

DESIGN SKILLS ALLIANCE

A free training guide for design professionals

A guide to employment law for designers

In this guide we will cover:

- Preparing for disputes in advance
- Sick leave
- Disciplinary and grievance procedures
- Redundancy
- Flexible working
- Equal opportunities and discrimination
- Maternity leave

If you're starting, running or working in a small creative business, employment law is possibly the last thing on your mind. It's also tempting to think that employment law only really affects larger companies, those with lots of employees, departments and dedicated human resources people; those which have the kind of procedures, forms and policies that your fleet-of-foot, family-style business can do without.

In reality, that's not the case because employment issues can arise in any business, no matter how small and no matter how friendly and close-knit the owners and employees might be. With that in mind, it is worth having an awareness of the kinds of situations that can arise, along with policies in place to deal with them fairly and lawfully.

PREPARING FOR DISPUTES IN ADVANCE

Clearly, no one wants to spend their time worrying about potential employee wrangles or legal squabbles, but it is unwise to ignore the possibility that something may arise, or to assume that you can tackle problems yourself when it does.

When problems do occur, it is good to be in a position to act promptly, efficiently and clearly, as well as in accordance with the law. Ignoring things or hoping they will go away can cause issues to blow up and people to become litigious, especially if they feel they are being ignored or not taken seriously.

Being prepared to respond to employment problems by having policies in place means you can safely stop thinking about them in the meantime. As well as this, employees and job applicants increasingly want to see the detail of a company's position on various aspects of employment, so having these policies in place is a selling point, as well as good practice.

It's a good idea to get some specialist help on this: using a human resources consultant to help you draw up your policies and consulting with either an HR specialist or an employment lawyer before making any decision on how to deal with a dispute. Most consultants will offer their services on a time-based rate, so you should only be paying for the time you need them.

UK DESIGN ALLIANCE FOR **GOOD DESIGN PRACTICE**

Free advice is provided for both businesses and employees by the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#), through its national helpline on 08457 47 47 47. ACAS also offers conciliation, mediation or arbitration services that may help to solve disputes, as well as training for employers and employees.

SICK LEAVE

All sick leave needs to be monitored, not just long term sick leave. Employees who take several Fridays and/or Mondays off may be doing so due to stress or other related problems. Long term sick leave can also become involved with the Disability Discrimination Act in certain instances – if, for example, an employee cannot make it to work due to a disabling condition covered by the DDA, you may be obliged to consider (although not necessarily adopt) alternative working arrangements for them.

Needless to say, one of the most important elements of a business' success is its people: fit and happy employees are more productive. And aside from the commercial benefits, employers have a duty of care to promote the health and wellbeing of their employees. So a good starting point is to consider what you can do to reduce the amount of people becoming ill in the workplace, looking at areas including:

- **Duty of care** – it is the responsibility of the employer to ensure that the level of workload is acceptable and that overtime is kept to a minimum - regardless of whether the employee is willing to do excessive overtime
- **Working environment** – is it 'healthy'? Are adequate lunch and rest breaks encouraged? Are subsidised gym memberships offered? Is private healthcare offered, or medical checks or an employee assistance programme? All of these measures will help to promote a healthy workforce
- **Policy** – write a comprehensive absence policy for insertion in the staff handbook and communicate it to staff from the start of their employment
- **Monitor absences** – do you have a clear indication of who is absent, when and for what reason? With this you can take steps to address the frequent absentees
- **Return to work interviews** – these are an excellent way of helping employees who are genuinely ill and deterring those who are not
- **Discipline** – if an employee's sickness absence levels are so high that it is affecting their own and their colleagues' work, then you may be able to begin the disciplinary procedure as they are unable or failing to fulfil the proper requirements of their role. Those whose illness is covered under the DDA may be protected. However, if you can prove that you have made reasonable adjustments and done all you can to allow them to work to an agreed standard, then you may still begin the disciplinary procedure. In such instances, it is suggested that advice is sought on individual cases.

DISCIPLINARY AND GRIEVANCE

Employees and employers involved in a dispute that has resulted (or may result) in a disciplinary or grievance procedure may benefit from calling the [ACAS](#) free telephone helpline on 08457 474747.

Even though the ACAS Disciplinary and Grievance guidelines are no longer statutory, you still need to show a good reason for failing to follow them should a dispute reach the stage of a formal procedure. The ideal scenario is to avoid the need for formal D&G procedures altogether by practising good performance management. Here are some pointers to help:

- **Policy** – ensure you have clearly set out the policies and procedures for D&G, and that everyone is aware of them
- **Communicate** – are you sure your staff are aware of the levels of conduct and performance expected of them? Keep the channels of communication open

- **Put performance measurements in place** – do you have job descriptions? How do your staff know what is acceptable or unacceptable performance? It is up to you to set the standard
- **Document everything** – even informal chats, make notes in your own note book if nothing else. You can then show evidence of a clear path that has been followed, if required
- **Start the process informally** – often performance issues are simply a question of misunderstanding. If you explain the business effects of people's actions they may improve without recourse to more formal procedures
- **Mediation** – an external mediator will remain impartial and objective. They may be able to settle a dispute before it reaches the formal stage
- **Inform** – ensure that individuals involved are aware of the potential consequences of formal meetings. They need to know that they may receive a sanction up to and including termination of their employment if they do not improve their performance
- **Assess** – use of formal process is not an unstoppable train; you can get off at any point along the way. Just because someone has been given a verbal or written warning, doesn't mean to say they will inevitably be asked to leave. These processes are intended to highlight issues and create a plan to help them achieve the necessary targets
- **Tools** – consider what tools are available to help them succeed such as a mentor programme, books and training.

REDUNDANCY

This has particularly affected the design industry in the past year. Although the formal process is important, do not overlook the more human aspects of caring for the wellbeing of both those whose employment is ending and those remaining within the company.

'People remember how they are treated in these circumstances very vividly,' says Evolution HR director Kate Marks. 'Showing sympathy, whilst speaking and acting within the legal framework, is a balance that needs to be maintained. The confidence provided by using a consultant helps immeasurably in achieving this balance. We have spent much time in formulating template letters and memos to ensure that the legal requirements are fulfilled. We have also helped devise scripts to guide those involved through what will be some of the most difficult conversations they are likely to have as employers and company owners.'

Here are some areas to consider:

- **Plan** – there is no substitute for thorough planning. Redundancy is only legitimate for specific reasons and you must show that at least one such circumstance exists in your business. Redundancy is not a method to remove employees who are not performing
- **Process** – you must get the process right. Incorporate the dismissal process into your redundancy procedure – inform, meet, the right to appeal. Good intentions alone will not save you from an employment tribunal
- **Reason** – your focus should be on your business reasons for having to go through this process. People will understandably take it personally, but it is up to you to assure them that it is not to do with character but with business strategy and necessity
- **Communicate** – always try to keep the channels of communication open. Make yourself available to answer any questions and try to be as open and transparent as possible

- **Keep in touch** – make sure that all parties understand the different stages of the process and what is happening to them. This is particularly the case with vulnerable members of staff, those with less experience or those who may find it more difficult to obtain alternative employment. Some people are so shell-shocked by the meetings themselves that they fail to take in what is being said. They need to know what options are available to them and what the implications are
- **Documentation** – document everything. Key stages should be confirmed in writing. Make notes of any question asked and of your responses
- **Consultation** – seriously consider any suggestions that your employees come up with. Do not dismiss them because your company has not tried them before. Just assuming “our clients won’t like it” shows lack of foresight. For example, job-sharing or part-time working can be possibilities. There is more than one way to achieve a business strategy
- **Conduct** – consider your own conduct. Do not fall into the trap of saying “I know how you feel” and don’t be jovial or flippant. Give people time to have their say without interrupting
- **Survivors** – remember those who are left behind: there is such a thing as ‘survivor syndrome’: people who have not lost their jobs often feel guilty for still being employed.

FLEXIBLE WORKING

This is a key area in design and creative industries. The phrase ‘our clients won’t accept it’ or ‘it doesn’t work in our industry’ is commonly heard. The main issue is that there is a right to request flexible working as opposed to a right to work flexibly. ‘I believe that the industry needs to open its eyes to more flexible ways of working and embrace the opportunities that exist. Too many companies see it as a problem, whereas there are many positives. For example, think of the increased skills base that would be made available if you could offer part time or home working,’ says Marks.

Everyone has the right to request flexible working arrangements, but an employer only has a legal duty to consider the requests of certain employees, notably parents with children up to 16 years old. However, many companies would view it as good business sense to consider flexible arrangements with their employees, so it is always worth asking even if your circumstances don’t offer you a statutory right.

Here are the main flexible working rights and the groups which hold them:

- **Right to request** – qualifying employees have the right to request flexible working arrangement
- **Eligibility** – the right to request flexible working has recently been extended to parents with children up to the age of 16 (and remains at 18 for disabled children). Carers of adults also have the right to work flexibly, provided the person in need of care is the employee’s relative, partner or spouse, or lives at the same address
- **Consider** – employers have a duty to consider such a request but not to necessarily accept it. If there is a justifiable business reason why the proposal will not work they can reasonably refuse the request
- **Reapply** – if an employee puts in a request to work flexibly but the request is declined, they cannot reapply for at least twelve months.

EQUAL OPPORTUNITIES AND DISCRIMINATION

A diverse mix of people live and work in the UK. It’s important that businesses reflect a proportionate mix of this diversity by promoting equal opportunity employment. Any accusation of discrimination should be taken seriously and not simply dismissed. If an

individual can present a plausible case that they have been treated differently on the basis of their protected status they can take action against the company.

Discrimination can often take the form of bullying or harassment, both of which have fairly precise definitions with regard to workplace treatment, as follows:

Definition of bullying - offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power which is meant to undermine, humiliate or injure the person on the receiving end. Examples of bullying would include picking on someone or setting him or her up to fail or making threats or comments about someone's job security without good reason or giving someone unrealistic performance targets.

Definition of harassment - unwanted conduct related to sex, race or ethnic or national origins, disability, sexual orientation, religion or belief, age or any other personal characteristic which:

(a) has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or

(b) is reasonably considered by that person to have the effect of violating his or her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her, even if this effect was not intended by the person responsible for the conduct.

Each design company is advised to have an Equal Opportunity policy. A request to see these is becoming more prevalent in proposals for work, particularly to public sector organisations.

Here are some further things to consider in this area:

- **Policy** - write an equal opportunities policy. This should list all minority groups, your equal opportunities policy on advertising, recruitment, employment, your commitment to observing religious occasions, your expectations of all employees to respect the policy and the procedure if an employee feels they have subject to discrimination
- **Advertising** – advertisements should not specify the desired age, sex, marital status, sexual orientation, ethnic origin, nationality or religion of an applicant
- **Recruitment** – application forms should contain an ethnic monitoring section so that, if required, you can prove you are an equal opportunities employer
- **Logging** – Once ethnic monitoring information is obtained, it should be logged so that an overview of the company's ethnic mix can be analysed and data can be passed on, if requested
- **Using the information** – ethnic monitoring and equal opportunities policies are a frequent requirement when preparing bids. Ensure your policy and ethnic monitoring log is up-to-date at all times
- **Grievance** – if an employee feels they have been discriminated against, the matter should first be discussed informally. If after the meeting they wish to raise a formal grievance then the normal grievance procedure should commence
- **Third party discrimination** - any form of discrimination or harassment towards any other employee or a third party on the basis of race, disability, sex, sexual orientation, marital status, age, religion or similar belief is unacceptable and may amount to gross misconduct leading to the employee's summary dismissal
- **Employee responsibility** - every employee is required to assist the company in meeting its commitment to provide equal opportunities in employment and avoid unlawful discrimination. Employees can be held personally liable as well as, or instead of, the company, for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence.

MATERNITY LEAVE

Rights surrounding maternity leave are long, complex and ever changing. If you are unsure of what you should do as an employer regarding a pregnant employee's rights, or unsure of your rights as a pregnant employee, seek advice from a specialist. Again, [ACAS](#) can help in both cases.

The following is a brief roundup of the things to consider:

- **Entitlement** – all pregnant employees are entitled to maternity leave regardless of their duration of employment
- **Statutory or enhanced** – decide whether you will offer statutory or enhanced redundancy pay. If you decide to offer enhanced pay, think about the maternity pay scale offered and how it will be awarded
- **Notification** – once you are aware that the employee is pregnant, you will need to issue them with a maternity acknowledgement letter. The letter must include details of their maternity leave, pay, return to work date, time off for antenatal treatment and risk assessment
- **Risk assessment** – as soon as you are aware that an employee is pregnant, you will need to conduct a specific risk assessment of the workplace and in particular, areas frequented by that employee
- **Time off** – pregnant employees are entitled to time off to attend antenatal appointments; agency workers are not. Contract workers may or may not be depending on the terms of their employment status
- **Redundancy** – an employee on maternity leave is not automatically protected from being made redundant. Their role may still be considered (and selected) for redundancy, but they are entitled to the same redundancy process as normal
- **Rights** – most contractual rights remain in place during maternity leave
- **'Keep in touch' (KIT) days** – if the employee and the employer agree, employees may attend work during their maternity leave for a maximum of 10 days to catch up on any role changes or to attend training. These are known as 'keep in touch' days
- **Return to work** – those on maternity leave have the right to return to work after their maternity leave. They also have the right to request flexible working.