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# Business Plus Sefton

## 24 February 2010

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### HR Workshop

Presented by **Andy Cross, Partner, and Lynn Mullan,  
Associate**

1. Keeping the staff you want... and keeping them motivated
2. Recruitment do's and don'ts
3. Protecting your business while growing
4. Getting rid of staff you don't need or want

Appendix: ACAS Code of Practice 'Disciplinary and Grievance Procedures'

Brabners Chaffe Street LLP

Horton House

Exchange Flags

Liverpool

L2 3YL

0151 600 3000



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### Keeping the staff you want.... and keeping them motivated

#### Keeping the Staff you Want

- Why do you want employees?
- Your resources, money, premises, machinery and equipment, intellectual property, an organised team of people
- Humans aren't resources
- Most businesses most valuable resource is their human resource

#### Employee Audits

- How important is this employee to the Company?
- What would be the effect if they left ?
- Is it likely that they will leave?
- Will you find a replacement easily?
- If they join one of your competitors what impact would it have?

## ☞ Why do People Leave?

- A better offer
- Perception that “the grass is greener”
- A lateral move but better career prospects
- Personal/domestic circumstances

## ☞ Why do People Stay?

- Inertia
- Feeling comfortable/happy
- The perception that this is a good place to be with a future
- A great culture

## ☞ Sunday Times 100 Best Companies to Work For

A person's experience of their workplace results from their perceptions in the following areas:

- Leaderships (heads and senior managers)
- My Manager (local management day to day)
- Personal growth (opportunities to use skills and advance)
- Wellbeing (work/life balance)
- My team (immediate colleagues)
- Giving something back (giving back to society in the community)
- My company (the company and the way it treats its staff)
- Fair deal (pay and benefits)

## **The Importance of Communication and the Skill of Listening**

- Induction
- Mentor/buddy system
- Informal and formal appraisal
- Team meetings
- Company wide meetings/conferences
- Emails, intranet and newsletters
- Staff consultation forums/employee surveys/liP
- Ask for and act upon employee suggestions
- Employee welfare helpline
- Good managers

## **Importance of Training**

- Improves performance/flexibility/adaptability
- Reduces errors/mistakes
- Improves job satisfaction and interest
- Prepares staff for changes and makes them less fearful/uncertain about the future; and
- Can be seen as a reward!
- Career paths and/or job changes

## ☞ Importance of Work Life Balance and Flexible Working

- Part time
- Shorter hours
- Flexitime
- Compressed working week
- Annualised hours
- Career Breaks and unpaid leave
- Shift working
- Job sharing
- Working from home – remote access

## ☞ The Importance of Rewards

- Consider
  - Individual reward
  - Team reward
  - Organisation reward
- Ensure remuneration is competitive and appropriate for each individual
- Performance related pay
- Profit related pay
- Share options
- Equity
- Retention/loyalty benefits
- Perks

## **The Importance of Contracts, Policies & Procedures**

- Flexible employment contracts
- Make people aware of the policies so that everyone knows what they can/can't/need to do

## **The Importance of Recognition**

- Attendance bonus!!
- Chocolates/wine/cakes/biscuits
- Reward employees for suggestions (show you've considered them)
- Introduce staff committees...we value your opinion
- Bosses to take people out to lunch
- 'End of Project' meals/drinks/taxi
- Sports and social budget
- Holiday gifts
- Access to the web, use of mobiles, texting!
- Reward skilled workers by paying professional subscriptions, letting them go on CPD/CPE events
- Consider internal people for vacancies before looking externally

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### Recruitment do's and don'ts

#### ☞ Importance of getting it right

- Your staff are your biggest investment - the right person for the right job
- Ensure that there is clarity as to the terms upon which the person is employed and build in business protection
- Avoid the risk of claims – discrimination and / or breach of contract

#### ☞ Plan your recruitment

- Identifying your vacancy – what do you need to meet this business need?
- Be clear about the job description and person specification for the role
- Advertising the job
- Use application forms
- Interviewing candidates and selecting the right person for the job
- Making the job offer

## ☞ Vacancy / Job description

- Employee / worker / temporary / for fixed period
- Main purpose and objectives
- Main tasks and responsibilities
- Distinguish the essential requirements from the desirable requirements
- Can all requirements be objectively justified?
- Ensure that you do not indirectly discriminate against any groups of employee by including requirements that cannot be justified

## ☞ Advertising the job

- Beck v Canadian Imperial Bank of Commerce
- “Young Entrepreneurial Profile”
- Ryanair Case
- “Wanted for young enthusiastic team”
- McCoy v James McGregor & Sons
- “at least 5 years experience” “youthful enthusiasm”
- Presumption of discrimination which employer must rebut

## ☞ Job application

- Only collect information relevant to the job
- Easier to compare applicants
- Ensure that you shortlist against the requirements of the job

- Be aware of your disability discrimination reasonable adjustments obligations

## Interview/Selection

- Ask all candidates the same questions
- Score all candidates independently and consistently as against answers given
- Avoid questions concerning candidate's personal life unless directly relevant to the job requirements, eg. asking a female candidate whether she intends to have children
- Ensure that you appoint the best person for the job as against the job requirements
- Keep a careful note of questions asked, answers given and scores attributed

## Making the job offer

- Avoid forming the contract too early / oral contract
- Consider whether you wish to make your job offer subject to certain conditions. For example:-
  - Satisfactory medical
  - References satisfactory to you
  - Proof of qualifications
  - Confirmation that the employee is not subject to any restrictions preventing him/her working for you
  - Proof of the right to work in the UK
- Set a time limit for acceptance
- Send written offer of employment together with contract of employment setting out fully the terms applicable to the job which are open for acceptance
- Include a probationary period in the job offer and review during this period

 **References / Conditional offer**

- Unsatisfactory references
- Take advice if considering withdrawing offer / conditions not met

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### Protecting your business while growing

#### ☞ Different ways to “man” your business

- Control v employment rights risk
- Self employed sub-contractors / workers / agency workers / employees
- Employees - temporary / for fixed periods / for specific project
- Winning contracts – factor in TUPE risk when costing work

#### ☞ Post termination restrictions – what can you protect ?

- Sensitive business information
- Your customers
- Supply chain arrangements
- Your staff

## Confidential business information

- Implied duty of fidelity and confidentiality during employment
- Very limited protection operates post employment unless employer and employee have expressly agreed otherwise
- What is at risk post employment includes:
  - Your customers
  - Your supply chain arrangements
  - Your key staff
  - Operating in competition with you
  - Key business information

## Restricting your staff on exit

- Legitimate business interest
- No longer than necessary
- Bespoke to individual employee

## When should you consider restrictions?

- At the outset of employment
- Remind employee on exit
- Review restrictions periodically to ensure still relevant to the job that the employee performs for you
- TUPE transfer

☞ **What other measures can you take to help protect the business?**

- Include a garden leave clause in the contract of employment
- Include a payment in lieu clause in the contract of employment

☞ **If it goes wrong?**

- Seek advice
- Injunctive relief
- Claim for loss suffered

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### Getting rid of staff you don't need or want ...

#### ☞ Managing Dismissal

- The lawyer worries about:
  - Unfair dismissal
  - Wrongful dismissal
  - Discrimination
  - A host of other claims...
- The Company worries about red tape, political correctness and paralysis!

#### ☞ The Good News

You still have the power to manage your business as you see fit but you'll manage it easier if you invest in:-

- Contracts
- Procedures & Policies
- Trained Personnel
- Access to practical legal advice

☞ Unfair Dismissal – who can claim?

- Employees only
- 1 years' continuous service
  - Excluding certain automatically unfair dismissals
  - Watch out for discrimination claims
  - Probationary periods
- Must be a dismissal

☞ Unfair Dismissal

- What is unfair dismissal? – Statutory Claim:

Employer who admits dismissal must show two things:-

1. Admissible reason
2. Fair procedure/process leading to decision to dismiss – was it reasonable to dismiss?

☞ Six Fair Reasons

Burden of proof on employer to show dismissal was for one of the six potentially fair reasons:

- Capability
- Conduct
- Redundancy
- Illegality
- Some other substantial reason
- Retirement

☞ Fair Procedures

- ACAS Codes of good industrial practice including the new Code on Discipline and Grievances, April 2009 (see also “Redundancy Handling” and “Managing Attendances and Employee Turnover”)
- Your own disciplinary / performance / attendance (including ill health) / redundancy / retirement procedures

☞ ACAS Code on Discipline and Grievances

- Core principles of fair dealing for conduct and performance issues
- Employment Tribunal must take it into account in assessing “fairness” of dismissal
- Unreasonable failure to follow can result in up to 25% uplift in damages
- Brabners Chaffe Street ‘Compliance’ Pack

☞ Reasonable to dismiss?

*“...the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -*

- (a) Depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and*
- (b) Shall be determined in accordance with equity and the substantial merits of the case”*

☞ Band of reasonable responses

*Iceland Frozen Foods Ltd v Jones [1982]:-*

- Tribunal must not substitute its own view

- Band of reasonable responses within which reasonable employers may take different views
- If the dismissal falls within that band, dismissal is fair

## ☞ Compensation

- Basic award
  - Weekly wage (capped at £380) x length of service x age factor
- Compensatory award
  - Capped at £65,300
  - Loss of earnings main component – open ended
  - Duty to mitigate loss
  - Contributory fault deduction
  - Trust and equitable deduction
  - “Polkey” deduction
- Reinstatement/Re-engagement

## ☞ Misconduct – What the Employer must prove in the Employment Tribunal

- Employer must establish a belief in the guilt of the employee based on reasonable grounds after carrying out as much investigation into the matter as was reasonable in all the circumstances

## ☞ Summary of Conduct Process

See ACAS Code of Practice:

- Core principles (introduction to point 4)
- Investigation (points 5-8)

- Notify employee of the problem (points 9-10)
- Hold a meeting to discuss the problem and right of representation (points 11-16)
- Decide on appropriate action (points 17-24); incremental warnings: gross misconduct
- Right of appeal (points 25-28)

☞ Performance (capability) – What the Employer must prove in the Employment Tribunal

- Did the employer honestly and reasonably believe the employee to be incompetent?
- Were there reasonable grounds for that belief?

☞ Performance Procedure

Performance process should follow same framework as for conduct but note:

- “Investigation”  
Capability must be assessed in relation to job employed to do;  
Assessment of employee’s explanation of under performance;  
Employer’s support.
- Warnings and reasonable opportunity to improve
- In deciding “appropriate action” consider alternative employment.

TIP: Have your own separate “performance” procedure from the “misconduct” procedure

☞ Redundancy

- Redundancy and Unfair Dismissal
- Is there a “Redundancy” situation?

- The importance of the Business Case for Redundancy
- Consultation
- Fair Selection
- Alternative Employment
- Procedure – including appeal
- Statutory rights of the redundant worker (statutory redundancy pay, alternative jobs, time off)
- ☞ **Compromise Agreement**
- Used as clean break to compromise actual and potential claims
- Must satisfy legal requirements
- Employee must take legal advice
- Use with care
  - Without prejudice
  - Two channel approach