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startscale
supercharging your start-up

**What do I need to know before
hiring?**





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This article in our Start to Scale Essentials series provides answers to the top ten questions we encounter from entrepreneurs who are hiring for the first time.

How do I know if I am employing rather than contracting?

Oddly, it's not as straightforward as it may seem. An employee relationship is governed by a contract of employment and has a number of key features including: personal service; mutuality of obligations (an obligation by the employer to provide work and an obligation on the employee to undertake work); and control (for example, the employer generally dictates how and when the work is carried out). The rise of the gig economy has seen an increase in the number of individuals engaged by businesses on more flexible terms, often as self-employed contractors or as casual workers. Care must be taken to ensure the terms of any contract reflect the reality of a situation, as miscategorising this can result in legal challenges and claims.

How should I go about recruiting an employee?

The recruitment process generally involves creating a job description and advertising the role, shortlisting applicants, considering whether aptitude tests would be useful, agreeing the selection criteria and holding interviews. At interview, candidates should be marked against the selection criteria, be asked broadly the same questions, and not asked any questions concerning details of their personal life, unless directly relevant to the requirements of the job. To do otherwise, opens the company up to potential claims. Hire fast; hire twice... so do take care to ensure that your growth ambitions are not driving hiring decisions.

What must an employment contract cover?

A copy of the main terms and conditions of employment must be provided to the employee on or before their start date. It is sensible to have this signed and returned. A statement of particulars (which generally forms part of the employment contract) must, by law, contain a number of matters including amongst other items: the date the employment started; whether there will be a probationary period and, if so, its duration; the job title and job description; the place of work; the salary and how often it will be paid; the pension arrangements; the hours and days of work and whether these are variable; holiday entitlement; termination and notice periods; details of any training or other benefits; and disciplinary/grievance procedures. It is also important to include provisions covering intellectual property rights, confidentiality and restrictive covenants in order to protect the value of your business.

Do I need to obtain employers' liability insurance?

Employers are required by law to have employers' liability insurance to compensate an employee who is injured at work. Cover must be for at least £5 million and come from an authorised insurer. In addition, the insurance certificate must be displayed in the workplace.

What do I need to know about payroll?

You will need to register as an employer with HMRC. Through PAYE online, you can send payroll reports to HMRC, access tax codes and notices about employees, and receive alerts from HMRC if you are late in reporting or paying an employee. For early stage businesses, it is often easier to use an outsourced solution to take care of this for you.

Will my business need to offer an employee pension scheme?

Nearly all employees need to be automatically enrolled into a pension scheme, with contributions paid by both the employer and the employee. Group schemes are available such as NEST, the government's workplace pension scheme.

What should I do on an employee's first day?

Prior to the employee starting work, you need to verify the employee has the legal right to work in the UK. You do this by conducting a "Right to Work check". You need to date and keep copies of the identity documents checked. Additionally, for tax compliance, you need to obtain the employee's P45. You should also take details of the employee's next of kin to be contacted in case of emergency and make sure they have returned a signed copy of the statement of employment particulars. If there is a probationary period, explain how and when their performance will be assessed and how their position will be confirmed, if they are successful. During the induction process, set performance objectives and organise any relevant training.

What health and safety duties do I need to comply with?

There are a range of common law and statutory health and safety duties under the Health and Safety at Work Act 1974 and the related regulations and codes of practice that employers must comply with. Generally, employers are required to provide and maintain a safe place of work, a safe way of working and safe plant and machinery, with employers also being subject to liability for any negligent acts carried out by employees during their course of employment.

Will data protection legislation apply to me as an employer?

Employers and employees both have obligations relating to data protection, and under GDPR there are substantial fines for a failure to comply. Employers have to provide employees with information about how their data will be processed, including for how long it will be retained, and this will often be set out in a Privacy Notice. It is important to keep up-to-date and accurate records for all employees.

What do I need to know about immigration?

Only British and Irish citizens have an automatic right to work in the UK. If you are employing someone who is not British or Irish, check if they already have a visa which provides an unrestricted right to work, for example a spouse visa or EU Settled Status. If they don't have their own visa, you may be able to sponsor them under a skilled worker visa or a scale-up visa. The skilled worker visa is the standard UK work permit and the scale-up is a brand new route designed for fast growing UK businesses. To sponsor an employee,

you must first obtain a sponsor licence. Employers are strongly recommended to apply for a sponsor licence as early as possible so as to avoid delay in recruitment plans.

Shepherd and Wedderburn's corporate team combines industry knowledge and extensive experience with technical expertise, and is on hand to assist businesses at all stages of their growth journey. The team's Start to Scale initiative, comprising written guides, video content and in-person events, addresses some of the specific challenges affecting start-ups and scale-ups throughout their lifecycle to give entrepreneurs the insight they need to scale. Visit shepwedd.com/start-to-scale for more information, or contact Neil Maclean, Partner in Shepherd and Wedderburn's employment team, at neil.maclean@shepwedd.com.



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