

Wright, Johnston & Mackenzie LLP



Franchising

Becoming an Employer



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Becoming an Employer

Once you have acquired your franchise, your focus will quite rightly be on developing your business. However, if you are going to be employing any staff, even on a part-time basis, then you will require to ensure that you comply with employment law. This is an increasingly complicated area of the law and an unprepared employer can easily find themselves in difficulties.

Contracts of Employment / Written Statement of Particulars of Employment

The first step that must be taken is to ensure that the basis upon which staff are being employed is adequately documented. Best practice would be to have a full contract signed at the time that the employee starts work, but often the needs of developing a fledgling franchise business can mean that this is overlooked. By law all employees must be provided with at least a Written Statement of Particulars of Employment within 2 months of starting employment. This must contain the following :-

- Names of employer and employee
- Date when period of employment began and any period of continuous employment
- Rate and frequency of pay
- Hours of work
- Holiday arrangements
- Sick pay arrangements
- Details of pension schemes (exempt if less than 5 employees)
- Length of notice required to terminate employment
- Job title / job description
- Whether any collective agreements are in place
- Whether there is any period in excess of one month where the employee could be required to work outwith the UK

Statutory Disciplinary / Grievance Procedure

Even if you are a very small employer, you are still subject to legal requirements in relation to taking disciplinary action against any of your employees. If you fail to follow the necessary procedures then this may result in an automatic finding of unfair dismissal in a situation where you may otherwise have been entitled to dismiss the employee. Ignorance of the law is not an acceptable excuse!

If you are going to take any disciplinary action, the following minimum steps must be taken:-

- Write to the employee explaining the reason for the disciplinary hearing, when it will take place, whether dismissal may result and that they have the right to be accompanied by a work colleague or full-time union official.
- Hold the disciplinary hearing, preferably with someone there to take minutes of the meeting.

- Write to the employee outlining the outcome of the disciplinary hearing and giving them the right to appeal against the decision.
- Hold an appeal hearing (if requested). In all but the smallest of organisations, the appeal should be heard by someone more senior than the person who held the original disciplinary hearing.
- Provide the outcome of the disciplinary hearing.

In the event that an employee wishes to raise a grievance then grievance hearings should be convened in the same way as above.

Rights Acquired By Employees

While employees only acquire certain rights after a certain length of time, most employment rights start as soon as someone is employed.

Any form of discrimination, whether on the grounds of age, sex, race, disability, sexual orientation or religious belief, does not require any qualifying period. If an employer was found guilty of discriminating against someone on any of these grounds then the potential award at the Employment Tribunal could be unlimited.

The right not to be unfairly dismissed only arises once an employee has one year's continuous service. This means that if an employee is not performing well then you can dismiss them within the first year. However you should ensure that you follow the disciplinary procedure outlined above (and make sure you are not discriminating against them when dismissing them).

If a redundancy situation happens to arise, an employee will only be entitled to a redundancy payment if they have a period of two years' continuous service. However an employer cannot manufacture a redundancy situation in order to dismiss someone.

It may seem that the law places excessive burdens on franchisees who are just starting in business. However, if you can establish a good contractual relationship between employer and employee from the outset then this will not only offer both parties certainty, it will also minimise the likelihood of claims to the Employment Tribunal which can be both expensive and time-consuming. This will leave franchisees free to grow a successful business.

For more information on becoming an employer contact John Grant: jzg@wjm.co.uk

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