BY
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Best HR Practice must start before the recruitment stage

Over the next few editions of Accountancy Plus, Adare Human Resource Management will examine the Life Cycle of the Employee and provide helpful insights and best practice advice for employers. In the first of the series, Derek McKay, Managing Director of Adare Human Resource Management looks at Attraction, Recruitment and Onboarding.

Derek McKay, Managing Director, Adare Human Resource Management, leading experts in Employment Law, Industrial Relations and best practice HRM.

Attracting the right people

After a decade of riding the Irish economic roller coaster, businesses are now finding it increasingly difficult to retain and attract talented people. This challenge is affecting every sector of the Irish economy but it is a particular concern for professional services like accountancy.

Unemployment is now at just 5.1%, its lowest level in years. Even compared to this time last year there has been a decrease of 1.7%, highlighting a very competitive marketplace. According to our ***2018 HR Barometer***, an extensive research report on trends in human resources amongst Irish companies, the number of employers expecting staff turnover in excess of 15% of headcount has increased dramatically from 11% to 17%.

Another stark finding from our research shows the average cost of recruiting a new employee is now over €13,000, a significant investment by any organisation.

To ensure your organisation is front of mind with prospective employees, it is important that they recognise and know it and they identify with your 'employer brand'. Organisations who attract and retain the best people will have a well-defined brand. Without having a a clearly articulated employer brand, organisations will not be maximising their recruitment resources, whether this is their HR staff, recruitment agencies or advertising spend. It is important that an employer's vision and ethos is clearly communicated to potential employees and resonates well with them in terms of their own ambitions.

Are there risks associated with recruitment?

Apart from the cost and time that goes into recruitment, there are other potential pitfalls that organisations need to be mindful of when shortlisting or interviewing candidates. The Employment Equality Acts, 1998 – 2015 prohibit discrimination by employers on nine grounds, including gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller Community. A crucial consideration for organisations is that the Act also prohibits discrimination during recruitment, so it covers prospective as well as current employees.

The Workplace Relations Committee (WRC) has previously made decisions against organisations based on this; one such case last year involved a finding against a disability charity who was ordered to pay €8,000 compensation and apologise for discrimination against a prospective employee on grounds of disability. The WRC found that the job application by the complainant was treated inconsistently by the charity and the selection process had not been transparent. The complainant, who had dyslexia and autism, had applied for a supervisor position with the charity. As part of his application he disclosed that he had dyslexia and Asperger's Syndrome. He explained that he had been shocked that he had not been shortlisted for the position given his experience. After making inquiries, he was told that there was a miscalculation in the assessment of his application that resulted in him not being brought forward; something the complainant did not believe. After he brought the case forward to the

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WRC, they found erasures and revisions on the final marking sheet for applications and found that the complainant had been treated in a manner inconsistent with the selection process.

There have also been cases brought before the WRC in relation to employees going forward for internal promotions but refused on the basis of their age.

It is important to note that once it has been established that there is a prima facie case of discrimination, the burden of proof then lies on the employer when engaging with the WRC, to demonstrate that discrimination, direct or indirect, did not take place. Therefore, organisations must be able to demonstrate, as required, the recruitment process undertaken was both fair and in line with legislation. This includes from the advertisement process, to the shortlisting templates and process used through to the interview questions and scoring/ assessment process.

Understanding different types of contracts and the risks in getting it wrong

It is also important that the organisation familiarises itself with changes and developments in employment legislation and changes to contract types. There has been a lot of talk recently about zero hours contracts and how much protection is afforded to employees on these types of contracts.

Under the terms of the Employment (Information) Acts 1994 – 2014, every employee commencing employment after 16th May 1994 must be provided with a written statement of terms and conditions of employment within 2 months of their commencement with an organisation.

Those on Fixed Term Contracts also have protections under the Protection of Employees (Fixed-Term Work) Act 2003. They cannot be treated any less favourably than those on permanent contracts in terms of sick pay, holidays, overtime and redundancy, unless there is an objective justification, which can be difficult to demonstrate.

Also, an employer cannot continue to offer fixed terms contracts indefinitely. Since July 2003, if an employee has been on two or more fixed term contracts and the total duration of these contracts is four years, after this point, if the employer wishes to continue the working relationship, they must offer a permanent contract or contract of indefinite duration to the employee, unless there are justifiable grounds for fixed term only.

Ensuring your organisation from the outset is clear on the type of employment being offered and the legislation governing that contractual relationship is key. It is important also not to confuse or blend contracts OF service (employees) with contract FOR service (contractors).

Signing on the line

Before formally offering a job to a candidate be sure to follow through on all your checks and balances. Quite often employers are in a rush to get a new employee in place and settled but it's important to check references and also qualifications. Other considerations such as requiring a driving licence or the requirement for Garda Vetting may also form part of the conditions of employment for certain roles.

Neglecting or forgetting to issue a signed statement of terms and conditions, within the two months, can give rise to dissatisfaction with the employee, ambiguity as to what the agreed terms of employment are, as well as giving rise to potential claims.

A decision by the WRC in November 2017 found in favour of an employee, who had asked on several occasions for a contract but never received one. While the complainant accepted that there had been no changes to the terms and conditions during his employment, he still did not receive anything in writing. At the time, the employer was running the business on his own and had put forward a defence that he was too busy "to get around to it". But the WRC found under the Terms of Employment (Information) Act that the employer did not comply with providing the necessary documentation in the 2-month period and the complainant was awarded €800.

Onboarding new employees

Also known as induction, onboarding is about ensuring new employees understand and adjust to their new surroundings; the

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culture and performance aspects of their new roles. As previously mentioned, we are now in a very competitive employment market so getting employees settled in quickly is key to providing them with stability and assurance that they are valued by the organisation and provided with clear scales for career growth and development.

Also, from an employer's perspective, the quicker a new employee is welcomed and settled, the sooner they can contribute to the overall success of the organisation.

An important part of any new start is how they perform during their probationary period, usually the first six months. The duration of this period must be laid out clearly in the Terms and Conditions of employment.

Any employee on probation has a lot of the same protections as those who are employed by the organisation for greater than twelve months and they are entitled to fair procedure and natural justice in terms of termination. The probation period also affords some protection for employers as employees who have less than 12 months' continued employment do not have sufficient service in general, to take a case under the Unfair Dismissals Acts. However, what is often overlooked by employers is that employees with less than a year's employment can take an employment claim under the Industrial Relations Act, as there is no service qualification under this Act. This can lead to misunderstanding on the part of employers where they may believe they can terminate an employee's contract of employment without following due process and not risk reprisal. Other protections are provided to employees during periods of probation such as those afforded under the Maternity Protection Acts, Employment Equality Acts, the Safety, Health and Welfare at Work Acts to name just a few.

Each year, there are cases adjudicated by the WRC in relation to the Industrial Relations Act. One such case where the WRC found in favour of the complainant was a case that involved a general assistant in a restaurant. While it was noted that the complainants (ex-employee) overall behaviour contributed towards her dismissal, ultimately the employer did not afford her with fair procedure. The basis of the decision was down to the WRC ruling that the employer did not provide the complainant with a written warning and an opportunity to respond to the complaints made against them. Employers must follow correct procedures when dealing with probation and disciplinary issues and document the process correctly, or risk facing possible claims and compensation pay-out.

Regardless of the size of your organisation, whether you employ 5 or 50 people, you are obliged to operate in accordance with employment legislation. The legislation and case law is continuously evolving, particularly as the type of work evolves. At Adare Human Resource Management, we have an expert team that advises our clients on a wide range of HR and employment law issues and ensure clients are not just compliant with employment legislation but strive to follow best practice.