



The easiest way to run a fair and efficient business

Small Business Employment Law

FOR
DUMMIES®

Liz Barclay

*Small business advisor and presenter
of BBC Radio 4's You and Yours*



A Reference for the Rest of Us!™  **UK Edition**

Small Business Employment Law FOR **DUMMIES®**

by Liz Barclay



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Introduction

Welcome to *Small Business Employment Law For Dummies*. If you're running your own business and already have some employees or you're just starting out and are planning to employ some staff, you need to know where you stand legally and what your obligations and responsibilities are. That's where this book comes in, explaining the areas of law you need to be aware of and as many of the intricacies of that law as can be fitted between its yellow and black covers.

About This Book

This book will give you a good basic knowledge of how you need to apply the law to your employees, but if any disputes arise between you and your employees don't hesitate. Get advice from some of the organisations mentioned in this book, because ultimately the outcome of any claim made against you by an employee will be down to the very fine detail of that individual case and the way it has been handled.

Running a business, even when you do have employees around the place, can be a lonely experience. If you're a really small operation there may be just you to worry about getting the deliveries out on time, paying the invoices, and managing the cash-flow. Employment law might not be your immediate priority. This book is meant to be a useful and caring companion, on hand to give a bit of advice when you need it, rather than nagging for constant attention. Sometimes the best place for a book like this is in the loo, where you can pick it up when you're having a necessary break from the day-to-day operation of the business!

Finally, remember that court and tribunal cases go on all the time and their outcomes have an impact on the law. The law is changing all the time and some aspects may be out-of-date almost as soon as this book reaches the shelves. New laws on age discrimination, for example, will be introduced in October 2006, although there are no details yet. The government mentions the law on maternity and paternity leave, parental rights, and flexible working almost every month, so there will be changes there that we won't know the

details of by the time this goes to print. There will be changes to the Disability Discrimination Act too in December 2005, which will extend protection of the Act to some people with cancer and HIV as well as mental illnesses that aren't covered at the moment.

Conventions Used in This Book

To help you navigate this book, I've set up a few conventions:

- ✓ *Italic* is used for emphasis and to highlight new words or terms that are defined for the first time; this includes a lot of the 'legalese' you'll come across.
- ✓ `Monofont` is used for Web addresses.
- ✓ Sidebars (the shaded grey boxes) contain information that, although helpful, might not apply to all readers – check out these sidebars by all means, but don't worry if the information within them doesn't seem applicable right now (it may in the future).

Foolish Assumptions

They say you should never assume as it makes an ass out of 'u' and an ass out of 'me', but I've had to make a few assumptions, such as:

- ✓ You're reading this book in the first place, so you'll agree that in these days of skills shortages it's difficult to find staff you need, therefore making sure you look after your employees has to be a priority. Look after your staff and they'll look after your customers.
- ✓ You're running a business of some sort and, while you know that any employees you take on have rights, you aren't fully aware of all of those rights or what your obligations are to deliver them.
- ✓ You take your employees and their welfare seriously. You want to keep them, so you'd like to stay on the right side of the law.
- ✓ Ultimately you'd like not just to do the bare minimum for your staff but, if you're in a position to, be a bit more generous than the law expects and would like to aspire to what people see as best practice.
- ✓ You'll appreciate my warnings as to the dire consequences of getting it all terribly wrong, but you'll also see from what I've

written that it's easier to get it right if getting it right is part of your business culture. It can simply become second nature. It needn't be nearly as hard for employers to get it right as stories in the press sometimes suggest.

How This Book Is Organised

Small Business Employment Law For Dummies is organised into six parts. The chapters in each part cover specific topics in as much detail as possible given the limitations of space and given that I've tried not to get overly technical.

Part I: Hiring and Firing

The first five chapters cover all you need to know to employ someone and get rid of them again. You can work out who has employment rights, what those rights are, and what other rules you may want to lay down about your workplace that will help you comply with the laws. You can read about recruiting staff; what to put in the employment contract; and what forms part of the contract even if you don't write it down. At some point you may want to dismiss someone. The law has given employees more protection in recent years. The most recent and most important changes came into force in October 2004. There are now dismissal and disciplinary procedures that you must follow if you're firing someone. Employers who take the 'fire first and ask questions later' approach can get themselves into serious trouble, but if you follow all the right procedures and are fair about your reasons you do have the right to get rid of employees. This part also covers what happens if the business isn't doing so well and you have to make staff redundant.

Part II: Working Hours and Taking Time Off

The law has changed with the introduction of the European Working Time Directive. There are now rules about the maximum number of hours that people should work on average and about the breaks they have to be allowed. Employees also have the right to paid holidays. This part goes into the details of working hours, breaks, holidays, and all the other reasons for taking time off such as having a baby, becoming a father or an adoptive parent, or being off sick. There's also information on time off for jury service, union duties, pension fund trustees, and magistrates.

Part III: Keeping the Workers Healthy and Safe

The three chapters in this part explain all you ever wanted to know and more about identifying hazards and making risk assessments. It's your job to make sure the working environment is safe, so you've got to look out for the things that can cause the problems. Remove those hazards or, if you can't, reduce the risks. If risks still exist, set about protecting people with goggles, ear plugs, non-slip shoes, machine guards, and such like. The law covers hazardous substances, dust, noise, temperature, lighting, uneven floors, fork-lift trucks – you name it! You also have a duty to make sure that work doesn't cause illness or injury, and stress is one of the biggest problems here.

Part IV: Respecting and Consulting Staff

Respecting employees means keeping their personal information confidential and secure; not being intrusive if you are monitoring calls or e-mails; not discriminating against people because of sex, religion, race, disability, or sexual orientation (or age, from October 2006); making sure they aren't victimised, harassed, or bullied. It also means consulting them if there are problems and changes around the workplace. Your employees are a wonderful source of good ideas and information that can make the whole operation run more efficiently and smoothly. Consulting and involving them will have positive business benefits and should help avoid disputes. You have to have a disciplinary policy in place that sets out how disputes will be dealt with so that everyone knows where they stand and what they might do that can lead to them getting the sack. You also have to have a grievance procedure that employees can follow if they have complaints to make. This part deals with all of those issues.

Part V: Paying Up – Everything to Do with Money

This part does what it says on the label – it deals with everything to do with employees and money, from their wages and holiday pay to sick pay, maternity pay, pay in lieu of notice, final payments when they leave, and pension plans. It deals with the amounts you pay people and the regular amounts you have to deduct for things

like income tax and National Insurance. It also explains the circumstances in which you can deduct other amounts like overpayments or sums of money missing from the till.

Part VI: The Part of Tens

Two chapters with 10 sections each – the first covers how best to avoid conflict between you and your staff at work and stay out of the Employment Tribunals or courts; the second is a collection of 10 documents that I think you should find useful when it comes to dealing with your employees.

Icons Used in This Book

If you flick quickly through the book you'll notice some little icons in the margins. These are there to highlight suggestions and cautions when it comes to dealing with employees.



This icon is a target to aim for – an insight into best practice that can help you to get the best from an employee or a situation.



Make a note when you see this icon – it highlights an important piece of information that you'll do well to take in.



Stop and read this information to steer clear of mistakes and pitfalls that are common in employment law – following my tips and remembering the important pieces of information will help you to avoid these problems.



The icon that speaks for itself! It highlights points of law that you'll want to become familiar with.



If you like as much in-depth information on a subject as possible, make a point of reading this material.

Where to Go from Here

The law is always a very serious matter and it can be quite daunting so I've tried to make this book as easy to read as possible. While it really does help you to avoid the pitfalls if you've got the law under your belt before you take on employees, you don't need

to read this book all at once. If you're planning to recruit start with Part I; if you already have employees and some are having babies, Chapter 8 is the place to start. If you're worried about how to set up a disciplinary procedure turn to Chapter 15. You can read the bits you need and then dip in and out of the rest as and when you've got the time. Don't forget though that there's only room for the very basic information in a book this size so follow up the leads I've given you for more information and advice. There are Web site and helpline numbers throughout.

Part I

Hiring and Firing



"Come now, Mr Scrimfold, aren't you a little too old to ask your parents to help you with your contract of employment?"

In this part . . .

I explain who has rights under employment law. I take you through the process of recruiting, from advertising or using an agency, to interviewing and checking references and convictions. The contract between you and your employees may be in writing, or some may be written down while the rest is implied. Written down or not, a contract exists from the moment you make a job offer and the candidate accepts it; so if you're about to employ your first member of staff or replace someone who has left, this is the place to start.

I then look at why you might want to get rid of employees by making them redundant, because you don't have any work for them, or firing them because they're incompetent or have been guilty of some unpardonable behaviour.

The idea is to stay on the right side of the law at all times so that you don't end up in front of a tribunal panel accused of unfair dismissal, discrimination, or having selected the wrong person to be made redundant. Be forewarned!

Chapter 1

Staying on the Right Side of the Law

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In This Chapter

- ▶ Understanding your employees' rights under the law
 - ▶ Knowing who's an employee and who isn't
 - ▶ Determining the kinds of workplace policies you need to draw up
 - ▶ Managing without a whole lot of support systems
-

As a small business employer or in the management level of a small company, you may feel that staying on top of the law is just too much hassle. As long as you don't do anything blatantly illegal, everyone should be content. After all, you've got a business to run and you have to make a living. While that's true, if you get on the wrong side of the law the results can be devastating. You can end up seriously out of pocket because a tribunal or court finds in favour of a disgruntled, or even worse a seriously injured, employee and awards large amounts of compensation against you. Tribunals can award anything from a very basic amount up to a maximum of £56,800 in unfair dismissal cases (see Chapter 4). But if they decide that you've discriminated against someone (see Chapter 13) when you've dismissed them or made them redundant there's no cap on the amount of compensation they can award. If they find that you didn't follow, to the letter, all the new dismissal and disciplinary procedures that came into force in October 2004 (see Chapter 15) they can increase the compensation they order you to pay and there's no upper limit in the case of a workplace accident or illness claim (covered in Chapters 10, 11 and 12). Many small businesses can't recover from that kind of a blow.

But it isn't only the financial penalties that can be seriously damaging. When a dispute or an accident occurs in the workplace it affects everyone, not merely the employee directly involved. People lose trust in an employer if they see that things aren't run properly and safely, or if the employer has no real respect for workers' rights.

Employers frequently struggle to find suitable employees or have to train applicants from scratch. You can't afford to lose employees because they have no confidence in the way your business is run. It costs a lot of money to recruit staff and train them. The more often people leave, the more time you spend fire-fighting instead of improving performance and increasing productivity.

Small business owners are always worried about the amount of legislation that applies to them. There are a lot of laws, regulations, and codes of best practice out there, and staying on the right side of the law can be a tough job. Knowing what the law says before setting up a business or before employing your first member of staff is important, and if you start out with all the information you need, it's not as difficult or expensive to apply the law as you go along – and take it into consideration each time you make a business decision. Changing your habits later on can be much trickier.

Good employment practices encourage good employee–boss relationships. In turn that breeds loyalty and staff stay. People who are loyal work better. They have the interests of your business at heart because you have their interests at heart. Everyone's a winner.

Cutting Through the Red Tape

'Red tape' is a term that conjures up images of bad regulations, strangling your business and making your life more difficult. Commentators sometimes blame the employment laws in the United Kingdom for putting too heavy a burden on business owners, but they're really intended to protect employees from bad employers, not from good ones. These laws also help employers protect themselves.



The law isn't a burden to good employers who want to do right by their employees; it's a source of clear guidance that helps you to keep employees instead of losing them to better employers. When hard workers with the skills you need seem hard to find, your business's success depends on your reputation as a desirable employer; rather than seeing the law as just so much red tape, think of it as a guide to becoming that kind of desirable employer.

Business people most often cite the National Minimum Wage and family friendly legislation about maternity, paternity and parental leave as causing them difficulties. Yet motivated employees who feel fairly paid and who know they can take the time needed to take care of family matters can increase your company's productivity so it's well worth your investment in sound policies. You can