Employing people: a handbook for small firms

Introduction

Employing people - just common sense?
Employing people seems a perfectly straightforward matter: hire them, then set them to work. Many small firms consider that they have insufficient time or resources to devote to employment issues. But as this guide shows, sensible employment practices can help small firms to be more effective, more profitable, to grow and to create more jobs.

Employees are most firms' greatest asset so it is worth spending some time and effort over them. Employing people can, if handled badly, cost the employer time, money or lost profitability through:

- recruiting unsuitable employees
- inadequate training
- low morale and motivation
- high absence levels and turnover of employees
- ineffective management and supervision
- too many dismissals.

These problems can be overcome by a small investment of time and resources.

Small firms can have a number of 'natural' advantages:

- close personal relationships between employer and employee
- an understanding of individual employees' problems resulting from regular face-to-face contact
- being able to act and react quickly to events.

We hope to build on these benefits by showing how good employment practices can help:

- small firms to anticipate employment problems and so improve managing the business
- employees to know where they stand - what they can and cannot do, what they can expect from their employer and what their employer can expect from them.

This handbook has been written to assist the busy small firm deal with the most important employment areas and operate simple but effective employment practices.

Planning employment needs

Key Points: -

When should decisions about employing people be made?
How can firms get the right information?

Getting the right information

Personnel records
Even in the smallest firms, new jobs are created and employees retire or leave for other jobs. Changes in the workforce can cause serious disruption unless some attempt is made to plan for them. By keeping up-to-date employee information on personnel records, firms can make sure that unexpected changes to their employment needs are kept to a minimum. They can also provide other useful information for managing the business. Personnel records kept on a simple card index system can be effective for small firms but there are also computerised systems(1) that may be suitable.

A card index for each employee could contain information on:

- personal details - name, sex, date of birth, address, education, qualifications, previous experience, tax code, National Insurance number, emergency contact, details of any job-related disability.
- employment details - date employment began, date present job started, job title, basic pay, overtime and other premia.
- absence details - sickness, lateness, authorised, unauthorised
- details of accidents
- details of disciplinary action
- training details.

To avoid unnecessary duplication of some of the information on this list, the written statement of major terms and conditions of employment could be attached to each employee's record form.

Records such as these can be the basis for management information on:

- the age, sex, grade and length of service of employees
- timekeeping, absence levels and labour turnover
- total wage and salaries bill.

The Appendix to this handbook contains an example of how to set out a personnel record form suitable for a card index system.

Making employment decisions

Good planning, done well in advance, is as important in avoiding employment problems as it is in avoiding other business problems such as shortage of materials, space, capacity or case flow. It helps if employment decisions are not taken in haste, in particular since job losses could result.

The most important employment planning decision for small firms is to get right the size and composition of their workforce.

The costs of overstaffing or of a few redundancies are often substantial to a small firm and insufficient employees to meet demand can mean lost sales opportunities and revenue.

It is important to try to anticipate employment needs not just for next month, but for next year and if possible for still further ahead. So look at changes in demand. Are employment needs the same throughout the year or are there 'peaks' and 'troughs'? Do employment needs vary over a monthly, weekly or even daily period? For instance, a shop may find that it needs more staff on Saturdays or over the lunch period. A decision to employ full-time or part-time staff should take account of such variations.

Recruiting people

Key questions: -

- When should decisions about employing people be made?
- How can firms get the right information?
- What are the effects of bad recruitment?
- Are new employees necessary?
- What is the job?
- How can applicants be attracted?
- Would an application form help selection?
- Which is the best way to interview?
- What use can be made of references?

Hiring employees, if done badly, can be costly. It can lead to:

- poor performance

- unnecessary training
- increased supervision
- wasted management time
- higher absence and labour turnover
- lower morale.

How to avoid bad recruitment
A few simple steps can help avoid these problems. First ask whether the firm really needs new employees - can existing employees do the job or be trained for it? If new employees are needed, would part-time workers be more suitable? Find out what are the job's tasks; then draw up a job description to help get a clear idea of the job. This will contain the major parts of the job and its main purpose. The Appendix to this handbook contains two examples of job descriptions - one for a 'white collar' worker and one for a manual worker.

Getting the right person
Once the job has been clearly defined, the search for the right person can begin. The following can help.

- **A person specification**

This is a 'pen picture' of the ideal person for the job. It identifies the skills and personal qualities to look for. It is important that there is a direct and precise connection between the person specification and the job description. In this way the person's ability to do the job is considered, not unrelated personal characteristics. Employers need to be particularly careful not to specify unnecessary or marginal requirements that might exclude people with disabilities. Employers can stipulate essential health requirements but may need to justify doing so and that it would not be reasonable to waive them.

- **Internal transfer or promotion**

Can the right person come from the existing workforce? If so this is probably the cheapest and most reliable method.

- **Word of mouth**

Employees may know suitable candidates. This can be a useful method if the employer is able to judge the reliability of an employee's opinion.

- **JobCentres**

provide a free nationwide recruitment and advisory service.

- **Employment agencies**

can also assist in the recruitment process and provide other services.

- **Local careers services**

can give employers information on suitable school leavers and other young people who are less than 18 years old, based on regular contacts with local schools.

- **Advertisements**

in local newspapers or specialist journals often attract good applicants at relatively low cost. Their advertising departments will usually give advice on layout but companies will need to think about the content of their advertisements, for example, brief job description, pay and conditions, qualifications required, career prospects, how to apply, closing date. The aim is to attract suitable applicants and reduce unsuitable applications.

- **Internet**

Employers and jobseekers are increasingly using the internet. Applications may also be made direct via email. This may be particularly useful for graduate or management training opportunities, as many students will have access via their college service.

The recruitment process can sometimes be improved by using an application form. By getting information relevant to the job it can help weed out unsuitable applications and provide a sound basis for an interview. It can provide a useful 'pen picture' of the applicant, especially for those who have little training or interviewing experience. However, application forms should not require a higher standard of English than is required to do the job. A simple application form is contained in the Appendix to this handbook.

An interview is one of the best ways to judge whether someone is the best person for the job and to secure his or her agreement to take it. The employer wants to find out if the applicant can do the job; the applicant wants to find out about the company, the job, how much it pays and other employment terms. But it is not just the applicant who is being judged - a badly prepared interviewer can create an unfavourable impression of the company.

Interviews need to be planned. They will run more smoothly if:

- the interviewer scans the completed application form again just before the interview

- there are no interruptions (including the telephone) - they can disrupt the interview and may make the applicant uneasy

- preparations are made to put disabled applicants completely at ease. Think about matters such as ease of access, the need to speak clearly to the hard of hearing so that they may lipread if necessary, and so on. At the interview concentrate on the applicant's abilities, to see if they meet your needs, not on disability

- the applicant can be made to feel at ease - so don't begin the interview with a difficult question

- the interviewer's questions call for explanations rather than 'yes' or 'no' replies, eg. 'Why do you want to leave your present job and join us?' and 'What relevant experience have you had so far?'

- applicants are given the chance to ask further questions at the end of their interviews. They should also be told when they should know the outcome - ideally as soon as possible.

A short note made immediately after the interview helps with the final decision. The Data Protection Act 1998 provides that candidates may request interview notes in certain circumstances. The Information Commissioner has produced the Employment Practices Data Protection Code Part 1 which explains how organisations can follow the Data Protection Act 1998 in the context of recruitment and selection - see other useful addresses. This decision can be assisted by asking for references. But contact with the applicant's current employer should not be made without permission. Some of the information which can be obtained from references is straightforward - previous job, length of service and previous pay but information on suitability should always be weighed against the assessment made during the interview - don't be tempted to rely solely on someone else's judgement.

It is also worth noting whether there were candidates who might be suitable if the first choice is unavailable. Remember to notify all unsuccessful applicants at each stage of the recruitment process. It is a simple courtesy and can also help enhance your reputation in the community as an employer who cares about people.

The Advisory booklet - Recruitment and induction gives more detail on good practice in these areas.

The employment contract

Key Questions: -

- What is an employment contract?
- Does an employment contract have to be in writing?
- What are express and implied terms?
- What are employees' statutory rights?
- How can a contract be altered?
- How can a contract be ended?

This section tries to explain in general terms the main legal issues relating to the employment contract. It is not intended to be a precise statement of law nor is every legal aspect dealt with. For instance, it does not deal with the law relating to the hiring of independent contractors who will be self-employed. When self-employed people are hired, the resulting contract is fundamentally different from an employment contract and most of the employee rights described below do not apply.

What is an employment contract?

All employees have a contract of employment which forms the basis of the employment relationship. In simple terms, an employee agrees to work for an employer in return for wages. A contract is made when the offer of employment is accepted. A number of rights and duties, enforceable through the courts, arise as soon as this happens.

However, most rights and duties, particularly statutory ones, apply only when the employee starts work; and a number of them require specific periods of service to have been worked. For instance, there is a service qualification of one year for most unfair dismissal claims to an Employment Tribunal.

Does an employment contract need to be in writing?

Most employment contracts need not be in writing to be legally valid; a verbal agreement can be sufficient. However, writing down the terms of the contract can minimise later disagreements. The Employment Rights Act 1996 requires employers to provide most employees, within two calendar months of starting work, with a written statement of the main terms of the contract.

Written statement of employment particulars at www.dti.gov.uk/employment/index.html.

The following details must be included in the written statement:

- the employer's name
- the employee's name

- the job title or a brief job description
- the date employment began(9) the place of work and the address of the employer
- the amount of pay and the interval between payments
- hours of work
- holiday pay entitlement
- sick pay arrangements
- pension arrangements
- notice periods
- where the employment is not permanent, the period it is expected to continue
- where the employment is for a fixed term, the date when it is to end
- grievance and appeal arrangements
- disciplinary rules and any disciplinary or dismissal procedures (as a minimum these should comply with the statutory procedures)
- any collective agreements which directly affect the terms and conditions
- where the person is required to work outside the UK for more than one month: the period he/she is to do so; the currency in which salary will be paid; any additional remuneration payable by reason of working outside the UK; and any terms and conditions relating to his/her return to the UK.

The Appendix to this handbook gives an example of a written statement.

What are implied terms?

The first part of this section has outlined the formation of contract terms by explicit agreement, preferably in writing. Terms agreed in this way are called express terms. However, it is unusual for all the terms of an employment contract to be expressly agreed. For example, the courts have established that all employment contracts have the following terms in them, whether explicitly agreed or implied:

- to maintain trust and confidence through co-operation
- to act in good faith towards each other
- to take reasonable care to ensure safety and health in the workplace.

When no express term exists, implied terms can become part of the contract:

- by the conduct of the parties
- by custom and practice if reasonable to do so and if generally applied in the area or trade in question for some time
- through firms' rules - rules can become part of the contract particularly if an employee has been made aware of them and given access to them.

Statutory rights
Over the years, employees have become entitled to a wide range of statutory rights, derived from parliamentary acts or regulations which affect the employment relationship. In general, despite any express term to the contrary, they cannot be waived. They include the right:

- not to be discriminated against (including the right not to be dismissed) - on grounds of race, sex, marriage, disability, sexual orientation or religion or belief.

- to equal pay - with members of the opposite sex if it can be shown that they are doing like work or work of equal value

- not to be unfairly dismissed - most employees can complain to an Employment Tribunal within three months of their dismissal, provided they have at least one year of continuous service. No service period is required if the dismissal was:

  - for participation in trade union activities, for membership or non-membership of a trade union and in respect of trade union recognition or derecognition

  - for activities as an employee representative, or as a candidate for election, for purposes of statutory consultation over redundancies or business transfers or European Works Councils

  - because the employee asserted or sought to assert a statutory right

  - for taking (or proposing to take) action on health and safety grounds as a designated or recognised health and safety representative, or as an employee in particular circumstances

  - or taking part (or proposing to take part) in consultation on health and safety matters, or taking part in elections for representatives of employee safety (representatives elected by groups of employees not covered by trade union safety representatives)

  - because of pregnancy or childbirth

  - for refusing to do shop or betting work on Sundays (in England and Wales only)
  - for being a trustee of an occupational pension scheme and performing, or proposing to perform, any of the trustees' functions
  - qualifying for working families' tax credit or disabled persons' tax credit, or seeking to enforce a right to them
  - taking or seeking to take parental leave or time off for dependents

- to an itemised pay statement

- to maternity benefits/rights - all pregnant women have the right to paid time off for ante-natal care, the right to a minimum of 26 weeks' maternity leave and the right not to be dismissed because of pregnancy or childbirth. An employee dismissed during pregnancy or statutory maternity leave is entitled to receive a written statement of the reasons for her dismissal without the need to request it. During her period of statutory maternity leave the employee must continue to receive all her contractual benefits except renumeration. Employees with 26 weeks' continuous service by the beginning of the 14th week before the expected week of childbirth are entitled to an additional 26 weeks' maternity leave. The Work and Families Act 2006 removes the length of service requirement for additional maternity leave and extends the period of Statutory Maternity Pay from 26 to 39 weeks. The new regulations come into force on 1 October 2006 but apply to employees with babies due on or after 1 April 2007. For further information see the Department of Trade and Industry website at http://www.dti.gov.uk/employment/workandfamilies/index.html

Where a statutory health and safety regulation prevents a woman from doing her normal work, because of childbirth or pregnancy, she must be offered suitable alternative work on no less favourable terms and conditions. If none is available, she is regarded as suspended on full pay. Most pregnant women with at least 26 weeks' service are entitled to Statutory Maternity Pay (SMP).

- **to paternity leave** - the Employment Act 2002 has introduced a new right to two weeks paid paternity leave for employed fathers who have responsibility for the upbringing of the child and who have at least 26 weeks continuous service with their employer by the 15th week before the baby is due. The father need not be the child's biological father but must be the mother's husband or partner. To qualify for Statutory Paternity Pay employees must, on average, have weekly earnings which are equal to or above the lower earnings limit for National Insurance Contributions. See Department for Trade and Industry leaflet PL514 at www.dti.gov.uk/employment/index.html.

- **to adoption leave** - the Employment Act 2002 has introduced new rights to leave and pay for adoptive parents whose children are placed with them on or after 6 April 2003. These rights are broadly similar to the new maternity and paternity leave entitlements, providing 26 weeks paid leave and a further 26 weeks unpaid leave when an employee is newly matched with a child for adoption, subject to the employee having 26 weeks continuous service with their employer leading into the week of being notified of the match. Adoption leave is be available to one member of the couple only, of their choice. The other member of the couple may be entitled to two weeks paid paternity leave provided that they have responsibility for the child's upbringing, are the partner or spouse of the adopter and have 26 weeks continuous employment with their employer leading into the week of notification of the match and

average

weekly earnings above the lower limit for National Insurance Contributions. Work and Families Act 2006 extends the Statutory Adoption Pay period from 26 to 39 weeks. The new regulations come into force on 1 October 2006 but apply to adoptions where the child is expected to be placed for adoption on or after on or after 1 April 2007. See Department of Trade and Industry leaflet at www.dti.gov.uk/employment/index.html.

- **to parental leave** - employees who have worked for over one year with their employer are entitled to take unpaid time off work if they have a baby or adopt a child. The right applies to both mother and father and allows for up to 13 weeks in total (over 5 years) for each child. Parents of disabled children can take parental leave until the child's 18th birthday

- **to time off for dependants** - all employees have the right to take a reasonable period of time off work to deal with an emergency involving a dependent and not to be dismissed or victimised for doing so. There is no statutory right to payment for any such time off(16)

- **to apply for flexible working** - from 6 April 2003, the Employment Act 2002 introduced the right for employees who are parents of children under the age of six or disabled children under the age of eighteen to apply to their employer to work a flexible working arrangement. The request can cover hours of work, times of work and place of work and may include requests for flexi-time, home working, term-time working, shift working, self-rostering, annualised hours etc. The request must be made in writing and the employer will have a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds for doing so. Employees making applications for flexible working will have the right to be accompanied at meeting by a fellow employee. See Department of Trade and Industry leaflet at www.dti.gov.uk/employment/index.html. From 6 April 2007 carers of adults will also be able to apply to work flexibly under the Work and Families Act 2006.

- **to notice of termination of employment** - most employees are entitled to receive from their employers at least one week's notice after one month's service, two weeks' after two years and an additional week's notice for each complete year of employment up to 12 weeks for 12 years' service.

- **not to have unlawful deductions from pay** - employers must not deduct from an employee's pay unless the deduction is required or authorised by statute or by a relevant provision of the employee's contract; or if the worker has previously given written agreement or consent for the deduction to be made.Where

employment has been terminated, an employee may be able to make a claim for breach of contract to an Employment Tribunal for wages or sums of money due under the contract. The employer may be able to make a claim against the employee where the employee has claimed against the employer

- **to pay when laid off** - whether or not an employer is entitled to lay off an employee is determined by what has been agreed in the individual contract of employment. Most employees who can be laid off by their employers are entitled to a minimum payment - a guarantee payment, for up to five workless days in any period of three months.

- **to redundancy pay** - employees with at least two years' service are entitled to redundancy payments, the size of which depend on the individual's pay, age and service.

- **to a safe system of work** - when you hire someone, you become statutorily responsible for their health and safety. The Health and Safety at Work Act 1974 requires you, for example, to have a health and safety policy, to report certain injuries, diseases and dangerous occurrences, to provide information and training, and to provide first aid facilities. Additionally, all employers are required to carry out risk assessments in their workplace.

- **to statutory sick pay (SSP)** - paid by the employer (provided the employee meets the qualifying conditions). However, where an organisation has an exceptionally high level of sickness in any month, the employer may be able to claim reimbursement of a proportion of SSP paid out.

- **to time off** -

  i) for public duties (civic, magistrate, etc)

  ii) to look for work if declared redundant with at least two years' service

  iii) for trade union activities, duties and training where a trade union is recognised for collective bargaining (see Acas Code of Practice: Time off for Trade Union Duties and Activities). Provisions contained in the Employment Act 2002 now give new rights for Union Learning Representatives to reasonable paid time off to carry out their duties and to undergo training.

  iv) for duties as an employee representative, or as a candidate for election, for purposes of statutory consultation over redundancies or business transfers or European Works Councils

  v) for carrying out functions as a safety representative (trade union or non trade union) or as a candidate for election as a

representative of employees not in groups covered by trade union safety representatives, and

vi) for performing the functions of a pension fund trustee or undergoing relevant training

vii) to study, if employees aged 16 or 17 have not attained a certain standard of education

viii) for medical suspension if continued employment would endanger health

- **trade union membership** - employees have the right:

  - to belong or not to belong to a trade union
  - to time off to take part in trade union activities/duties
  - not to be excluded or expelled from a trade union other than

for a permitted reason

- not to be unjustifiably disciplined by a trade union
- not to be refused employment or the service of an employment agency

because of membership or non-membership of a trade union

- not to suffer unauthorised or excessive deductions from trade union subscriptions

- not to have political fund deductions made from trade union subscriptions where they object to this or have a certificate of exemption

- **to protected employment rights** - employees have the right to be transferred automatically, on the same terms without loss of service-related employment rights, from one employer to another when the business in which the employee is then employed is transferred to a new employer. Employees have the right to object to the transfer of their contract to the new employer but they will normally lose the right to claim there was a dismissal. Employees with one years' service who are dismissed solely or mainly because of the transfer, are regarded as being unfairly dismissed unless a tribunal is satisfied that it was necessary for economic, technical or organisational reasons

- **to written reasons for dismissal on request** - provided they have at least one years' service (no request or service period required where dismissal is on maternity grounds)

- **to a written statement** - of the main terms of the contract. The Appendix to this handbook contains an example of a written statement.

- **to minimum pay** - under the National Minimum Wage Act 1998, workers are entitled to be paid at least the level of the National Minimum Wage.

- **to annual leave and working time limits** - under the Working Time Regulations 1998, workers are entitled to four weeks paid leave per year, to rest periods and in-work rest breaks and health assessments in certain circumstances. The regulations also limit the average working week to 48 hours and limit night working to an average of eight hours in any 24 hour period. Special rules apply to young persons.

- **to protection from being required to work on Sundays** - shop workers and betting workers have the right to opt out of the requirement to work on Sundays.

- **to payment on insolvency of the employer** - dismissed employees can receive payments for certain debts, within limits, from the National Insurance Fund on the formal insolvency of their employer.

- **to be accompanied at disciplinary and grievance hearings** - workers are entitled to be accompanied by a fellow worker or a trade union official of their choice at certain disciplinary and grievance hearings provided that they make a reasonable request to be so accompanied. The right applies when the hearing could result in the administration of a formal disciplinary warning or some other punitive action such as suspension without pay, demotion or dismissal. The right to be accompanied at grievance hearings applies only where the grievance relates to the performance of a legal duty by an employer in relation to a worker.

- **for part-time workers to be treated no less favourably than comparable full timers** - the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 aim to ensure that part-time workers have the same terms and conditions as comparable full timers. Less favourable treatment must be objectively justified.

- **for employees on fixed-term contracts to be treated no less favourably than comparable permanent employees** - the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 aim to ensure that employees on contracts of fixed duration have the same terms and conditions of employment as comparable permanent employees. Less favourable treatment must be objectively justified. The regulations came into force on 1 October 2002.

- **to protection when making disclosures of wrongdoing to the employer** - the Public Interest Disclosure Act 1998 protects employees who have a reasonable belief that they are disclosing

information relating to criminal offences, miscarriages of justice, danger to health and safety or the environment or breaches of legal obligations to their employer.

In most cases individuals have the right to make a complaint to an Employment Tribunal if they consider their rights have been infringed. If an employee makes a complaint because they have been dismissed – or suffered action short of dismissal, such as loss of pay or seniority – they, and the employer, must comply with the new statutory disciplinary procedures.

These involve the employer giving the employee a statement in writing of the reasons for the dismissal; holding a meeting to discuss the problem; and, where necessary, hearing an appeal.

If the procedures have not been followed then the tribunal may well judge the dismissal 'automatically unfair'. The compensation will increase or decrease – by between 10-50% - depending on whether the employer or employee failed to adhere to the new law.

Acas conciliation officers are available in most of these instances to help both parties to understand the way tribunals work and to help the parties reach a voluntary solution which would avoid the need for a tribunal hearing. If no voluntary solution is reached, the matter is decided by the tribunal.

How can a contract be altered?

Most changes to an employment contract require the consent of employer and employee. They can be agreed:

- either verbally or in writing (although written consent can avoid later disagreements)
- through collective bargaining arrangements
- when the employee works in accordance with the new terms without objecting to the changes
- through a term which provides for a variation in the contract, eg a clause specifically allowing an employer to change an employee's duties.

It is important that changes are discussed and agreed where possible with the job holder since disagreement over the changes may lead to the ending of the contract and employers facing claims for unfair dismissal

and wrongful dismissal. But there may be occasions when employers feel that changes to the contract are essential to the operation of the business - perhaps arising from changes in technology. In some circumstances an Employment Tribunal may consider that it was not unreasonable to alter the contract without the employee's consent. However, in view of the potential problems, any decisions concerning change where there is no employee agreement require very careful consideration and discussion with those concerned.

How can a contract be ended?
A contract can be ended by the employer or employee, normally by giving the required notice of termination. But if the employer fails to give required notice, the employee can make a claim to the courts for damages for wrongful dismissal. Alternatively, if the employment has been terminated, a claim can be made to an Employment Tribunal. Where the employee leaves without giving the required notice, the employer may also have, in certain circumstances, a right to claim damages. There are exceptions, where no notice is required - where dismissal is for gross misconduct or where constructive dismissal occurs.

Further advice
If you are unsure whether specific areas of the employment contract are covered by legislation, or if you have any employment contract problems, please telephone the Acas Helpline on 08457 47 47 47 where Acas officers with specialist knowledge can provide you with useful information.

Pay

Key Questions: -

How much should firms pay?
What is the best pay system?
What is better - cash or cashless pay?

Pay is probably the most important part of the employer-employee relationship.

- it is a major part of most firms' costs
- it is a major factor in attracting and retaining employees
- it can affect how employees work
- it can lead to conflict between employer and employee.

This section looks in general terms at the decisions a small firm can take about levels of pay, systems of pay and methods of pay.

It shows how these can contribute to a more effective workforce.

It also briefly considers the pros and cons of these decisions.

But before we look at pay, it may help to bear in mind factors such as:

- the quality of management and supervision
- the satisfaction employees get from the job
- job security
- relationships with colleagues
- working conditions
- social and recreational facilities.

These can affect, for better or for worse the way people do their jobs. Getting pay right needs to be seen in relation to these other factors.

How much should firms pay?
How should a firm decide how much to pay its workforce? It needs to keep in mind the following:

- **What can it afford?** - This decision will be influenced by factors such as profitability and the effect of the wage bill on total costs. However, a reputation for low pay can adversely affect recruitment and labour turnover. These 'hidden' costs may outweigh any savings achieved through low pay rates.

- **What is total pay?** - For many employees this is more than their annual salary or weekly wage. It can include pensions packages, low-interest loans, travel and meal subsidies. These benefits should be costed so that the company knows total pay costs and employees understand all the different elements in their pay.

- **What level of pay will attract enough suitable recruits?** - Look in the 'jobs' section of local newspapers to get an idea of the 'going rate', contact your local Job centre and if the company is looking for someone with specialist skills, then try the 'ads' in specialist journals.

- **What level of pay will retain employees?** - Is pay a major reason why employees leave? - find out at their 'exit' interviews. Has real pay been eroded by inflation? Is overtime being wrongly used, for example as a way of increasing low levels of basic pay?

- **What will be acceptable differences between or within groups of employees?** - To motivate and avoid dissatisfaction, they need to be fair and based on the requirements of the job and the contribution to the business by each employee.

- **What has been agreed between the company and a trade union representing the company's employees?**

- **What does the law require?** - It requires equal pay and conditions for men and women doing like work, ie the same or broadly similar work or work of equal value. From 1 April 1999 the National Minimum Wage sets a minimum statutory hourly rate of pay.

Under 18s are exempt. The Agricultural Wages Board sets minimum rates of pay for farm workers. But in all other circumstances pay depends on what has been agreed to become part of the individual contract of employment.

Payment systems

Payment systems can be divided into two major types:

- Time-rate payment systems - where pay is directly related to hours worked

- Incentive payment systems - where pay depends upon employees' performance. Below we look at some of the advantages and disadvantages of these payment systems for small firms.

Time rated payment systems

Time rated systems provide employees with a set rate per hour, week or month usually expressed as an hourly rate, weekly wage, or annual salary. The rate need not be the same for all working time. Higher rates may be paid when overtime is worked or when shift-working is undertaken. But in each case pay is related to the length of time worked. Time rated systems are simple to operate and it is probably why the majority of employees in small firms are paid on this basis. Employers tend to find it easier and usually cheaper to administer. But it is sometimes suggested that its weakness is that there is no direct link between pay and performance. And this type of system does usually require effective supervision to make sure of the right level of performance.

Incentive payment systems

The main advantage of incentive payment systems is that they link pay to performance and therefore can encourage employees to work harder to increase earnings. The main disadvantage for a small firm is that incentives systems will generally be more complicated to administer than time related systems and probably more expensive to operate. Most incentive schemes will need to record individual performance. And they need effective quality control, otherwise employees may sacrifice quality to produce more and thereby earn more.

Firms may find that a single incentive system will not be suitable for the whole workforce. For instance, it may be that white collar workers are best served by a merit rating scheme under which employees receive

bonuses linked to an objective assessment of their performance; production workers may be better suited to a payment by results scheme - operatives being paid according to the amount they produce so that their pay increases (or decreases) with their production.

Share incentive schemes involve the provision of shares to employees – either by giving them direct or allowing them to be bought. The aim is to encourage staff involvement in the company's performance and therefore improve motivation and commitment. This may be suitable to small firms because employees can more easily see how their efforts contribute to the business.

Companies can award some or all of their free shares on the basis of performance – so long as they satisfy certain criteria laid down by the Inland Revenue (for more information visit www.inlandrevenue.gov.uk/shareschemes or telephone 020 7438 6718).

Method of pay - cash or cashless pay?

The decision whether or not to introduce cashless pay can involve much more than just cost considerations. This section looks at the implications of cash or cashless pay for small firms.

Employees who are paid in cash do not need bank accounts. But cash handling can take up substantial staff time (for instance making up, checking and issuing pay packets) and also pose security problems.

If employees are paid by cheque, arrangements can be made:

- for employees to cash their cheques at a local branch; or
- for the company to pay directly into employees' accounts.

Arrangements can also be made so that wages are paid directly into employees' bank accounts by credit transfer.

Cashless pay does not have the security problems associated with cash and it can reduce wage administration costs (especially if payment is made on a monthly basis rather than weekly).

What are the problems?

Problems can, however, arise with cashless pay. Employees may lack experience of banking facilities and may need some help in obtaining and using banking services. It may prove difficult for employees to get to a bank, especially if they work some distance from one. They may object to bank charges and some employees may simply want their cash 'in hand'

and not 'in bank'.

Employers need to be aware that where employees have a contractual right to payment in cash, a change to cashless pay without consent may be a breach of contract.

How can problems be overcome?
Branch managers of High Street Banks can offer assistance to companies and their employees, for instance on overdraft loan facilities and banking charges. The spread of bank 'cash points' and Saturday opening are making banking services more accessible.

Firms which are some distance from the nearest bank can also overcome resistance to cashless pay. Employees can be given slightly longer lunch breaks on pay day so that they can get to the bank.

Finally the change is more likely to succeed if employees can see that there are benefits for them as well as their employer in moving to cashless pay.

Further advice
This section has looked at pay issues simply and briefly. If further advice is required on any of the topics dealt with in this section, please telephone Helpline numbers.

Training

Key Questions: -

Can the firm do its own training?
Is there any outside help?
What training is available?
How can new recruits be fitted in quickly and easily?
What will new recruits need to know?

Training can make employees and employers more effective by improving performance. Where training extends their range of skills, it can make them more adaptable to the rapid changes in technology and can lead to improvements in the quality of jobs and commitment to the firm. It is particularly important in small firms for employees to become fully effective as quickly as possible. There is less scope to 'carry' learners, whether new to the company or just new to the job. And well trained employees allow the employer to delegate more, so that more attention can be given to those parts of the job that cannot be delegated.

An important early decision about training for a small firm is what can be done by the firm itself and what assistance will be required from outside training organisations. Advice on training is available from:

- employers' and trade associations
- local chambers of commerce
- industry training organisations
- Learning and Skills Councils in England; National Council for Education and Training in Wales; Local Enterprise Companies (LECs) in Scotland.

In addition, the Government supports a range of measures designed to help adults, young people and the business community.

Each LSC/Wales Council/LEC offers a range of training opportunities designed to meet the needs of the local labour market, and can provide information, advice and access to services that help owner-managed companies and management teams with the continuous development of the skills and potential of their workforce.

More information about programmes and training availability can be obtained by contacting, in England, the LSC helpline on 0870 9006800 www.lsc.gov.uk; in Wales, Education and Learning Wales on 08456 088; and in Scotland and in Scotland the Scottish Further Education Unit on 01786 892000 www.sfeu.org.uk.

Business support in England is available through Business Links, which are partnerships of local organisations including Chambers of Commerce, local authorities, enterprise agencies and others.

Induction training for new recruits

The purpose of induction training is to help new recruits fit into the organisation quickly and easily. Good induction training benefits the company: it helps turn new recruits quickly into effective employees and can reduce labour turnover. Advice and assistance on induction can be obtained from outside organisations but the firm should retain the main responsibility for carrying out induction training.

It will help new recruits if the company is aware that:

- First impressions count - so make new recruits feel welcome and make sure arrangements have been made for their arrival. In particular, be prepared to make allowances for people returning to work after a long period away, for those entering employment for the first time, for people with disabilities and for ethnic groups.

- New recruits will want to know a great deal about the firm information mentioned at the interview may need to be repeated, such as:

- What is the job and how does it fit into the rest of the organisation? New recruits should be introduced to other employees where appropriate.

- What are the terms and conditions of employment and in particular how, when and where do employees get paid?

- Who will be 'in charge'? The new recruit's immediate boss should always be involved in the induction process.

- What are the company rules? In particular, new recruits need to know the rules on safety and whether there are any special hazards.

- Where are the cloakrooms, toilets, rest-room, first aid facilities, etc?

Rules and procedures key points

Key Questions: -

Why have rules?
Should rules be written down?
What should rules cover?
How should the breaking of company rules be dealt with?
How do employees voice their grievances

Good company rules benefit employers and employees. They make clear what conduct the employer considers is acceptable and what is unacceptable. They also make sure that employees' conduct and job performance meet certain minimum standards. From the employee point of view they ensure consistency which benefits employer and employee. And they clearly indicate what action the company will take if company rules are broken.

The current law relating to dismissals enables eligible employees, who believe that they have been unfairly dismissed, to challenge both the reason for the dismissal and the manner in which the dismissal was handled, at an employment tribunal. Many complaints to employment tribunals involve employers who have no procedures in place to deal with disciplinary issues or workplace grievances.

From 1 October 2004 all employers, regardless of size, must follow the statutory disciplinary and grievance procedures.

These procedures are a minimum standard. Each company must decide the way that it applies its rules. But they should be in writing because written rules are less likely to be misunderstood and they should be easily accessible to all employees. It is important that company rules should be known and fully understood by all employees.

The rules should particularly identify two types of unacceptable conduct:

- **misconduct** - conduct which initially requires disciplinary action other than dismissal (although if further misconduct takes place, it may lead to dismissal). This can include persistent lateness, unauthorised absence and failure to meet known work standards

- **gross misconduct** - conduct which may lead to dismissal without notice - summary dismissal. This can include working dangerously, stealing or fighting. But much will depend on the circumstances of each offence and whether summary dismissal would be reasonable in such circumstances.

It is difficult to list all instances of misconduct and gross misconduct. But companies should give their employees enough examples to make sure they understand what is meant by each them.

What should rules cover?
The following are examples of subjects on which companies may want rules and the sort of issues that rules should deal with:

- **absence**

Whom should employees notify when they are absent from work?
When should notification take place?
When is a medical self-certificate sufficient?
When will a doctor's certificate be necessary?

- **health and safety**

Are employees aware of the importance of health and safety rules?
Are there special hazards?
Are there non-smoking areas?
Is alcohol prohibited?

- **standard of work performance**

Have agreed performance standards been established?
Are employees aware of required standards?
Does performance measure up to agreed standards?
Are standards reasonable?

Is adequate training provided?
Are exceptions made in special circumstances?

- **clothes**

Will employees need special clothes?
Will they be provided by the employer?
Who will be responsible for cleaning?

- **marriage, change of address**

Who should be informed of such changes in personal circumstances?

- **use of company facilities**

Are private telephone calls or private use of company computer facilities (eg internet/email) permitted? Are employees allowed to be on company premises outside work hours?

- **timekeeping**

Are employees required to 'clock' in?

- **holidays**

Do employees have to take holiday at specific times - eg summer shutdown, between Christmas and New Year?

Breaking company rules
If after checking the facts thoroughly, employers genuinely believe that employees have broken the rules, they will usually need to take some form of disciplinary action. The Acas Advisory Handbook: Discipline and Grievances at Work, follows the Acas Code of Practice: Code of Practice - Disciplinary and grievance procedures and gives valuable advice on how to deal with disciplinary matters.

The aim of disciplinary action should be to improve future conduct. No company should take such action lightly, however, since it can have serious results for both employer and employee. It is essential that the employer's approach should always be the same in similar cases. If not, employees may feel unfairly treated.

Initially it is often better to try to solve the problem informally. Small firms are generally well placed to do this. Can the problem be dealt with by the employee's immediate boss or by the employer talking to the employee about it? But it should not simply be a 'friendly warning' - the discussion should be two-way.

Try to find out if the problem (for example, persistent absence or lateness or unsatisfactory performance) really is a disciplinary matter. If the underlying problem is a financial, domestic or health one, the firm may be able to help the employee overcome it and achieve the required change. However, if these problems do not explain the employee's poor performance, it will be necessary to make clear the likely consequences of failure to improve or change.

If a discussion does not solve the problem, the more formal approach of a disciplinary procedure may be called for. Details of the procedure should be in writing, readily accessible, known and understood by all employees. The procedure should be:

- fair
- stress the need to improve and not overstate the punishment
- provide for employees to be notified and allow them to put their case before decisions are reached
- set out clearly so that employees understand the penalties which can result from unacceptable conduct and failure to change it.

A procedure should also:

- ensure that disciplinary action is not taken until the case has been fully investigated. If it is thought necessary to suspend an employee during the investigating period, it should be with pay and for as short a period as possible

- give employees the right to be accompanied by a colleague or trade union official of their choice

- make sure employees are aware that the employer is dissatisfied with their conduct before disciplinary action is taken and that no employee is dismissed for a first breach of discipline except for gross misconduct

- require that disciplinary action be implemented as soon as reasonably possible

- provide the employee with a right of appeal. In a small firm the grievance procedure may be the best way to hear appeals.

A disciplinary procedure will normally operate as follows:

- **first formal warning: unsatisfactory performance** – an employer should issue an 'improvement plan' setting out the nature of the problem; the improvement required; and the timescale for improvement

- **first formal warning: misconduct** – a first written warning

- **final written warning** - for further poor performance or misconduct as relevant. The warning should make clear that dismissal may follow failure to improve

- dismissal - with appropriate notice will follow if there is insufficient improvement.

Employees should be made aware that the employer will record all written warnings. Employee conduct or performance should then be reviewed at a specified later stage with a view to 'wiping the slate clean' if employees' behaviour is satisfactory.

If an employer is contemplating dismissal – or action short of dismissal such as loss of seniority or pay – they must, as a minimum, follow the statutory disciplinary procedure. This can be summarised as follows:

Step 1
write to the employee notifying them of what they are alleged to have done wrong – in terms of performance or conduct; set out the basis for the allegations; and invite them to a meeting to discuss the matter;

Step 2
inform the employee the grounds for making the allegations and **hold a meeting** to discuss them - at which the employee has the right to be accompanied. Notify the employee of the decisionand the right to appeal;

Step 3
hold an appeal meeting (if the employee wishes to appeal) at which the employee has the right to be accompanied - and inform the employee of the final decision.

Making known employee grievances
Just as employers sometimes feel they must take action against an employee, individual employees may sometimes feel that there is a need to complain about employer's actions as they affect them.

A grievance procedure should provide an open and fair way for employees to make known their complaints, to have these complaints considered by the company and for the company to decide whether to accept or reject

the complaint.

A grievance procedure in a small firm should:

- be in writing
- be known and understood by all employees
- allow the employee to be accompanied by a colleague or trade union official in the procedure if he or she wishes(26)
- ensure a speedy resolution to the problem - the circumstances of each organisation will affect the length of time taken. But most firms ought to be able to complete both stages within seven to ten working days.
- comply with the following statutory grievance procedure:
  - step one: inform the employer of the grievance in writing
  - step two: meet to discuss the grievance and
  - step three: hold an appeal, if requested

From 1 October 2004, if an employee wishes to use a grievance as the basis of a complaint to an employment tribunal they must first complete step 1 of the statutory procedure.

Employment tribunals may adjust any award of compensation by between 10 and 50 per cent for failure by either party to follow relevant steps of the statutory procedure.

The type of issues that may be raised as grievances include:

- Pay issues - such as bonus calculations or overtime entitlement
- Holidays - complaints concerning allocation of holiday period
- Discretionary benefits - such as paid time-off for medical visits and unpaid leave-of-absence.

Unfair dismissal

Key Questions: -

What is a dismissal?
What is constructive dismissal?
What is a fair dismissal?
What points should be considered before a decision to dismiss is taken?

This section provides a basic introduction to the area of unfair dismissals.

It is based on the knowledge and experience of Acas staff gained as specialists in the areas of employee relations and personnel management, not as legal experts. In certain circumstances it may therefore be desirable to consult a lawyer. More detailed guidance can be found in the Advisory handbook - Discipline and grievances at work (section 1 of 2).

The previous section dealt with action designed to minimise the need for dismissal. It needs to be stressed that dismissal should be the final step to be taken after all other options have been considered. However, in certain circumstances it will be unavoidable. It is our intention in this section to look at the major issues facing small firms when considering the dismissal of employees.

What is a dismissal?

An employee is dismissed when the employer terminates an employee's contract. In addition the expiry of a fixed term contract is a dismissal. A resignation is normally considered to be termination by the employee and therefore usually when an employee resigns no dismissal has taken place. But in certain circumstances an employee may resign because the employer has broken a significant term of the contract. This is known as constructive dismissal.

There is no law which prevents an employer from dismissing an employee. But employees may have the right to apply to an Employment Tribunal claiming that they were unfairly dismissed (see The Employment Contract). A decision by a tribunal in the employee's favour could result in an award against the employer of substantial compensation.

What is a fair dismissal?

A dismissal will normally be fair provided the employer had sufficient reason for the dismissal and acted reasonably in so doing. Among the commonest reasons for dismissal are misconduct, inability to do the job and redundancy. But it is not possible to specify exactly what is meant by reasonable. It will depend to a great extent on all the circumstances surrounding the dismissal. However, any employer contemplating dismissing an employee should ask whether:

- there is sufficient reason for dismissal
- reasonable alternatives to dismissal were considered
- the dismissal is consistent with previous action by the employer and any disciplinary procedure
- the dismissal is fair, taking all relevant factors known at the time into consideration
- they have, as a minimum, followed the statutory disciplinary and dismissal procedures.

Employers who have not asked themselves these questions will risk an unfair dismissal. But by following this handbook's advice on disciplinary rules which is based on the Code of Practice - Disciplinary and

grievance procedures (see Rules and procedures key points), the risk can be reduced. The law does not expect a small firm to act in the same way as a large one - a greater element of informality in relations between employers and employees is to be expected. Nevertheless it does expect a small firm to act reasonably in the circumstances, having regard to its size and administrative resources.

Useful reference booklets
The Department of Trade and Industry booklets provide useful guidance on dismissals and are available at www.dti.gov.uk/employment/index.html.

Controlling labour costs: absence and labour turnover

Key Questions: -

What are the costs of high levels of absence and labour turnover?
How can absence and labour turnover problems be identified?
What factors contribute to high levels of absence and labour turnover?
How can absence and labour turnover be reduced?

Absence
Employees can be away from work for a number of reasons including:

- sickness
- other authorised absence
- unauthorised absence (including lateness).

Most types of authorised absence (eg holidays, external training, maternity and parental leave or civic duties) are not dealt within this section because they form part of a predictable absence pattern which can usually be accommodated in line with the needs of employers and employees.

The major concern for most small firms is how to control levels of sickness absence and unauthorised absence. Although absence levels can be reduced by better procedures, they cannot be wholly eliminated and it is not easy to say what is an acceptable level of absence. It will be affected by factors such as the industry or the type of job.

If employees cannot strike a comfortable balance between their work and home responsibilities they are likely to suffer not only in their ability to do the job but also in their general health and well-being. Stress levels increase, morale drops and sickness and absenteeism escalate. Additionally, employees may feel that they have no option but to use sickness leave to deal with caring responsibilities at home.

From April 2003, the Employment Act 2002 introduced new rights for working parents. Parents of young and disabled children have the right to request a flexible working pattern and employers will have a legal duty to consider such requests seriously and to refuse them only if there are clear business reasons for doing so. The Act also increases maternity leave for most employed mothers, provide two weeks paid paternity leave for most employed fathers and provide similar rights for employed adoptive parents.

High absence levels can increase costs through overtime payments to provide cover and business commitments can suffer. Hidden costs such as low morale may further reduce productivity. Measures that reduce or eliminate unjustified absence are therefore important for any firm.

What affects absence levels?
There are many factors which may have an impact on the level of absence including:

- working conditions - could working relationships, the physical environment or the layout of premises be improved?
- management/supervision - does the company know the size of the problem? What is it doing to reduce absence levels?
- health and safety standards - is the level of absence connected with job hazards?
- initial training of new recruits - are they apathetic towards the company?
- welfare arrangements - could the company assist with personal problems?
- company rules - uncertainty can lead to misunderstandings - when is a medical self-certificate sufficient? When will a doctor's certificate be necessary? Whom should absent employees inform? When will the company require a medical examination of the absent employee? This is particularly important when deciding on action concerning long-term sick employees.

What is the size of the problem?
The first step towards control of absence is to be in a position to estimate the problem. This can be easily achieved if attendance details are kept in employees' personnel records. They need not be elaborate but should include:

- the dates - of the beginning and end of each period of absence

- the reasons for absence and whether absence was authorised - ie: backed by a medical self-certificate, a doctor's certificate or subsequently agreed by the company. In small firms it is relatively simple to tell if the problem is spread throughout the workforce or confined to particular work sections or to a few employees. By keeping an eye on individual absence levels, it may be possible to identify a potential problem such as regular uncertificated absence or a regular pattern of absence. If the company makes sure that the reason for absence is always discussed with the person concerned, this may prevent a problem from developing. If absence problems involve a disabled employee or if the health problem is affecting working capacity and cannot be resolved, contact the local JobCentre and seek help from the Disability Service Team.

The Disability Discrimination Act 1995 makes it unlawful for an employer to treat a disabled person less favourably because of a reason relating to their disability, without a justifiable reason. Employers are required to make reasonable adjustments to working conditions or the workplace where that would help to accommodate a particular disabled person.

The personnel record form in the Appendix contains a table for recording absence. Care should be taken to distinguish between absence records, which record the incidence of absence but do not include details of the illness and sickness records, which include details of the illness. Sickness records are classified as sensitive personnel data under the Data Protection Act 1998 requiring the consent of the employee. The Employment Practices Data Protection Code on Employment Records, produced by the Information Commissioner, contains detailed advice.

Labour turnover

Most small firms have some turnover of staff and a certain level of labour turnover can benefit the organisation by introducing 'new blood'. But excessive labour turnover can cause serious problems - the effectiveness of the workforce can suffer, recruitment and training costs can increase and morale may be reduced. Labour turnover can be affected by a number of factors, including those relating to absence. It may involve employees with health problems or disabilities for whom the job has become too difficult and those with caring responsibilities who cannot maintain a comfortable balance between their priorities at work and home and so choose to terminate their employment.

What is an acceptable level of labour turnover will depend to a great extent on the circumstances of each organisation. However, a small firm is more likely to feel the effects of labour turnover since a few employees will be a substantial part of its workforce. Even when small numbers of employees leave, this can have a considerable impact on the effectiveness of the firm. It will therefore benefit any small firm to look closely at the

factors that may affect levels of labour turnover.

What can be done?
It is important first to be able to estimate the extent of labour turnover and any particular problem areas. As with absence, this can best be done by keeping simple up-to-date personnel records. If regular examination of these records shows that there seems to be a problem, then the firm should try to find out why people leave.

An exit interview can provide useful pointers that may help the firm to recruit more suitable employees and identify problem areas within the organisation. Leavers should be asked why they are leaving and what they think is good and bad about the firm - for example:

- the job itself
- hours and patterns of work
- supervision and management
- pay and other terms and conditions of employment
- training and career prospects with the company
- working conditions and amenities.

But it should be kept in mind that employees may not always disclose the real reasons for leaving or their true views about the company.

Further Information

The Advisory booklet - Absence and labour turnover gives more detail on these topics.

Workplace communications

Key Questions: -

Why are communications important?
What do employees need to know?
How can employees be kept informed?
Why are workplace communications important?

Most employees need to be instructed about their jobs. But keeping employees informed about other more general matters at work is just as essential and can contribute to the efficiency of any organisation by:

- increasing their understanding of the employer's actions

- reducing opportunities for misunderstandings between employers and employees
- improving trust between employers and employees.
- Information should flow both ways - employers should listen to and take account of employees' views before action is taken.

Consulting employees not only shows employees that their views are important but can also:

- provide the organisation with informed opinions based on its employees' experience
- improve commitment and morale in the firm.

What do employees need to know?

Employees need to know:

- how their jobs fit into the rest of the organisation
- about the firm - its products and services, its objectives, overall performance, managerial responsibilities and general information about the workplace
- terms and conditions of employment
- company rules and procedures
- company prospects - both good and bad
- individual performance - standards they are expected to achieve, how they are doing.

A recent European directive giving employees in the UK new rights to information and consultation has been agreed. The directive gives employees the right to be informed about the businesses' economic situation and to be informed and consulted about employment prospects and about decisions which may lead to substantial changes in work organisation or contractual relations, including redundancies and transfers. The directive is being implemented in stages and applies to businesses with 150 or more employees (from April 2005); businesses with 100 or more employees (from 2007) and businesses with 50 or more employees (from 2008). The directive does not apply to businesses with fewer than 50 employees.

How can employees be kept informed?

The day-to-day contacts that take place in small firms between employer and employees, can be used to pass on information. But care should be taken to communicate clearly and consistently. Nobody should be overlooked - for instance, mobile employees or shift workers can easily be forgotten. Problems can arise when employees think that information is deliberately being withheld from them.

Contact at an individual level may not always be appropriate or possible. There may be occasions when it is essential that meetings of either the whole workforce or groups within it are necessary because employees need to be informed simultaneously. This can also save management time.

Some information can best be passed on to employees in writing, particularly where it is likely to remain unchanged for a long time or where a detailed explanation is required. Three methods which may suit small firms are:

- a company or employee 'handbook' - a simple reference document can be issued to each employee containing information about the organisation. It may include details of, for example, amenities, terms and conditions of employment and company rules. A handbook does not need to be printed or expensively produced. In some cases it may require no more than stapling together various pieces of existing information.

- Notice boards -if well situated and kept up to date, they can quickly and easily provide a workforce with access to information

- Pay packet/notification - putting information either in the pay packet or with pay notification can be a simple way of ensuring it is received.

Employee representation

Key Questions: -

Why have employee representation?
What forms can it take?
What is the difference between recognition and representation rights?
What is collective bargaining?
What are the subjects of negotiations?
What if employers and trade unions disagree?
Is training important?

This section raises some questions that an employer and workforce should consider about the representation of employees. It does not deal with every aspect however. Employers, employees and their trade unions may find that a problem or disagreement arises that is not dealt with in this section. If so, their nearest Acas office can provide assistance on all aspects of employee representation.

Why have employee representation?

The major reason why most firms agree to employee representation is because it is wanted by a substantial part of the workforce. Some employers, particularly in small firms, may take the view that employee

representation will interfere with the direct relationship between the employer and individual employee. Indeed, the importance of good communications between employer and employee cannot be overestimated; this will often be enhanced by an effective system of employee representation.

Employee representation can benefit the firm as a whole by providing a regular and systematic 'channel' through which the representative views of employees are made known to the employer and the employer's views made known to the workforce.

Employers are legally required to consult with representatives of employees on certain issues, which include:

- Redundancies and business transfers - Where 20 or more redundancies are proposed at one establishment over 90 days or less, or where there is a transfer of a business, employers are required to consult representatives of any recognised trade union, or if no trade union is recognised, another elected representative of affected employees. Such employee representatives may be elected solely for the purpose of consultation about specific redundancies, or, if appropriate, they could be elected representatives from an existing consultative body.

- Health and safety - Where an employer recognises an independent trade union and the trade union has appointed, or is about to appoint safety representatives, the employer must consult those safety representatives on health and safety matters affecting the group or groups of employees they represent. Employees not in groups covered by trade union safety representatives must be consulted on matters affecting their health and safety, either directly or through elected representatives. If the employer decides to consult through elected representatives the employees will have to elect one or more employees to represent them.

A recent European directive giving employees in the UK new rights to information and consultation has been agreed. The directive gives employees the right to be informed about the businesses' economic situation and to be informed and consulted about employment prospects and about decisions which may lead to substantial changes in work organisation or contractual relations, including redundancies and transfers. The directive is being implemented in stages and applies to businesses with 150 or more employees (from April 2005); businesses with 100 or more employees (from 2007) and businesses with 50 or more employees (from 2008). The directive does not apply to businesses withy fewer than 50 employees.

What forms can employee representation take?
Representation can take a variety of forms. Employers may encourage arrangements which provide a forum for a regular exchange of views. For

example, a works or office committee may serve this purpose. These committees will comprise employees chosen to be representatives of the workforce as well as the employer and/or the employer's representatives. They discuss such matters as working conditions, employment and production changes, safety and welfare matters. To work effectively, such committees should meet regularly rather than on an occasional basis. If disillusionment is to be avoided, such committees should be seen to have a real effect on how matters are determined. This requires that the workforce be regularly informed about the committee's work.

Sometimes a staff association may be formed to provide a basis for employee representation. Typically such associations are based on the company or establishment and, initially anyway, have few if any links with outside organisations. This is sometimes seen as one of their attractions both to employees and employers. But it can also limit their effectiveness, long-term stability and independence, which often depend on the energy and drive of one or two individuals. Accordingly staff associations may eventually merge with a larger trade union. This is especially likely when employees seek to negotiate collectively their terms and conditions.

Trade unions

Trade unions aim to improve the pay and other employment conditions of their members, primarily by representing them in collective bargaining with employers. Where groups of employees have joined trade unions, they may seek recognition from their employer.

Recognition

The Employment Relations Act 1999 introduced provisions for statutory trade union recognition in certain circumstances. When a company receives a request for recognition - ie a request to negotiate - it should find out the answers to the following:

- Is the union appropriate? - Does it normally recruit in the industry and for the particular type of employees covered or is there another union which is already recognised for similar employees?

- Are there sufficient employees who support the union's claim for recognition? - Support may be wider than the number of union members. It should be kept in mind that the employer's stated attitude towards trade unions can affect support - hostility can create a conflict of loyalty for employees between their company and trade union.

Taking these factors into account, it is then up to the employer to decide whether to agree to recognition of the trade union.

However, if voluntary approaches are unsuccessful and the employer has at least 21 workers, the trade union may make an application to the Central Arbitration Committee (CAC) for recognition.

Representation rights

Sometimes employers do not think there is enough strength of feeling for trade unions within the workforce to justify full recognition. Instead they may agree to representation rights which do not provide for full negotiations with the employer but entitle members to be represented by their union individually, eg in disciplinary cases or if the employee has a grievance. If subsequently the union can show sufficient membership growth, full recognition can then follow.

Such an arrangement does not prevent a trade union seeking statutory recognition.

What is collective bargaining?

Collective bargaining arrangements are jointly agreed rules and procedures between employers and trade unions which provide a method of determining employees' terms and conditions of employment. They define the way that agreement should be reached and the subjects to be dealt with. There are a number of legal provisions which relate to the activities of trade unions.

Collective bargaining agreements do not normally establish legal relations between an employer and trade union. But those parts of the agreement that affect terms and conditions of employment can become part of the individual employment contract. The employer and employee can expressly agree that employment should be on terms agreed by the employer and trade union and subject to any changes they may agree.

Collective bargaining takes place in firms of all sizes. The strong personal relationships which can be a useful feature of small firms are not incompatible with collective bargaining. On the contrary, sound employer-employee relationships contribute to a healthy employer-trade union relationship.

What statutory rights arise when unions are recognised?

A number of statutory rights arise when a trade union is recognised, including:

- the right to receive some information from the employer for collective bargaining purposes
- the right to time off for trade union duties, training and activities

- the right to be consulted before employees are made redundant
- the right to be consulted and informed about any transfer of the business and, in certain circumstances, the right to be recognised by the new employer
- the right to appoint a safety representative.

Provisions contained in the Employment Act 2002 now give new rights for Union Learning Representatives to reasonable paid time off to carry out their duties and to undergo training.

Reaching agreement

Employers and trade unions should agree a simple written negotiating procedure. This will clarify arrangements and can avoid later misunderstandings. In a small firm a simple procedure of no more than three stages is probably all that is necessary in most cases. An example of a negotiating procedure is contained in the Appendix.

Making collective bargaining arrangements clear

Employers and trade unions need to agree a number of arrangements so collective bargaining can operate effectively on a day-to-day basis.

These include:

- how and when negotiating meetings can be arranged

- who will be involved in the negotiations - the employer and trade union representatives. It is important to indicate whether full time trade union officials will be involved or whether lay representatives (eg. shop stewards) will do the negotiating

- what facilities will be available for union representatives - eg telephone, notice board, stationery

- how much time will be made available to trade union representatives and members for union duties, meetings and other trade union activities

- how agreements (and disagreements) should be made known to the workforce.

The subjects of negotiations

The subjects of negotiations will depend upon what is agreed by the parties. Both parties should be in no doubt about what matters are to be the subject of joint agreement. They may typically include:

- pay and payment systems
- hours of work
- holiday
- sick pay

- pensions
- premium payments (eg bonus, overtime, shift)
- security of employment.

Resolving outstanding differences
Most negotiations are settled by the parties themselves within their joint procedure. In small firms particularly, a committed and participative management approach can help employees develop a realistic understanding of the possibilities and limitations of negotiations.

However, there may be occasions when agreement cannot be reached during negotiations. In these circumstances, either or both parties may want to use the independent conciliation service of Acas. If requested to do so, Acas will attempt to help both sides to reach a mutually acceptable agreement.

If agreement still cannot be reached through negotiation or conciliation, then at the joint request of the parties, Acas may appoint an independent arbitrator provided both sides agree to be bound by the arbitrator's decision.

Industrial relations training
A good understanding of the factors affecting industrial relations is important for successful employer/trade union relations. Most trade unions have training facilities for their representatives and there are a number of independent training organisations that can provide industrial relations training separately for management or jointly with trade union representatives.

Appendix

Please see: http://www.acas.org.uk/media/pdf/3/a/H01_1.pdf

Notes

1. Users of some personal computerised information (which can include personnel records) have to register with the Information Commissioner.

2. See Advisory booklet - Personnel data and record keeping for more detailed information on records systems and data protection.

3. Impartial advice about starting and running a business can be obtained from the Small Business Service. Tel 0845 600 9006.

4. By law an employer may not discriminate on grounds of age, race, sex, marriage, disability, sexual orientation or religion or belief. All stages in the recruitment process must treat all races and both sexes equally. The Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC) have both produced codes of practice which explain how to avoid discrimination in recruitment. The Disability Discrimination Act 1995 introduced a new statutory right, making it unlawful for an employer to treat a disabled person less favourably than someone else because of their disability, when applying for employment or when employed, without a justifiable reason. Employers are also required to make a reasonable adjustment to working conditions or the workplace where that would help overcome the practical effects of a disability. Guidance on how to avoid discrimination on grounds of disability is provided in an employment Code of Practice which also has statutory force. (Available from The Stationery Office).

6. 'Word of mouth' recruitment may lead to discrimination claims because it may not satisfy equal opportunities requirements. It is therefore recommended that this recruitment method should not be used where the workforce is wholly or predominantly white or black and the labour market is multi-racial. It may also discriminate against disabled applicants.

7. Unfair dismissal claims relate to the reasonableness of the dismissal and are made to Employment Tribunals.

8. But a contract for an apprenticeship must be in writing to be valid.

9. Sometimes the date when previous employment began will also be required. In addition, employers should be aware of the implications of the Transfer of Undertakings Regulations 1981 which protect employees' rights on the transfer of a business. (See Department of Trade and Industry booklets PL699 & PL711).

10. A more detailed explanation of employees' individual employment rights is provided in the Department of Trade and Industry leaflet PL716 Individual rights of employees - a guide for employers and in further publications listed below.

11. See note 7 above.

12. See note 35 below.

13. See Consulting employees on health and safety: a guide to the law - HSE Books.

14. See Maternity Rights - a guide for employers and employees. Department of Trade and Industry booklet PL958.

16. See DTI Leaflet Time Off for dependents.

17. Contracts of employment. Department of Trade and Industry booklet PL810.

18. The Management of Health and Safety at Work Regulations 1992. HSE Approved Code of Practice.

19. See note 34 below

20. Wrongful dismissal occurs where an employee is dismissed and the terms for ending the contract have not been observed. Action for wrongful dismissal can be taken in the courts or, if the employment has been terminated, through an Employment Tribunal.

21. The Advisory booklet - Pay systems gives more detail on various pay systems and their advantages and disadvantages.

22. For more information call the Business Link advice line on 0845 600 9006 or visit the website at www.businesslink.gov.uk

23. The Advisory booklet - Recruitment and induction gives more detail on the induction process and contains a checklist of the topics that may need to be covered.

24. Acas Codes of Practice are available from The Stationery Office Bookshops or from the publications section on the Acas website.

25. See note 34.

26. See note 34.

27. Rules concerning the operation of fixed term contracts are complex and advice about their use may be desirable. (See Department of Trade

and Industry leaflet PL 513).

28. Some reasons for dismissal are automatically unfair such as dismissal because of pregnancy or childbirth or for seeking to assert a statutory right. See Department of Trade and Industry leaflet Fair and unfair dismissal: a guide for employers PL714.

29. Available from The Stationery Office Bookshops.

30. The Safety Representatives and Safety Committees Regulations 1977.

31. The Health and Safety (Consultation with Employees) Regulations 1996.

32. The Employment Relations Act 1999 contains provisions for statutory trade union recognition in certain circumstances. The right was introduced during 2000.

33. See Ask Acas Leaflet: Trade Union Recognition which gives information on this right introduced by the Employment Relations Act 1999.

34. The statutory right to be accompanied by a trade union official or a fellow worker at certain disciplinary and grievance hearings is set out in the Employment Relations act 1999.

35. See the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Trade Union Reform and Employment Rights Act of 1993.

36. See Code of Practice - Disclosure of information to trade unions for collective bargaining purposes.

37. See Code of Practice - Time off for trade union duties and activities

38. Where 20 or more redundancies are proposed at one establishment over 90 days or less, or where there is a transfer of a business, employers are required to consult a recognised independent trade union or, if no trade union is recognised, some other elected representatives of affected employees.

39. See Department of Trade and Industry booklet PL833 Redundancy consultation and notification and PL699 Employment rights on the transfer of an undertaking.40. See Health and Safety Commission Safety representatives and safety committees and HSE leaflet Consulting Employees on Health and Safety: a guide to the law.

41. See statutory rights under (The employment contract) to time off will need to be taken into account.

42. Where issues are not subject to negotiation, it can be helpful to consult the workforce or its representatives before decisions are made (see Workplace communications).

43. This example is taken from the Department of Trade and Industry's booklet PL 700A Example form of a Written Statement of Employment Particulars.

Useful booklets

The information contained in all of the Department of Trade and Industry booklets listed below and those referred to in this handbook can be found at www.dti.gov.uk/employment/index.html. The Acas website also has a section on 'Rights at work'.

Contracts of Employment

Written statement of employment particulars

Itemized pay statements

Individual rights of employees - a guide for employers

Employee's rights on insolvency of employer

Employment rights on the transfer of an undertaking

Maternity rights - a guide for employers and employees

Rights on suspension from work under health and safety regulations

Time off for public duties

Redundancy consultation and notification

Time off for job hunting or to arrange training when facing redundancy

Redundancy payments

Offsetting pensions against redundancy payments - a guide for employers

Limits on payments

Guarantee payments

Rules governing continuous employment and a week's pay

Sunday Trading Act 1994 - new employment rights for shop workers

Sunday Betting - new employment rights for betting workers

Rights to notice and reasons for dismissal

Unfairly dismissed?

Fair and unfair dismissal - a guide for employers

Union membership and non-membership rights

Unjustifiable discipline by a trade union

Trade union executive elections

Trade union funds and accounting records

Trade union political funds

The payment of union subscriptions through the check-off

Industrial action and the law - A guide for employees, trade union members and others

Industrial action and the law - A guide for employers, their customers and suppliers, and others

Industrial action and the law - A guide for individuals on their right to stop the unlawful organisation of industrial action

The Trade Union Reform and Employment Rights Act 1993. A Guide to its industrial relations and employment law provisions

Code of Practice - picketing

Code of Practice - Industrial Action Ballots and Notice to Employers

Code of Practice - Access to workers during recognition and de-recognition ballots

Department of Trade and Industry Small Firms Publications

Employment Rights Factsheets - full set

A guide to help for small firms

Employing Staff - a guide to regulatory requirements

Setting up in business - a guide to regulatory requirements

Equal Opportunities Commission
Working to eliminate sex discrimination
Tel: 08456 015 901
http://www.eoc.org.uk
Code of Practice: Equal Pay
Equal Opportunities: It's your business too

Disability Rights Commission
Providing information and advice to disabled people and employers
Tel: 08457 622 633
www.drc.org.uk

Employing disabled people – top tips for small businesses (EMP5) Code of practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability (available from Stationery Office Bookshops)

Commission for Racial Equality
Tackling racial discrimination and promoting racial equality
Tel: 0870 240 3697
www.cre.gov.uk

Code of practice: for the elimination of racial discrimination and the promotion of equality of opportunity in employment Racial equality and the smaller business: a practical guide
Racial equality means business: a standard for racial equality for employers

Health and Safety Executive
Controlling the risk to people's health and safety in the workplace
Infoline 08701 545500, Publications: 01787 881165
www.hse.gov.uk

Essentials of health and safety at work Consulting Employees on Health and safety – a guide to the law Ref: IND (G) 232L A guide to the Health and Safety (Consultation with employees) Regulations 1996 Ref: L95

Equality Direct
A confidential helpline service on all aspects of equality in the workplace
Tel 0845 600 3444
www.acas.org.uk

Office of the Information Commissioner
For information on the Data Protection Act 1998 and the Freedom of Information Act 2000
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel 01625 545745
www.dataprotection.gov.uk

Race Relations Employment Advisory Service (RREAS)
Advice and consultancy services on diversity in employment
Tel 0121 452 5448

Small Business Service
Impartial advice about starting and running a business
Tel: 0845 600 9006
www.businesslink.gov.uk

Last printed version: November 2003
Last updated web version: September 2006