



DMH Stallard

Employment law webinar

Developing the right resourcing
models: recruitment and retention
considerations - Session two

Direct employment

What are the main pros and cons of taking on a traditional direct employee?

What if things do not work out. How do you manage that risk?

Pros	Cons
Certainty of legal status and rights	Highest level of statutory obligations/protection
Greater level of express and implied obligations	Can be higher cost (e.g. annual leave, sick pay, family leave)
Gives maximum amount of control	More costly to exit (e.g. redundancy pay and dismissal rights from two years' service)
Post-termination restrictions are customary	Entitled to pay even if no work to be done
Generally a more stable and long term form of engagement	Less flexibility compared to other models

Types of employment contract

What are the pros and cons of fixed term contracts?

Is it still worth putting someone on a FTC or why not just start them on a permanent contract and then terminate the arrangement when they're no longer needed?

Zero Hours: what advantages are there in using ZH contracts rather than maintaining a bank of casual workers?

What are the different types of employment contract that you can consider having?

Part Time Contracts: obviously PT work arrangements are popular and PT employees will share the same employment rights as full time employees. What extra considerations do you need to think about when hiring a part time employee?

Pros	Cons
Greater flexibility compared to employees	Lack of certainty over availability/willingness to work
Management of individual’s expectations in respect of frequency/availability of work)	Likely to increase the turnover of staff
Only entitled to pay when work available	Calculating rights (e.g. annual leave) more complicated
No unfair dismissal or redundancy rights	Still have all the same potential ER issues (grievances, disciplinary procedures etc.)

Pros	Cons
Manages employee's expectations as to length of employment	Comes with additional rights (e.g. same treatment as permanent comparator)
Reduces risk of inadvertently engaging beyond two years	Termination of contract is still a dismissal, for purposes of the Employment Rights Act 1996
Reputation: it's transparent, compared to engaging permanently in knowledge you will terminate after a fixed period	May put off candidates from applying, and those that do may be less committed than if they were permanent

Self employed

Often there can be doubt about whether someone is truly self employed or an employee and sometimes there is no clear cut answer. Suppose you take someone on the basis that they are self employed. What's the risk if you get it wrong? Have you any suggestions about how to manage that risk?

Is engaging a self employed individual a relatively risk free option for a company. What's your view on the obligations and liabilities a company would have toward a self employed individual?

What are your key takeaways for clients in what the contract should include?

Can you explain the extent of the duty of care that could be owed by a company to a self employed individual?

Pros	Cons
No statutory employment obligations owed	Potential to get it wrong and find employee/worker status creeps in
Commercial approach to contractual terms	Lack of control
Flexibility of resource	Uncertainty as to availability (and future availability) of services
No requirement to provide employee benefits and equipment	No lasting relationship to build engagement and support corporate brand

Service companies / IR35

The IR35 concerns we saw a couple of years ago seem to have receded. What was that all about? Why do you think this is?

How would you determine if an employer had taken “reasonable care” when they carry out their status determinations?

Pros	Cons
Access to talent pool of highly specialist skills	Heavy compliance obligations with the Off Payroll Working Regulations
No statutory employment obligations owed	Requirement to take “reasonable care” in completing status determinations
Flexibility of short term resource	Need to train employees to carry out status determinations
B2B commercial approach	Status determinations may change with time
No learning and development requirements	Requirement to set up worker on end user payroll
Certainty of budget for project work	Penalties for non compliance: fines, naming and shaming, payment of tax due

Agency workers

Agency workers are an obvious option. What are the pros and cons of taking on agency staff?

Who is responsible for agency workers? Is it the agency or the end user?

Pros	Cons
Ultimate flexibility in being able to call on labour on a “as required” basis	Limited engagement from worker
Often responsibilities for relationship will remain with agency	Limited opportunity to train and integrate agency labour
	Uncertainty as to liabilities
	Potential greater cost

International workers

Does visa sponsorship change the nature of the employment relationship, and are there any advantages beyond just having access to all available talent?

We are trying to weigh up the cost: benefit comparison between increased / pay / investment in developing local labour with visa sponsorship of those not resident here: Can you give an approximate idea of cost for the latter?

Can an approved English apprenticeship be undertaken by someone not resident in the UK?

Given the minimum skill requirements, is it even possible to sponsor a visa for someone to do an apprenticeship?

Pros	Cons
Enables demand driven access to the best possible talent (irrespective of borders/nationality)	Cost: could be several thousand pounds if employer is covering employee's costs as well as its own
Likely to give rise to greater degree of commitment and engagement from employee	Additional duties (e.g. to keep records and report changes in circumstances)
Retention: employee's working under a sponsored PBS visa will usually find it harder to move elsewhere	Changes of employment or pay (e.g. on promotion) could require a new sponsored visa application

Interns / volunteers

Interns are still a popular way of getting that vital experience on the CV. From an organisation's perspective what do they need to think about when hiring interns?

Lockdown has given people more time and people on furlough may have taken up volunteer posts for the first time. What do you see as the main red flags when taking on volunteers?

Pros	Cons
Opportunities to give individuals valuable career development skills	Need to assess employment status
Ability to assess competency for possible future hire	Unable to be prescriptive when giving tasks and hours of work
Ability to supplement direct employed labour	Interns usually short term therefore limited value to organisation
Ability to avoid employee/worker status if the arrangements are set up so there is no mutuality of obligation and control	Unable to pay anything other than expenses if employee/worker status is to be avoided

Apprenticeships

Aside from the training structure and framework requirements, are there other aspects of apprenticeship arrangements that are different to ordinary employment?

We're quite interested in the flexi-apprenticeships, but haven't been able to find a lot of detail yet. Will it be possible to employ apprenticeships for short term projects/placements?

If the Kick Start scheme only funds six month engagements, is there any risk associated with us ending employment relationship at the end of the scheme?

Pros	Cons
Cost: use of levy and government contribution can reduce cost	Complexity: tripartite arrangements, with training frameworks and stipulated contact time etc.
Flexibility: coming in the form of flex-job apprenticeships	Risk: an inadvertent “common law” apprenticeship could be costly on termination
Recruitment: likely to attract a wider/different spectrum of candidate	Investment/cost: likely to involve greater time and resource to set up and manage
Retention: good opportunity to assess the suitability of individuals and seek to retain those with most potential	Minimum training periods required

Speakers



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