

7.1 Selecting your team

PRODUCT
DISTRIBUTION
PROMOTION
PEOPLE
FINANCE
RISK
GROWTH

- > *The legal definition*
- > *The right employee*
- > *Terms and conditions*
- > *Employment contracts*
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There are several things you should check before deciding to take on your first employee. A little homework will make the process easier, cover all the legal aspects and help you to achieve your goal of increasing your productivity and profitability.

What is the legal definition of employment?

A work arrangement is classed as employment if you offer someone work on a full-time, part-time or casual basis and

- > pay them a salary, wages or some kind of remuneration
- > tell them the hours and conditions of work
- > give them instructions on how the work is to be done and in what order.

Making arrangements which try to get around the obligation of an employer (such as a cash-in-hand situation) could get you into serious disputes through the Industrial Courts or under Workers Compensation legislation. If a court decides that your relationship was an employer–employee relationship, the penalties and legal costs could ruin your business.

Can you afford to employ?

Do your sums. How will the extra person make your business more productive and profitable?

You should prepare a new operating budget and cash flow projection which takes account of all additional costs and allows for the extra revenue to be generated from sales. Consult your accountant about how this should be done.

In order to work out what taking on an employee will mean in money terms you should ask:

- > Will the employee be able to contribute immediately or will there be hidden costs? It can cost about \$5,000 in recruiting, downtime and training of a base-grade employee.
- > Will the projected long-term gain repay the investment in the person? Case studies show that trained employees tend to stay with their employer longer, minimising turnover costs.
- > How much of your own productive time will be spent on supervising the new employee?
- > Are you able to take advantage of government subsidies to offset the costs of training by taking on someone who is long-term unemployed, over 50 or with any other subsidy arrangements?
- > Will the person you require be taken on as an apprentice or a trainee and what will that mean in terms of training commitments and training subsidies?

- > What cash reserves do you estimate as necessary to meet the wages and on-costs until the employee is fully productive in your business?
- > Are you aware of all the operating on-costs which are added to wage costs, such as employer funded superannuation, workers' compensation insurance and leave loadings.
- > Does taking on an employee mean that you will have to upgrade your premises to meet occupational health, safety and welfare regulations and codes?
- > What costs will you have to meet in order to provide physical accommodation for an employee, such as work stations, ramps, plant and machinery, motor vehicle, tools and manuals?

Think these things through first.

What sort of employee are you looking for?

If you decide to go ahead and employ, you will need to spend some time working out what sort of employee you are looking for.

Describe the job, and write down the formal qualifications, skills and attitudes that a suitable candidate would bring to the job. This is called a Job and Person Specification, and it is an important tool in helping you select the right person for the job.

If you have a clear picture in your mind of what you need from the employee it will help you frame your advertisements to attract the right person.

- > What is the level of the work to be done? Do you need a qualified person, a trainee or an apprentice, or can the work be done by an inexperienced person with some training and coaching by you?
- > What kind of skills do they need to do the job? Be realistic – list the technical skills, customer service skills and personal skills of the employee you are looking for.
- > Are there any special physical characteristics that must be met before the person can do the job? Colour blindness, for example, can bar a person from employment in some industries. If the job requires long periods of standing and hard physical labour, then what fitness requirements will the new employee need to meet? Will they need a health check? This could be important in protecting you from claims under workers' compensation.
- > What previous training or qualifications will they need to do the work?

What are the terms and conditions of employment?

Employees can be hired on a part-time or full-time basis, in a temporary, casual capacity or as “permanent” staff, or may instead be offered a fixed term employment contract. Temporary assignments are generally brief in duration and employment agencies are commonly used to find such staff. Casual employment (where an employee’s working hours may be erratic and continuing employment uncertain) may be the best solution where an employer doesn’t wish to commit to a permanent arrangement.

If employment terms and conditions are covered in an industrial award then you will need to be sure of your facts before you place an advertisement. Do you know whether an award covers the job you have created? Check with your trade association, Business SA or the Department for Administrative and Information Services - Workplace Services Division for more information. This information must be given to employees before you take them on.

Are you going to set any special and additional conditions? If you require your employee to meet special conditions you should put these in writing and these must be signed before the employee is hired. Seek specialist advice when drafting these.

If you are going to require an apprentice or trainee then you should find out as much as you can about the Contract of Training arrangements before you take on anyone.

Advertising

You should consider discussing your employment needs with your local employment agency where you can get informed advice on selection procedures and any wage subsidies you might be eligible to receive to assist in staff training.

If you want to advertise through the press, consider these things. You should be as precise as you can about the description of the work to be performed and put in details of the duties, the qualifications and the work experience required. Also include how you want the applicants to present themselves to you. Do you want them to phone for an interview, call in person or write an application? Do you require references? Are you willing to send them out a job and person specification and how do they apply for this? What about the closing date?

How will you limit the number of applications you want to screen, and how many are you prepared to short-list for an interview? Although recruitment agencies can be expensive, one advantage of using them is that the applicants are screened for you and you will only have a small number to choose from, saving you time and effort. If you are asking them to apply in writing it would be courteous to acknowledge the application and then to inform the unsuccessful applicants when the job is filled. If there are too many for this, consider putting in a brief thank you advertisement to notify that the position is no longer open. This creates goodwill for your business.

What must not be included in job advertisements

It is against the law to discriminate against any person on the grounds of age, marital status, pregnancy, gender, physical ability, race or creed. Words for advertisements must be carefully

chosen to avoid breaches of the law. Use the term person instead of male or female and avoid using he or she where it might imply that only a person of that gender should apply.

There are some exceptions to the general rulings and it is possible to target some positions for special groups on occasions. The Equal Opportunity Commission is able to advise you on the wording if you are unsure of your grounds for specially selecting one type of person over another. If you want a junior person and will be paying junior rates then the advertisement must say this.

Disabilities

If you are unsure whether a person may have the strength or health to perform the work comfortably and safely you have the right to ask for a medical check.

Colour blindness, medication, hearing, eyesight and hidden problems such as heart and spinal conditions might be critical if the work involves lifting and carrying, operating machinery, driving or climbing. Checking these could save you from legal problems later.

Interviewing candidates

There are different questioning techniques that can be used and a basic knowledge of these can help you work out the best method of getting the information you want.

A closed question is one which will only get you a ‘Yes’ or ‘No’ answer. Use open questions or requests such as, “Tell me about your experience as a retail assistant,” rather than closed questions such as, “Have you ever worked in a retail store?” Open questions will give you much more information about the ability of the applicant.

You can also ask some very direct questions about how the person enjoys work, or even what they least enjoy and in what areas they would like further training. An interest in learning more about the job can provide you with a clue about the motivation to do the work.

Some very useful skills can be gained through community work or involvement with sporting and leisure organisations, so remember to ask about these. If the person has been involved in an activity that might give them good team skills and some leadership ability, then you will get a better view of their potential ability and commitment to the job.

If good manners and good personal presentation matter in the work, then watch how the applicant greets you and whether they treat your questions with courtesy. Of course, they may be nervous, particularly if this is their first job interview, so a smile and a friendly greeting will help them feel more comfortable. Always introduce yourself by your full name and the way that you would like to be called on the job.

Ask them about the people who have provided a reference and check back with referees, particularly if you are trying to make a difficult choice between two or three candidates who might all make suitable employees.

Always leave some time for the applicant to ask you questions about the job. It is their opportunity to find out if they would like

to work for you, as well as yours to find out if you would like to work with them.

Make sure that you give them the full information about rates of pay, hours and any special conditions at the interview, or give them some notes they can take away—this reduces the risk of misunderstandings later.

Work experience

Another way you might get good applicants is to take on students for work experience, but you must make sure that this is covered by workers' compensation insurance and that you are not going against union rules.

There is a difference between work experience placements and try-outs which should be paid for by casual or other wage arrangements.

If in doubt, seek advice on the legalities with the Department for Administrative and Information Services, Workplace Services Division, the Office of the Employee Ombudsman or Business SA.

Employment contracts

A fixed term employment contract may be used where there is a job of a defined duration to be done, resources are limited, or where other factors make it desirable to agree on the duration of employment at its outset. Fixed, short-term employment contracts can be offered directly to an employee or through an employment agency.

An employment contract is an agreement (usually written) between an employer and an employee that describes the terms and conditions of employment. An employment contract may be short or long, simple or complicated, and may be drawn up by a solicitor.

A written employment contract can provide some benefits including:

- > greater certainty in the event of either party wishing to terminate employment
- > it can provide an employee with greater job security, in the event that there are changes in the leadership of the organisation
- > a fixed term contract can provide a focus to an employee to achieve outcomes in a defined timeframe
- > written employment contracts can help employees understand what is expected of them by defining working hours, codes of behaviour, confidentiality issues and the like
- > entitlements can be clearly set out by defining terms and conditions
- > an employment contract can restrain a former employee from using confidential information unfairly.

However, you should also consider the limitations of employment contracts.

- > There is an expense in time and perhaps legal fees in drafting the document
- > Both the employer and employee may prefer a more flexible

working arrangement

- > Fixed term contracts often prompt an employee to look for another job towards the end of the contract term unless arrangements are made to “roll over” the contract or make the employee permanent
- > Some potential employees may be unwilling to sign an employment contract if they feel its terms and conditions are unduly demanding.

If you are not sure whether a written employment contract is the best arrangement for your business, a Business Enterprise Centre or Regional Development Board, a solicitor or recruitment consultant may be able to help.

A letter of offer

Whether you decide to offer a detailed employment contract or not, it is a good idea to provide a letter of appointment. A letter of offer of employment may have the force of a contract. When accepted it will bind the employer and the employee to act in certain ways.

This letter should contain

- > the job title
- > a brief description of the role or what is expected
- > details of the agreed salary
- > hours of work
- > a reference to the appropriate award, if applicable
- > superannuation, annual leave, long service leave and sick leave entitlements
- > any overtime requirements
- > the notice required in the event of termination
- > confidentiality clause
- > probation period



How much should I pay my new employee?

Employers are often unsure how much to pay a new recruit. It may be that the role is a new one in the company, or the employer may be concerned about overpaying or underpaying relative to prevailing market rates.

Most employers understand the need to be competitive with remuneration. Paying too little makes it difficult to attract good staff. Paying too much erodes profitability. You can determine an appropriate level of salary for a new staff member by

- > checking award conditions
- > talking to other employers in your industry
- > asking your industry association
- > consulting a remuneration adviser
- > checking employment advertisements for similar jobs
- > asking the prospective employee about their expectations

Salaries can be made up of various components. These components may include a base salary, which is a set salary paid regularly, according to the hours worked, and/or commission. Commission is usually based on the successful achievement of set sales targets or volumes.

'Commission only' arrangements may be applicable to the kind of employment you are offering. 'Commission only' remuneration is solely based upon the successful achievement of sales. Seek advice before working out the terms and conditions of this so that both you and prospective employees know and can agree in writing, to the arrangement. This way there is no room for misunderstanding.

Enterprise bargaining

Enterprise bargaining is a way of making industrial agreements where employees and employers agree to terms and conditions of employment that apply only to that particular enterprise or business. If the employment you are offering is not covered by an industrial award, or if you want to have special employment conditions built into the arrangements then you might wish to check whether enterprise bargaining would suit your business situation. Australian Workplace Agreements can also be applicable to very small businesses.

Websites

Office of the Employee Ombudsman
(www.employeeombudsman.sa.gov.au)

Office of the Employment Advocate (www.oea.gov.au)

Department of Administrative and Information Services,
Workplace Services Division (www.eric.sa.gov.au)

Australian Taxation Office (www.ato.gov.au)

Business SA (www.business-sa.com.au)

Government telephone numbers

Traineeships and apprenticeships 1800 673 097

Wages and awards 1300 365 255

WorkCover 13 18 55

Tax instalment deductions 13 28 66

Superannuation guarantee 13 10 20

Other useful telephone numbers

Business SA 8300 0000