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Taking people on

Many businesses start with just one person - the person with an idea or dream. It is unusual for businesses to carry on without involving other people within the business. Owners of new and expanding businesses are often much too busy to read a lot of theory, and as a result, can have made some interesting decisions on the basis of 'everybody knows'.

Here are some common questions and misconceptions raised on the Irenicon hotline.

1. Surely small businesses are exempt from employment legislation?

Nothing could be further from the truth. There were limited exemptions for small businesses, but they have been progressively removed, and small businesses are no more exempt from employment law than from any other law.

2. If I don't have any staff I can't have any employment law problems can I?

The minute you start to pay someone to do some work for you, whether or not you view them as an employee, you can find yourself with obligations and legal responsibilities. They come under a number of headings:

a) PAYE. Even self-employed contractors with their own limited companies can turn out to be your responsibility when it comes to tax and national insurance. That does not necessarily make them employees, but you can find the taxman coming to you for their tax and national insurance. You can contact the free employer's helpline on 08452 6070143 or check the Revenue's web site for leaflets - deducting tax from sub- contractors (IR35) is covered at

<http://www.hmrc.gov.uk/ir35/faq.htm> and advice on taking on a new employee <http://www.hmrc.gov.uk/payee/employees/start-leave/new-employee.htm> .

b) Workers have rights. Even people who have never been employed by you (whether or not you are deducting tax and national insurance from what you pay them) have rights if they undertake work for you. One way to look at employment law is that everybody has some rights and some people have additional rights. All workers are protected by law from or have legal rights in relation to: discrimination (sex, marital status, race, disability, sexual orientation, religion or belief), national minimum wage, companions at disciplinary meetings or meetings that will terminate their contracts for personal service, working time regulations (holiday and hours worked in a week), health and safety just for starters. You can get free advice from ACAS 08457 47 47 47 or you can download free leaflets from their web site – <http://www.acas.org.uk/index.aspx?articleid=1461>

c) Employees of other organisations can become your legal problem. Not only do they have potential rights against you as workers (see b) above), but they can become your employees (or a drain on your cheque book) even if you have never met them. This is because you can find yourself tangled up in the transfer of

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undertakings regulations when you change your service provider. The rules on transfers (known as the TUPE regulations) are complex and seem irrational to the uninitiated. They also affect you and your staff if you lose a contract yourself. If you are buying services (even cleaners) or selling services you should take advice before you enter into a contract or terminate a contract to avoid expensive mistakes.

3. Don't people have to work full time or for a set number of years to have rights?

Employees' contractual rights begin the minute you offer them a job. The law specifically prohibits discrimination against part timers and the days of lengthy qualification periods are long gone. Many of the new and 'expensive' rights start before an interview. Contractual rights begin when you make an offer, and ordinary unfair dismissal rights begin at one years qualifying service (which may be earlier than you think if you had a Saturday worker, or contract worker whose service will probably count towards their first year)

4. Surely if I am doing the right thing and I am fair I can't get into trouble?

Employment law is increasingly concerned with how things are done. It ain't what you do so much as the way that you do it. When it comes to discipline, dismissal, redundancy and many other areas, it is vital to adopt the right method or you can find yourself facing an automatically unfair dismissal. There is no exemption for small employers and no "get out of jail free card" for new businesses. Even if you never heard of a particular law, it applies to you.

5. This is all very depressing - what is the point of having workers and staff then?

The point of having workers and staff is to increase your profitability. Many employers spend more time choosing their company car and its maintenance contract than they do recruiting and contracting their staff. The reality is that staff get their rights from 'statute law' which is to say they have them whether you or they know about them. Employers get a large number of rights from what they contract for in the first place. If you don't chose the right people and contract them in the right way, you are more likely to run into trouble - just like choosing a car with your eyes shut. You can manage and improve performance in people and contracts sensibly for what you need - but it is far easier to do this at the beginning - before you run into trouble.

6. Staff can just do what they want these days anyway - it's not fair.

Having sorted out contracts and handbooks, communication is the key to performance management. Many employers ring our hotline when they are very cross with their staff and convinced that their employee is being deliberately unhelpful. This is sometimes the case, but as often as not, there is a problem with communication. And not everyone is working on the same priorities or information. It is important, wherever possible, to be clear and consistent about what is wanted. A large part of a contract of employment is 'custom and practice'.

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Employers who tolerate bad performance over a long period of time can find it extremely difficult to raise standards again - it can be done, but it is so much easier to keep things right, than change them when they have gone completely wrong.

There are many sources of free advice on employment - including the websites we have linked to above. Irenicon's advice is not usually free - we are a commercial organisation. We always recommend that potential clients take whatever free advice they can get first.

Irenicon offers an initial 20 minutes free advice to new clients - you can call our hotline, or email/fax our advisors with one query that takes up to 20 minutes to deal with. Email advice@irenicon.co.uk, fax us on 08452 303060 or telephone 08452 303050 with your query.

Meanwhile [click here](#) to subscribe to our free newsletter.
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