as part of an employee's induction:

- Confirmation that the employee has received all paper work, including their contract of employment and staff handbook. This is also an opportunity to ensure the employer has received a signed copy of the contract of employment and the employee's P60 which is likely to be required for payroll purposes. At this stage the employer should also ask the employee to confirm their address and emergency contact information. It is also appropriate for the employer to invite the employee to disclose any other information such as allergies and illnesses so that first aiders and occupation health may be informed.
- Health and safety training: New employees should be informed about the location of fire exits and alarms. If the employee shall be working remotely, a remote risk assessment should be conducted to highlight any equipment the employee may require.
- Training on equal opportunities, bullying and harassment: The employee should be informed that the employer does not tolerate discrimination, bullying or harassment and that allegations of such acts shall be taken seriously and inline with company policies. If this information is not provided during the induction, it should be provided to the employee at the next relevant training session.
- Training on data protection, privacy and the use of IT: The employee should be instructed on how to ensure they do not breach data protection legislation and how to use the employer's IT system or when training will be provided for any software used.
- Probationary period: The employee should be informed probationary period review meetings.
- Job specific training: For example where the employee is required to wear protective equipment, they should be shown how to use it correctly.
- The employee should be informed about how they may raise concerns and complaints.
- An introduction to the wider team.

A record should be kept of all training the employee has received.

In situations where more than one new starter is arriving, it can be beneficial to co-ordinate inductions so that where appropriate, training can be done together. Not only is this effective for the employer but will help the new starters build relationships.

It is not only new staff that should receive an inductions. Where a employee has moved to an internal role or is returning to work after a period of absence, conducting an induction can provide the employee with invaluable information on changes to procedure or technology.

About Davenport

Davenport Solicitors is an award-winning law firm based in London, specialising in Employment Law, Business Immigration and HR Support.

As a niche law firm, with a team of highly experienced employment law and business immigration specialists, we can deliver professional yet personable advice tailored to your needs and support you at every stage. With us on your side, you can resolve employment issues in a hassle-free manner and achieve the best possible outcome.

We understand the needs of today's modern business and look at the practical application of the law when giving advice. Our goal is always to best protect our clients through a commercially pragmatic approach.

We are committed to providing you with the highest standard of business immigration advice, whilst also maintaining costs. That is why we operate as a fixed-fee law firm.

We also offer fixed-fee monthly HR Support packages to enable our clients to prevent issues from occurring, protecting them should they arise, allowing them to prosper.

Prevent. Protect. Prosper.

Davenport Solicitors

93 Gloucester Place
W1U 6JQ, UK

E: contact@davenport solicitors.com

T: +44 (0)20 7903 6888.