

A Guide to Good Employment

Chapter 1. Equal Opportunities

Overview

This chapter sets out a summary of the main considerations concerning equal opportunities legislation and in particular racial, gender, disability and religious discrimination. It also provides sample Equal Opportunities and Harassment Policies.

The Legal Position

All organisations are required by law not to discriminate against employees by reasons of gender, marital status, disability, religious belief or political opinion, colour, race or national origin. To comply with the legislation, organisations must ensure that they have a written equal opportunities policy and written procedures covering equal opportunities in recruitment, promotion, transfer, training, dismissal and redundancy.

Beyond legal considerations, as a matter of good practice, organisations should include the prevention of discrimination on grounds of age, sexual preference or orientation, and transgender or HIV/AIDS status.

The following minimum legal requirements must be complied with:

- Fair Employment (NI) Act 1976 and 1989, and Fair Employment and Treatment Order 1998 make discrimination unlawful on the grounds of religious belief and/or political opinion.
- Sex Discrimination (NI) Orders 1976 and 1988 apply to both men and women and are designed to eliminate discrimination and to promote equal treatment between men and women.
- The Disability Discrimination Act 1995 makes treating disabled people less favourably than other people, without justification, unlawful in areas such as buying goods, using services, finding somewhere to live and getting a job
- Race Relations (NI) Order 1997 makes treating people because of their colour, race, nationality or ethnic or national origins unlawful in areas such as buying goods, using services, finding somewhere to live and getting a job.
- Equal Pay Act 1970, as amended by the Equal Pay (Amendment) Regulations (NI) 1984, guarantees equal pay and conditions to all workers, men and women, who are engaged in the same or like work, work of equal value, work rated as equivalent in the same employment (refer to Chapter 6 Salaries and Wages)

The Equality Commission

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. The Commission's general duties include:

- working towards the elimination of discrimination
- promoting equality of opportunity and encouraging good practice
- promoting affirmative/positive action
- promoting good relations between people of different racial groups
- overseeing the implementation and effectiveness of the statutory duty on public authorities
- keeping the relevant legislation under review

On 1 October 1999 the Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council. Comprehensive advice, information and training on all aspects of anti-discrimination legislation are available from the Equality Commission. Contact details are available at the end of this chapter.

Discrimination

What is Discrimination?

Discrimination has a special legal meaning. It is not the same as unfairness or prejudice. Obviously unlawful discrimination is unfair. Similarly it can take place as a result of bigotry or prejudice, but people do not have to be prejudiced to discriminate. Anti-discrimination legislation deals with people's actions and the results of those actions, not simply with their attitudes or motives.

Under Northern Ireland law there are a number of different types of unlawful discrimination. The main types are:

- direct discrimination
- indirect discrimination
- failure to make a reasonable adjustment
- victimisation

Direct Discrimination

This is the type of discrimination most frequently dealt with in the courts or tribunals. Direct Discrimination occurs when you are less favourably treated on one of the grounds protected by law, than someone else is treated, or would be treated in the same or similar circumstances. Examples of direct discrimination include not giving

someone a job because of their sex, treating someone less favourably at work because of their race or religion or dismissing them because of their disability.

Although not specifically referred to in the legislation, harassment is treated under the law as a form of direct discrimination, if such harassment is based on one of the protected grounds.

Indirect Discrimination

Employees are protected from indirect discrimination on grounds of race, religious belief or political opinion and sex or marital status. There is no concept of indirect discrimination within disability legislation.

As the term suggests, indirect discrimination is a less obvious form of discrimination. It includes accepted ways of doing things such as rules, policies and procedures, that seem fair because they apply to everyone, but when they are applied, act as a barrier to people from a particular group. Examples of indirect discrimination have included the application of height requirements for some jobs, dress requirements which adversely impact on some ethnic groups.

Failure to make a reasonable adjustment

Under disability discrimination legislation an employer or service provider is obliged to make reasonable adjustments to facilitate disabled people.

Victimisation

Legislation also protects employees against victimisation because of making a complaint or allegation of discrimination or having been involved in such a complaint.

Fair Employment

Under fair employment legislation all employers with more than ten employees (whether full-time or part-time) are required to register with the Commission. Registered employers have a legal duty to monitor the composition of their workforce and those applying to fill vacancies. Registered employers are also required to make an annual monitoring return to the Commission and failure to do so within the prescribed period is a criminal offence.

Even if you will never employ more than ten employees, you are not exempt from the Fair Employment legislation. All employees, regardless of size or number of staff must comply with good recruitment practice in attracting and employing applicants from both communities in Northern Ireland. Failure to do so may result in applicants making a complaint to an industrial tribunal.

Method of Monitoring

Under the Fair Employment Monitoring Regulations (NI) 1999 there is now only one principle of monitoring which is the Direct Question. For an example of this refer to the sample monitoring form in Appendix 5, Chapter 2 - Recruitment.

Affirmative Action

Employers are obliged to take affirmative action if fair participation is not being enjoyed by both communities. The most widely used of all affirmative action measures is the encouraging of members of under-represented communities to apply to your organisation. Many employers take this type of affirmative action and examples include targeted advertising, welcoming statements, school liaison and contact with community organisations.

Recruitment of Unemployed Persons

Article 55 of the Fair Employment and Treatment Order allows all employers to make it a requirement when filling a vacancy that applicants who have not been in employment for a specified period of time can be treated more favourably than those who are in employment.

This means that reserving specific vacancies for unemployed persons or only recruiting from individuals who have not been in employment for a period of time is possible under the legislation. Other examples of what could be allowed under this exception would include waiving particular qualification or experience requirements and guaranteeing job interviews for people who have not been in employment such as benefit claimants, school leavers, unemployed graduates, women wishing to enter or return to the labour market.

Sex Discrimination

The Sex Discrimination (NI) Order 1976 describes five kinds of behaviour which can constitute discrimination in employment. This behaviour is unlawful.

- direct sex discrimination means treating a woman on the grounds of her sex less favourably than a man is treated, or would be treated in similar circumstances
- indirect sex discrimination means applying a condition or requirement which, although it is applied equally to both sexes, is such that a considerably smaller proportion of women than men can comply with it and which cannot be demonstrated to be justifiable in relation to the job. For example if an employer applied a redundancy policy by selecting only part-time workers. This is because

such action would discriminate disproportionately against women as women undertake a greater proportion of part-time work.

- direct marriage discrimination means treating a married person, on the grounds that he/she is married, less favourably than a single person of the same sex is treated, or would be treated
- indirect marriage discrimination refers to applying a condition or requirement which has the effect of discriminating against married people because considerably fewer married than single people can comply with it, and which cannot be justified in terms of the job. For example if an employer refused to recruit people who had children
- victimisation is treating one person less favourably than another person because that person for example asserted rights under the sex discrimination or equal pay legislation, or had helped another person to assert such rights.

Exceptions

Where employers seek to employ a person of a particular sex and if they consider the employment is covered by one of the exceptions or special cases of the Order, they are advised to contact the Commission to ascertain exactly what the provisions are and whether the exception applies to their particular situation. In such circumstances employers may confine a job to a man or woman where their gender is a "genuine occupational classification" (GOC) for that particular job. Some examples of this are:

- the job requires a man for reasons of physiology eg modeling or authenticity eg acting (physiology does not include physical strength or stamina)
- the job requires a man or woman for reasons of decency or privacy such as a female care assistant at a women's refuge
- the job involves living or working in a private household, where there could be reasonable objection to someone of the other sex having the degree of physical or social contact with the person living in the home

Disability Discrimination

Disability discrimination occurs when a worker or applicant receives less favourable treatment or is denied equal opportunities because of their disability and the treatment cannot be justified. The law defines disability as "a physical or mental impairment which has a substantial and long term effect on a person's ability to carry out normal day-to-day activities". It is unlawful for an employer with fifteen or more employees to discriminate against disabled employees or job applicants. (There are proposals at present to reduce this figure to two employees.)

Making Reasonable Adjustments - Employers

It may be that the physical features of an employer's premises or the working arrangements put a disabled person at a substantial disadvantage compared with non-disabled people. Therefore an employer must take reasonable steps to prevent that disadvantage.

Examples of reasonable adjustments are:

- adjusting premises to facilitate disabled workers
- reallocating some of a disabled worker's duties to someone else
- altering a disabled person's hours of work
- providing a reader or interpreter
- giving time off for therapy or rehabilitation
- modifying instructions and reference manuals
- modifying procedures for testing or assessment
- assigning a disabled worker to a different place of work
- transferring a disabled worker with their agreement to fill an existing vacancy

Disablement Advisory Service

The Training and Employment Agency, through its Disablement Advisory Service, offers assistance to employers to recruit suitable people with disabilities or to retain an existing employee.

Disablement Employment Advisers are disability specialists in the Disablement Advisory Service based in offices of the Training and Employment Agency. They help employers of all sizes and across all industries to recruit disabled people and to implement good policies and practices in the employment of people with disabilities.

Furthermore, some of the employment programmes offer financial assistance to employers for a variety of support including special aids and equipment, personal reader service and adaptations to premises and equipment. Contact details may be found at the end of this chapter.

Access to Goods, Facilities, Services and Premises

Since December 1996, part 111 of the Disability Discrimination Act made it unlawful for those who provide goods, facilities and services to discriminate against disabled people. Discrimination under the Act can occur in two ways:

- by treating a disabled person less favourably for a disability related reason than a person who is not so disabled
- by failing to comply with the duty to make reasonable adjustments

Less Favourable Treatment

Broadly speaking this means that a service provider should not refuse service, provide a worse standard of service or offer their service on worse terms to a disabled person for a non-justifiable disability related reason.

Making Reasonable Adjustments - Service Providers

Since October 1999, service providers have had to take reasonable steps to:

- change practices, policies or procedures which make it impossible or unreasonably difficult for disabled people to use a service
- provide auxiliary aids or services which would make it easier for disabled people to use a service
- overcome physical features which make it impossible or unreasonably difficult for disabled people to use a service by providing the service by a reasonable alternative method.

From October 2004 service providers will have additional duties in respect of physical features that make it impossible or unreasonably difficult for disabled people to use their services. All duties under Part 111 of the Act apply to organisations within the voluntary and community sector which provide a service to the public for example advice and drop-in centres, crèche facilities, youth services etc. For further information and advice on your obligations regarding 2004, contact the Disability Unit of the Equality Commission. Contact details may be found at the end of this chapter.

Racial Discrimination

The Race Relations (NI) Order 1997 makes it unlawful to discriminate against anyone on the grounds of race. In Northern Ireland a racial group means a "a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group". Irish Travellers are specified as a religious group. The race relations law does not cover religious groups other than Sikhs and Jews who are recognised as racial groups as religious discrimination is already covered under the Fair Employment and Treatment (NI) Order 1998.

There are three main types of racial discrimination:

- direct discrimination means treating a person less favourably than another person is or would be treated in the same or similar circumstances on racial grounds. Instances of this could include being refused a job, place at school, admission to a pub or being offered less favourable terms and conditions in the provision of goods, facilities or services or in the management of premises.
- indirect discrimination is where there is a rule or requirement which is compulsory for everyone but a considerably smaller number from a racial group can comply with it compared to those not of the racial group. If the rule cannot be

justified and the group is put at a disadvantage because of it, then this may be indirectly discriminatory. An example might be where an employer insists that employees must have qualifications from a UK source. This could indirectly discriminate against those with qualifications from outside the UK if the employer could not justify the requirement.

- victimisation is where a person is treated less favourably because they have made a complaint of racial discrimination or have given information or evidence in connection with proceedings under the Order.

Recommended Good Practice

Creating an Equal Opportunities Policy

Although not required by law, it is good practice for organisations to create a comprehensive equal opportunities policy. Such a policy explicitly sets forth the organisation's intention to offer equal opportunities to all workers regardless of status, gender, race, disability, religion or sexual orientation. While it is not presently illegal to discriminate against applicants or employees because of their age, it is good practice not to do so and protection against discrimination should be offered to people of all ages.

The policy might also state the organisation's commitment to treating all employees fairly and respectfully and setting systems in place designed to provide the greatest possible access to equal opportunities. The policy should:

- give overall responsibility to a senior manager
- be in writing
- include collective agreements where appropriate
- have the support of management and trade unions at the highest level
- be monitored regularly

For further information and advice on developing an equal opportunities policy you can contact the Equality Commission. Contact details are available at the end of this chapter. An example of an equal opportunities policy can be found in Appendix 1 at the end of this chapter.

Harassment

The Legal Position

It is necessary to ensure an organisational environment where harassment will be recognised as totally unacceptable behaviour, which may constitute gross misconduct necessitating disciplinary action. In addition, offences of sexual, religious, racial or

disability harassment or intimidation may be unlawful under the legislation as outlined above.

Harassment involves certain forms of behaviour which are directed towards another person and which, because they are unwanted, have an adverse effect on working relationships or on an individual's work.

As a matter of good practice, organisations should commit to creating a harmonious working environment in which individuals do not feel apprehensive because of their religious belief, political opinion, racial background, gender, marital status, sexual orientation, age or disability.

Intimidation or harassment in any form is unacceptable behaviour. It is recommended that an organisation should create a policy to identify what constitutes harassment and how this will be dealt with. A sample harassment policy can be found in Appendix 2 at the end of this chapter.

For further information and advice on developing harassment policies or dealing with incidents of harassment, you can contact the Equality Commission. Contact details are available at the end of this chapter.

Managing Diversity

Managing diversity is a policy effectively following on from and expanding on equal opportunities. Equal opportunities is about keeping within the law and ensuring that all personnel decisions concerning pay, recruitment and promotion are based only on an individual's ability to do their job well. This is achieved by pre-empting discrimination through a systematic approach to all aspects of personnel activities.

Diversity is a more wide-reaching approach to equal opportunities work. It incorporates the principle that all workers should receive equal rights but rather than ignoring the differences between people in terms of gender, sexual orientation or race, etc, this diversity should be recognised and respected.

By valuing the varying qualities that different individuals bring to their job and organisation, managers may create an environment where everyone feels valued for their individual talents and where their competencies are fully utilised.

This approach of managing diversity brings to an organisation a wide range of experience, ideas and creativity whilst giving the individual employee a feeling of being enabled to work to their full potential.

Appendix 1

Equal Opportunities Policy

Statement of Policy

The aim of this policy is to communicate the commitment of the Chief Executive and Board of Directors/Senior Management Team to the promotion of equality of opportunity.

It is our policy to provide employment equality to all, irrespective of:

- gender, marital or family status
- religious belief or political opinion
- disability
- race or ethnic origin
- nationality
- sexual orientation
- age

We are opposed to all forms of unlawful and unfair discrimination. All full-time and part-time employees and job applicants (actual or potential) will be treated fairly and selection for employment, promotion, training or any other benefit will be on the basis of aptitude and ability.

We recognise that the provision of equal opportunities in the workplace is not only good management practice, it also makes sound business sense. Our equal opportunities policy will help all employees to develop their full potential and the talents and resources of the workforce will be fully utilised to maximise the efficiency of the organisation.

We are committed to:

- preventing any form of direct or indirect discrimination or victimisation
- promoting equal opportunities for women and men
- securing fair participation for Catholics and Protestants
- promoting equal opportunities for people with disabilities
- promoting a good and harmonious working environment where all men and women are treated with respect and dignity and in which no form of intimidation or harassment will be tolerated
- fulfilling all legal obligations under the relevant legislation and associated Codes of Practice
- taking any necessary positive/affirmative action, including setting goals and timetables

Breaches of our equal opportunity policy and practice will be regarded as misconduct and could lead to disciplinary proceedings. This policy is fully supported by senior management and has been agreed with the trade union and/or employee representatives.

Implementation

The senior manager has specific responsibility for the effective implementation of this policy. Each director, manager and supervisor also has responsibilities and we expect all of our employees to abide by the policy and help create the equality environment which is its objective.

In order to implement this policy, we will ensure that:

- the policy is communicated to all employees, through induction training, management training, team briefings, display on noticeboard/staff handbook/notes in pay advices etc (specify) and made known to job applicants
- manager and supervisors are aware of their responsibilities through appropriate and regular training
- an equal opportunities programme will be developed and will include a range of initiatives, indicating where appropriate affirmative/positive action, with targets and timetables
- appropriate training and guidance will be provided, including training on induction and management courses. In particular, all those involved in assessing candidates for recruitment or promotion will be trained in non-discriminatory recruitment and selection techniques
- consultation will take place with recognised trade unions/employee representatives on the implementation of this policy and any amendments to practice
- an information system will be established to assist the effective implementation of this policy and guidelines will be drafted for assessing the provision of equality of opportunity
- adequate resources are made available to fulfil the aims of this policy

Affirmative Action

Where appropriate, lawful positive action measures such as special encouragement in advertisements or special training will be developed. These measures are available to us in certain circumstances, for example where there is an under-representation of a particular group in specific areas of work.

Monitoring and Review

The provision of equality of opportunity between women and men will be monitored through the collection and analyses of statistical data on the sex, marital status and family status of all full-time and part-time employees and job applicants. We will

also monitor our workforce composition and undertake periodic reviews as required by the Fair Employment Monitoring Regulations (NI) 1999.

Progress on the implementation of this policy and any equal opportunities and affirmative/positive action programmes will be reviewed annually in consultation with the recognised trade unions/employee representatives. A joint employer/employee equal opportunities committee will be established for this purpose.

Complaints

Employees who believe that they have suffered any form of discrimination, harassment or victimisation are entitled to raise the matter through the agreed procedures. A copy of these procedures is available from the manager. All complaints of discrimination will be dealt with seriously, promptly and confidentially.

These internal procedures do not replace or detract from the right of the employees to pursue complaints, and Fair Employment and Treatment Order 1998, Sex Discrimination (NI) Orders 1976 and 1988, the Disability Discrimination Act 1995 and Race Relations (NI) Order 1997 to a Fair Employment Tribunal. Information on definitions of discrimination and time limits for raising complaints are set out at the end of this policy statement.

Every effort will be made to ensure that employees making complaints will not be victimised. Any complaint of victimisation will be dealt with seriously, promptly and confidentially. Victimisation will result in disciplinary action and may warrant dismissal.

Direct Discrimination

Direct discrimination occurs when a person is treated less favourably than another on the grounds of their sex, marital status, religious belief, political opinion, race, nationality or ethnic/national origin.

Indirect Discrimination

Indirect discrimination can occur when a requirement or condition which cannot be justified on grounds other than sex, marital status, religious belief, political opinion, race, nationality or ethnic/national origin, is applied equally but has the effect in practice of disadvantaging a considerably higher proportion of persons in one or other of the above groups.

In order to establish a complaint of indirect discrimination, an applicant must show the following:

- that a requirement or condition has been applied

- that the said requirement or condition adversely impacts against the person because of his/her religious belief, political opinion, sex, marital status, race nationality or ethnic/national origin
- that he/she has suffered detriment by reason being unable to comply with the condition or requirement

Disability Discrimination

Disability discrimination occurs when, for a reason related to his/her disability, a disabled person is treated less favourably than other people, and this treatment cannot be justified. It also occurs when an employer fails to comply with the duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be justified. An employer cannot justify less favourable treatment if, by making a reasonable adjustment, it would remove the reason for the treatment.

Victimisation

Victimisation occurs when a person is treated less favourably than another because that person has, for example, asserted rights under any of the discrimination laws or has helped another person to assert such rights or given information to the relevant statutory body, or because it is suspected that the person might do any of these things.

Complaints

Complaints of sex/marital status, race/nationality/ethnic/national origin, and disability discrimination should be lodged with the industrial tribunal within three months from date of the alleged act of discrimination.

In respect of equal pay, the complaint can be lodged at any time while the person is in the job or within six months of leaving the job.

Complaints to a fair employment tribunal must be lodged within three months from which a complainant first knew, or might reasonably have known, of the act of discrimination or within six months from the date when the act occurred, whichever is earlier.

Appendix 2

Sample Harassment Policy

As part of its overall commitment to equality of opportunity, this organisation is fully committed to promoting a good and harmonious working environment where every employee is treated with respect and dignity and in which no worker feels threatened or intimidated because of his or her religious beliefs, political opinion, sex, marital status, disability or race. The aim of this policy and the accompanying procedure is to prevent harassment, provide guidance to resolve any problems should it occur and prevent recurrence.

Harassment at work in any form is unacceptable behaviour and will not be permitted or condoned. Sexual, sectarian and racial harassment, as well as harassing a disabled person on account of disability, constitute discrimination and are unlawful under the sex discrimination, fair employment, race relations and disability legislation. Harassment may also be a civil offence, a criminal offence and it may contravene health and safety legislation.

Harassment detracts from a productive working environment and can affect the health, confidence, morale and performance of those affected by it, including anyone who witnesses or knows about the unwanted behaviour. This can have a direct impact on the profitability and economic efficiency of the organisation.

Harassment is inappropriate behaviour at work and will be treated by this organisation as misconduct which may include gross misconduct warranting dismissal. All employees must comply with this policy.

This policy has been agreed with the recognised trade unions/employee representatives.

Definition of Harassment

Harassment is unwanted conduct of a sexual/sectarian/racial/disability nature or other conduct based on sex, religious belief, political opinion, race or disability affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct. Such behaviour is unacceptable:

- where it is unwanted, unreasonable and offensive to the recipient
- where it is used as the basis for an employment decision
- where it creates a hostile working environment

Some examples are given below but many forms of behaviour can constitute harassment:

- physical conduct ranging from touching to serious assault
- verbal and written harassment through jokes, racist remarks, offensive language, gossip and slander, sectarian songs, threats, letters
- visual displays of poster, graffiti, obscene gesture, flags, bunting or emblems or any other offensive material
- isolation or non co-operation at work, exclusion from social activities
- coercion, including pressure for sexual favours, pressure to participate in political/religious groups
- intrusion by pestering, spying, following, etc

It should be noted that it is the impact of the behaviour which is relevant and not the motive or intent behind it.

Employees' Rights

All employees have the right to work in an environment which is free from any form of harassment. This organisation fully recognises the right of employees to complain about harassment should it occur. All complaints will be dealt with seriously, promptly and confidentially. A copy of the complaints procedure, which has been agreed with the recognised trade union, is attached.

This procedure does not replace or detract from the rights of employees to pursue a complaint under the sex discrimination/race relations/disability discrimination legislation to an industrial tribunal in the case of sexual harassment/racial harassment/harassment on grounds of disability, and under the fair employment legislation to the Fair Employment Tribunal in the case of sectarian harassment. A complaint must be lodged within three months from the date of the alleged act of sex, disability or racial discrimination. For religious or political discrimination, a complaint must be lodged within three months from the date when the person first knew, or might reasonably be expected to have first known, of the act of discrimination or within six months from the date the act occurred, whichever is earlier.

Every effort will be made to ensure that employees making complaints and others, who give evidence or information in connection with the complaint, will not be victimised. Victimisation is discrimination contrary to the Disability Discrimination Act 1995, the Fair Employment (NI) Acts 1976 and 1989, the Race Relations (Northern Ireland) Order 1997 and the Sex Discrimination (Northern Ireland) Order 1976. Any complaint of victimisation will be dealt with seriously, promptly and confidentially. Victimisation will result in disciplinary action and may warrant dismissal.

Employees' Responsibilities

All employees have a responsibility to help ensure a working environment in which the dignity of employees is respected. Everyone must comply with this policy and employees should ensure that their behaviour to colleagues and customers does not cause offence and could not in any way be considered to be harassment.

Employees should discourage harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint. They should alert a manager or supervisor to any incident of harassment to enable this organisation to deal with the matter.

Managers' and Supervisors' Responsibilities

Managers and supervisors have a duty to implement this policy and to make every effort to ensure that harassment does not occur, particularly in work areas for which they are responsible. Managers and supervisors have responsibility for any incidents of harassment of which they are aware or ought to be aware. If harassment does occur, they must effectively deal with the situation. Managers and supervisors should:

- explain the organisation's policy to their staff and take steps to promote awareness of the procedure for dealing with complaints. Ensure that each member of staff has been given a copy
- be responsive and supportive to any member of staff who makes an allegation of harassment, provide clear advice on the procedure to be adopted, maintain confidentiality and seek to ensure that there is no further problem of harassment or victimisation after a complaint has been resolved
- set a good example by treating all staff and customers with dignity and respect
- be alert to unacceptable behaviour and take appropriate action
- ensure that staff know how to raise harassment problems

The Organisation's Responsibilities

The organisation will ensure that adequate resources are made available to promote respect and dignity in the workplace and to deal effectively with complaints of harassment. This policy and procedure will be communicated effectively to all employees and the organisation will ensure that all employees and all managers and supervisors are aware of their responsibilities. Appropriate training will be provided including training on induction and management courses.

Individuals will be appointed to provide advice and assistance to employees who are subject to harassment. The name of these designated advisers will be made known to all employees. The organisation will ensure, where possible, that employees can raise complaints, should they wish, with someone of their own gender, religion or race, or who is aware of disability issues. All complaints of harassment will be dealt with promptly, seriously and confidentially. Manager, supervisors and designated advisers will receive appropriate training so that they can perform their roles sensitively and

effectively. In addition, those playing an official role in any formal complaints procedures will receive appropriate training.

Review

The organisation will monitor all incidents of harassment and will review the effectiveness of this policy and procedure annually.

MODEL PROCEDURE

Dealing with Complaints of Harassment

Any employee who believes that he/she has suffered any form of harassment is entitled to raise the matter through the following procedure.

This procedure does not replace or detract from his/her statutory rights under sex discrimination, fair employment, disability discrimination or race relations legislation.

The Informal Stage

This stage is appropriate where the employee simply wants the behaviour to stop, where the harassment is not serious or where it has not been repeated.

Employees can seek to resolve the matter informally by:

- approaching the alleged harasser directly making it clear to the person(s) harassing the employee that the behaviour in question is offensive, is not welcome and should be stopped
- approaching the alleged harasser with the support of a colleague or a trade union representative
- approaching the alleged harasser with the support of a supervisor/manager or designated adviser

If it is too difficult or embarrassing to do this personally, employees may request a supervisor, manager or designated adviser to approach the alleged harasser on their behalf. Designated advisers have been appointed to provide employees with advice and assistance. An adviser can be contacted at any stage of informal or formal procedures. The name and locations of advisers are listed at the end of this procedure together with telephone numbers where they can be contacted on a confidential basis. The adviser will provide support to assist with the informal resolution of the problem. The adviser can also provide support during formal procedures but will not conduct formal investigations. Where an employee seeks the support of a supervisor, he/she will be sensitively informed that their role at the informal stage can only be one of support or assistance.

The employee will be advised that:

- (i) a formal investigation and possible disciplinary action can only take place if the complaint is investigated under the formal procedure
- (ii) a written record of the action taken will be made to assist with any formal proceedings which may arise if the behaviour does not stop. Failure to maintain such a record will not invalidate proceedings at the formal stage

All reported incidents of harassment will be monitored and in the event of any patterns emerging management may wish to initiate its own formal investigation and take remedial action where this proves to be necessary. Additionally, there may be situations where the seriousness of a complaint warrants formal proceedings.

The Formal Stage

The formal complaints procedure is appropriate if the harassment is serious, if the person making the complaint prefers this, or if the harassment continues after the informal procedures have been used. It should be raised through the formal complaints procedure as follows:

A senior member of management (the Manager) has been given responsibility for proceedings at the formal stage. Individuals may raise complaints with this Manager or, if appropriate, another member of management or individual designated for this purpose. Where possible, employees will be able to bring a complaint in the first instance to someone of their own religion, gender or race, or who is aware of disability issues, if they so choose.

Managers carrying out investigations at the formal stage should not be connected in any way with the allegation which has been made.

The Personnel Officer (or other representative of management) will assist throughout the procedure. He/she will attend all meetings and maintain a written record of all proceedings including the investigation and any outcome. The Manager conducting the investigation will check all records to ensure accuracy.

Larger organisations may wish to designate a senior manager to act in an advisory role throughout the procedure to ensure that a consistent approach is taken, particularly with regard to proposed disciplinary action.

Investigation under the Formal Procedure

Time Limits

The following procedure details time limits for the completion of each stage of the procedure. If any of these time limits are not possible then both parties will be informed of the revised timescale. The procedure will be completed within twenty working days of the complaint having been received. Where this is not possible the procedure will be completed as soon as practicable.

Making a Complaint

Complaints should be raised as soon as possible following an act of alleged harassment so that the matter can be dealt with swiftly and decisively. While it is preferable that a complaint should be made in writing to the Manager (or any other manager as appropriate), this will not preclude the investigation of a complaint made verbally. The Manager will acknowledge receipt of the complaint and arrange to meet the Complainant within three working days.

Initial Meeting with the Complainant

The Manager will meet the Complainant to:

- clarify and formally record the nature of the complaint and that it is being handled under the formal procedure
- ensure that the Complainant is aware of the next stage of the procedure
- advise that the Complainant has the right to be accompanied and/or represented at the investigatory meeting by a trade union representative or work colleague

The Complainant will have the right to be accompanied and/or represented at this meeting by a trade union representative, work colleague or designated adviser.

Avoiding Contact between Complainant and Alleged Harasser

The issue of avoiding contact between Complainant and the alleged harasser must be considered before action is taken to inform the alleged harasser of the complaint. The Manager will take appropriate action concerning avoiding contact following discussion with the Complainant, including the possibility of transfer if appropriate. Both parties should also be advised that there should be no communication between them, directly or indirectly, in relation to the complaint. Where a case of serious harassment has been alleged, consideration will be given to precautionary suspension of the alleged harasser to enable investigation to proceed. An individual who is going to be suspended must be formally advised of this at a meeting with the Manager concerned. The individual will have the right to be accompanied and/or represented at this meeting by a trade union representative or work colleague as appropriate.

Informing the Alleged Harasser

The Manager will meet with the alleged harasser and:

- outline the nature of the complaint
- confirm that it is being handled under the formal procedure
- ensure that the individual is aware of the next stages of the procedure

- advise that the alleged harasser has the right to be accompanied and/or represented at the next stage of the procedure by a trade union representative or work colleague

Following this meeting the Manager will write to the alleged harasser outlining the nature of the complaint and setting a date for a formal meeting to be held within five working days of the complaint being received.

The investigation should include at least the following:

Whilst the Manager and the Personnel Officer (or other representative) will seek to resolve the matter as quickly as possible, the meetings with all involved need not necessarily follow immediately after each other. Every effort will be made to have held all necessary meetings within ten working days of the date the complaint was received. Where this is not practicable the Complainant and the alleged harasser will be so advised.

The purpose of these meetings is to establish the facts. All those giving information to the Manager and Personnel Officer (or other representative) do so privately and not in the presence of any other person involved in or present during the alleged incident. A record of all meetings will be kept. All evidence provided to assist with the investigation will be treated as confidential to the investigation subject to any statutory requirements.

Meeting with Person Alleging Harassment

The Manager and Personnel Officer (or other representative) will meet with the person alleging harassment and consider both what they have to say and any other related matter. The person alleging harassment will have the right to be accompanied and/or represented by his/her trade union representative or work colleague as appropriate.

Meeting with Alleged Harasser

The Manager or Personnel Officer (or other representative) will meet the alleged harasser and hear what he/she has to say about the alleged incident(s) and any other related matter. The alleged harasser will have the right to be accompanied and/or represented by his/her trade union representative or work colleague as appropriate. This will not be the same person who accompanies and/or represents the Complainant.

Meeting with Anyone who can Assist with the Investigation

The Manager or Personnel Officer (or other representative) will meet anyone who can assist with the investigation. This may include supervisors and co-workers and may also include anyone who observed the Complainant's demeanour immediately before and after the alleged incident(s) or any colleague with whom the Complainant

discussed the alleged incident(s). Each individual will be asked to outline what happened.

The Manager or Personnel Officer (or other representative) will meet the managers/supervisors of both the Complainant and alleged harasser to establish if there has been any history of previous conflict between them and/or with other parties. The Manager or Personnel Officer (or other representative) may then wish to have further meetings to clarify or gain additional information.

Consideration of Information

Having obtained all the information possible, the Manager will consider whether the organisation's disciplinary procedure should be invoked or some other action taken.

Reporting the Facts

The Manager undertaking the investigation should prepare a written report outlining the facts, indicating his/her findings, and whether the disciplinary procedure should be invoked or other action taken. Where the Manager has not the authority to take the necessary action, this report will be forwarded to the appropriate level of management.

Decision on Disciplinary Action

The Manager (or other appropriate level of management as outlined above) will then decide either:

- to initiate the organisation's agreed disciplinary procedure against any party as appropriate; and/or
- to take no further action or to take any other appropriate management action eg the provision of training or counselling.

Communicating the Decision

Having made a decision on the most appropriate course of action, this will be communicated in writing to both the person who has complained and the person against whom the complaint was made.

After the Investigation is Complete

Redeployment if Disciplinary Action is Taken

Where a complaint has been upheld, the Complainant may wish to avoid any further contact with the harasser. Should the harasser remain in employment with the organisation and where it is agreed that further contact between the individuals concerned would be unacceptable, every effort will be made to facilitate this wish. Consideration should always be given to relocating the harasser in the first instance

and where transfer of the Complainant occurs it should not lead to any disadvantage to him/her.

Redeployment where Disciplinary Action has not been taken

Even where a complaint is not upheld, or, for example, where the evidence is inconclusive consideration may still be given, where practicable, to the voluntary transfer of one of the employees concerned.

Training and Counselling

Training and/or counselling will be offered to the person who has been harassed and to the harasser. Where a complaint has not been upheld, training and/or counselling may also be offered. This will be provided by a trained member of staff or by an external provider, as appropriate.

Further Meetings

The Manager will meet the individual who has alleged harassment on a regular basis to offer support and to ensure that no harassment or victimisation has occurred. This action will be undertaken even where a complaint has not been upheld.

The Manager of the harasser will be responsible for ensuring that the harasser is made fully aware of the organisation's policies on equal opportunities and harassment and of the law relating to these matters.

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Equality Commission for Northern Ireland
Andras House
60 Great Victoria Street
Belfast BT2 7BB

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9024 0010
Website: www.equalityni.org

Disability Action
Portside Business Park
189 Airport Road West
Belfast BT3 9ED

Tel: 028 9029 7880
Fax: 028 9029 7881
Minicom: 028 9029 7882
Website: www.disabilityaction.org

Employers Forum for Disability
Banbridge Enterprise Centre
Scarva Road Industrial Estate
Banbridge BT32 3QD

Tel: 028 4062 4526
Fax: 028 4066 9665
Email: efd.ni@virgin.net

Northern Ireland Council for Ethnic Minorities
3F Ascot House 24-31 Shaftesbury Square
Belfast BT2 7DB

Tel: 028 9023 8645
Fax: 028 9031 9485
Email: nicem@n-ireland.freeserve.co.uk

A Guide to Good Employment

Chapter 2. Recruitment and Selection

Overview

This chapter outlines best practice and procedures in the recruitment and selection of staff. It outlines the main pieces of legislation to be observed when undertaking a recruitment exercise.

The Legal Position

The following minimum legal requirements must be complied with:

- Rehabilitation of Offenders (NI) Order 1978 may give an ex-offender the right to treat their record as if it never existed.
- Fair Employment (NI) Act 1976 and 1989 and Fair Employment and Treatment Order 1998 makes it unlawful to discriminate against an applicant on the grounds of their religious belief and/or political opinion
- Sex Discrimination (NI) Orders 1976 and 1988 state that it is unlawful for an employer to discriminate against women or men or married persons in the way they make their selection
- The Disability Discrimination Act 1995 makes it unlawful to discriminate against job candidates with disabilities
- Race Relations (NI) Order 1997 states that it is unlawful for an employer to discriminate against job applicants because of their colour, race, nationality, ethnic or national origins
- Equal Pay Act 1970, as amended by the Equal Pay (Amendment) Regulations (NI) 1984, makes it unlawful for an employer to offer different terms and conditions of employment or rates of pay where male and female applicants are engaged in the same work or work of equal value

For further information on equality legislation, refer to Chapter 1, Equal Opportunities.

Rehabilitation of Offenders (Ni) Order 1978

The 1978 Order sets out a period of time from the date of conviction which will allow some convictions to become 'spent'. This means that if the individual is asked on any application form or at interview or at any other time if they have a conviction, the law usually allows them to answer no. The period of time that must run before a conviction is considered spent is called the rehabilitation period. The length of

rehabilitation period depends on the sentence given and not the offence committed nor period of imprisonment. The table in Appendix 1 at the end of this chapter outlines the rehabilitation period connected to particular sentences.

Legal Exceptions

There are some jobs for which people will be expected to disclose their conviction even if it is spent. These jobs are excepted from the 1978 Order and are covered under a separate piece of legislation, the Rehabilitation of Offenders (Exceptions) Order (NI) 1979. These include:

- barrister, solicitor, accountant
- doctor, dentist, dental hygienist, vet, nurse, midwife and other health service employment
- optician, chemist
- judicial appointments
- employment in the court service
- traffic warden, probation officer
- teacher and any employment which enables access to children and vulnerable adults

The Recruitment Process

Employers assume important responsibilities when taking on staff. It is crucial that adequate attention and preparation are given prior to selection in determining issues such as duties and responsibilities of the postholder, how the individual fits into the organisational structure, what skills are required, who will be involved in the selection, and so on. The following outlines a step by step approach to recruiting staff in the organisation:

- write or update the job description
- write or update the personnel specification
- write and publish an advertisement
- prepare application form and other material
- send out recruitment packs
- establish panel
- shortlist
- prepare questions
- interview for the post
- check references
- job offer
- start and induction

Job Descriptions

The first stage of the recruitment process involves preparing a job description for the post, that is, determining the duties the postholder will be required to do.

Preparation

To prepare the job description, organisations should clarify the following:

- the aims and purpose of the job
- the duties and responsibilities associated with the post
- the relationship to other jobs
- how it fits in to the organisation's development plans
- supervision: how the job gets support or gives it to other staff.

Gathering as much information as practicable will assist in preparing the job description. This may include:

- existing written information
- interviews with job holder/colleagues/line manager
- exit interviews
- views of users/management committee

It is important to adopt a standard format for job descriptions. The following is a suggestion:

- name of organisation
- job title and department/unit
- who the job holder is responsible to (the line manager's job title)
- who the job holder is responsible for (the job titles managed directly by the postholder)
- other key working relationships within the organisation
- status of post (grade, salary, hours of work, whether permanent or fixed-term contract)
- any allowances that are attracted to the post (mileage, childcare)
- summary of main responsibilities (one or two sentences describing the main duties of the post)
- specific duties (a list of all duties of the post in rank order of importance)

Refer to Appendix 2, Job Description proforma at the end of this chapter.

Checklist

- does the job description accurately reflect the duties of the job

- is the job description written in a clear and accessible manner so that potential applicants can understand it
- is the job description jargon-free (avoid abbreviations and in particular those specifically relating to your own organisation)
- have all sex stereotypes been removed

Approval and Implementation

- management committee or senior management should agree the final version of the job description
- the union or staff representative should be consulted
- if the job description is new, the post should be given an appropriate salary level
- job descriptions should be reviewed on an ongoing basis

Personnel Specifications

Having agreed the job description, the next stage in the process is to develop a personnel specification which outlines the list of skills required to carry out those duties. Objective standards should be set in the personnel specification for the essential and desirable criteria needed for the effective performance of the job.

Preparation

All specifications should state the minimum qualifications and experience needed to be eligible. These should be examined carefully to ensure they are absolutely necessary. Consider whether academic qualifications are always necessary, for example experience in a particular field may be of greater benefit in the post. Clarify the following:

- essential criteria where candidates must be able to meet criteria in order to be able to perform the duties on the job description
- desirable criteria which can be used to distinguish further where a large number of candidates may be eligible for shortlisting
- proven ability where candidates have had experience of the skill in question
- potential ability where the candidate can learn the skill on-the-job and whereby the criteria become 'ability to'

As with the job description, it is important to adopt a standard layout for the personnel specification. Go through the job description and write down the criteria for the duties under the following headings:

- name of organisation
- job title
- attainments (qualifications and specific experience required)

- special aptitudes (personal skills of the individual, communication, ability to prioritise workload, ability to work with ,minimum supervision)
- interests (not personal interests rather interest or understanding of the work area or voluntary/community sector)
- disposition (eg personal commitment to the work, ability to work flexible hours, within the aims and values of the organisation)
- physical (will only apply if essential to the job)
- legal requirements (eg willingness to undertake vetting, Rehabilitation of Offenders order)
- any other requirements

Checklist

- are you able to test or measure each criteria
- can each criterion justified in terms of the tasks in the job descriptions
- are the criterion written out clearly and precisely
- have you ensured that the criteria do not result in a personality profile or relate to personal circumstances of candidates

Advertisements

Preparation of the advertisement is based on the information available from the job description and personnel specification. It should provide information about the job and the organisation in a positive manner to appropriate candidates and promote the organisation to anyone who reads it. The advertisement should be conceived within the context of the equal opportunities policy and should include a statement to that effect. All advertisements should contain the following:

- name of the organisation and/or logo if appropriate
- job title
- status of post (whether full-time, part-time)
- status of post (whether permanent or fixed-term)
- salary
- main purpose of job
- the essential criteria for the job (eg number of years experience or qualifications)
- how to get an application form and further details
- a closing date for applications which should be at least two weeks if advertised in a newspaper

Application Form and Recruitment Packs

Good practice demonstrates that application forms should be used for all recruitment as this ensures that all applicants have equal opportunity to present themselves to the shortlisting panel and that additional personal information normally contained in a curriculum vitae is not used to discriminate against potential applicants. It is much

easier to assess applications without bias if the same information is presented by all applicants in the same manner. Application forms should contain the following:

- name (ask for forename rather than Christian name as this may deter members of other religious groups)
- address - home and email , telephone numbers - home and work
- details of current or most recent employment, duties involved, date of joining and leaving (if appropriate), rate of pay
- details of employment history
- education and qualifications relevant to the post
- details of two people to whom references may be made (at least one should be current or previous employer)

Refer to Appendix 4 for sample application form.

Equal Opportunity legislation and good practice suggest that the following information should be **excluded** from application forms:

- marital status
- age and date of birth
- place of birth
- details of dependents
- disability status
- driving licence and car driver (may discourage those with a disability from applying)

Monitoring

Under the Fair Employment Monitoring Regulations (NI) 1999 registered employers are required to monitor the composition of their workforce on the basis of religious belief and gender. It is, however, good practice to monitor even if you are not a registered employer. In addition, other information such as disability status, racial background, marital status not required under the monitoring regulations, may be gathered to ensure fair participation from all sections of the community. Appendix 5 provides a sample form for this purpose.

Recruitment Packs

The following information should be forwarded to all applicants:

- cover letter asking candidates:
 - not to send CV
 - to complete the form in accordance with the personnel specification
 - stating the organisation's commitment to equality of opportunity
 - explaining procedure for monitoring
- application form
- monitoring form and envelop

- job description
- personnel specification
- equal opportunities policy
- any additional information on the organisation (eg general leaflet, annual report)

Selecting a Panel

The composition of the selection panel depends on the nature of the job and the organisation. It should include people who will be supervising the new worker and members of the management committee. Panel members are required to have special training in interviewing techniques and equal opportunity law and good practice. Some groups invite outsiders with specialist knowledge of equal opportunities policies and practices to take part in the process. No more than six people should sit on a panel. However a manageable and reasonable number would be a panel of three to four people. Under no circumstances should there be less than two panel members.

Shortlisting

Before shortlisting, the monitoring forms should be detached from the application forms and stored for future reference. Shortlisting should take place soon after the closing date. All members of the selection panel should have copies of the job description, personnel specification and application forms and should shortlist separately before meeting to decide on the final shortlist. The decision to shortlist a candidate should be based on whether that person fulfils knowledge, skills and experience requirements detailed in the personnel specification. All essential criteria should be met before an applicant can be shortlisted. The reasons for rejecting candidates should be well documented and relate to the criteria only.

Preparing for Interviews

Shortlisted candidates should be invited for interview specifying the place, time, date and if they are required to carry out a test. Candidates should also be asked if they have any specific requirements to assist them in the interview, eg interpreter, signer.

Interview questions must be well prepared by the panel in advance of the interview (preferably at the shortlisting meeting) using the personnel specification and job description, and ensuring that all questions are clearly job specific. The panel should agree the order of questions, the person asking which questions and clarify possible responses.

Types of Questions

- open question requiring more than a yes or no answer, eg “tell me about?”, “what was your involvement in?”
- closed/direct questions to gather yes or no answers or factual information eg “when did you start?” “how long were you here?”

- reflecting/summarising questions which summarise what the candidate has said eg “you mentioned earlier have I got that right?”
- linking questions which link one section of the interview to another eg “having heard about perhaps you could tell us how you dealt with”
- follow up/probe questions which build on what the candidate has already said eg “what was your role in the project?”
- hypothetical questions which set out a situation specific to your organisation and ask how the candidate would react, eg “if happened, how would you approach this difficulty”

Structure of the Interview

Beginning

- put the candidate at ease
- develop rapport and set the scene
- chair should introduce panel
- outline the structure of the interview

Middle

- ask agreed questions
- probe when necessary
- maintain rapport

End

- close the interview
- confirm future action (how and when candidates will be notified of result)
- outline conditions of service
- invite candidates to ask questions

Completing Candidate Assessment/Scoring

Every member of the panel should make notes on each candidate after the interview. Candidates must always be assessed on the selection criteria and not against each other. The most effective method of scoring is to use a weighted system.

To operate the weighted system, the panel must first decide what marks are available and then to which criteria they should be attributed. It is suggested that the total marks available should be 100 and marks should be allocated or weighted to the criteria considered most important in terms of ability to carry out the job effectively.

For example if qualifications and experience are considered most important, it is likely that these will command a higher proportion of the marks available. Other factors considered less important, eg such as disposition, will have fewer marks

allocated to them. A sample assessment form may be referred to in Appendix 6 at the end of this chapter.

Selection

Once all interviews are completed, the panel should discuss the applicants. Sometimes one candidate stands out and everyone will agree that person should be offered the job as their scores are greater than all other candidates. At other times considerable discussion will be needed before a decision can be reached. Most importantly, any decision must solely be based on individual merit and no reference to personal circumstances should be made or considered by the panel. The person who most closely fulfils the criteria on the personnel specification should be selected for the post.

References

Some organisations request references prior to the interview process. However reference should not be considered by the recruitment panel until the interview process has been concluded and the panel is in a position to make an offer of employment. If references have not yet been sought such an offer may be made subject to the receipt of satisfactory references being received.

Offer

The successful applicant may be contacted in the first instance by telephone and then followed up with a letter of appointment which will form part of the contract of employment and should contain the following:

- starting date
- starting salary
- job title
- any conditions of appointment (eg subject to receipt of satisfactory references or medical)
- brief summary of key conditions of appointment (duration of contract, working hours etc)

Employees are entitled to receive a full written statement of main terms and conditions of employment within eight weeks of commencing employment. For further information on this and other terms and conditions relating to an employment contract, refer to chapters 3, 4 and 5.

Reserve List

There may be occasions when the panel feels they could appoint more than one candidate from the interviews conducted because of the high standard of interviewees. It is possible under recruitment legislation and codes of practice to hold suitable

appointees' applications in reserve should a suitable vacancy arise in the future. The limit of time on reserve is six months and this allows the organisation to automatically select the reserve candidate without further interview should the position become vacant within a six-month period.

Induction

The induction procedure is an integral part of the selection process as it provides the new employee with an opportunity to understand more about the organisation, its purpose, vision and objectives. The main objectives of the procedure include:

- to assist the new employee to understand where their role fits in to the structure of the organisation.
- to provide an opportunity for the employee to learn about the culture of the organisation
- to provide an opportunity for the new employee to discuss any areas of difficulty
- to explain important specific rules such as fire drill, health and safety, etc

What to cover

- where the employee will be working, with whom and to whom will they report
- aims and philosophy of the organisation
- what their job entails
- equipment to be used
- introduction to other staff
- terms and conditions of employment
- health and safety policy and procedures
- facilities such as photocopying, mail, telephone
- any other activities of the organisation

Refer to appendices 7 to 11 for other sample letters including letter of offer, request to attend interview and regret after interview.

Appendix 1

Table of Rehabilitation Periods

The table below outlines the rehabilitation periods after which many of these sentences will be considered 'spent'. This means an applicant may answer "no" if asked about a criminal conviction or record unless the job to which they are applying is an 'excepted' one.

Custodial sentences of over 2½ years can never become spent

	Rehabilitation Period	
	Aged 17 or over upon conviction	Aged under 17 upon conviction
Prison (immediate or suspended sentence) or young offender institution- more than 6 months but less than 2½ years	10 years	5 years
Prison (immediate or suspended sentence) or young offender institution- 6 months or less	7 years	3.5 years
Fine or community service order	5 years	2.5 years
Absolute discharge	6 months	6 months
Probation, supervision, care order, conditional discharge or bind over	1 year or until Order expires (whichever is longer)	
Attendance Centre Order	1 year after the Order expires	
Hospital Order (with or without restriction)	5 years or 2 years after the Order expires (whichever is longer)	

Appendix 2

JOB DESCRIPTION PROFORMA

Organisation: _____

Job Title: _____

Responsible to: _____

Responsible for: _____

Status of post: _____

Grade: _____

Hours: _____

Salary: _____

Location: _____

Summary:

Specific Duties:

Date Implemented: _____
Appendix 3

PERSONNEL SPECIFICATION PROFORMA

The personnel specification shows essential skills, abilities, knowledge and/or qualifications required to be able to carry out the duties of this post. Please therefore address, in completing the application form, each criterion listed in the specification, drawing upon all of your experience, whether at work or on a voluntary basis.

Organisation _____

Job Title: _____

Attainments

Qualifications Essential

Desirable

Experience Essential

Desirable

Special Aptitudes Essential

Desirable

Interests Essential

Desirable

Disposition Essential

Desirable

Appendix 4

POST:	APPLICATION REF NO:
CLOSING DATE:	

Please complete all sections of this application using black ink or typescript.

PERSONAL PARTICULARS
Name: _____
Address: _____ _____
Telephone Number for contact: _____
Email _____

EDUCATION	
Subjects passed at 'O' Level/GCSE or equivalent	Subjects passed at 'A' Level/GCSE or equivalent
Degrees or diplomas with dates and institutions attended	

PROFESSIONAL QUALIFICATIONS		
Name of professional body or bodies	(i) By Examination Date and Result	(ii) By Election

--	--	--

PRESENT OR LAST EMPLOYER (if any)

Name and Address
of present employer
(or last employer)

Post Held:

Duties of Post:

Date Appointed: _____ Present Salary: _____ Period of Notice: _____

VOLUNTARY SERVICE OR COMMUNITY WORK

Please give details of any voluntary service or community work that you have undertaken on an unpaid voluntary basis.

WORK EXPERIENCE

Please list, starting with the latest, any previous positions you have held, with a brief description of duties and dates.

RELEVANT EXPERIENCE TO THIS POST

Using the Personnel Specification, how do your skills, experience and abilities relate to this post?

REFEREES

Please name two referees, who should have knowledge of you in a working/academic capacity.

1 Name: _____
Address: _____

Telephone No: _____
Position: _____

2 Name: _____
Address: _____

Telephone No: _____
Position: _____

These referees may be approached if you are shortlisted for interview, unless you specify otherwise.

DECLARATION

I declare that the information set forth in this application form is, to the best of my knowledge, true and complete.

Signature: _____

Date: _____

PLEASE RETURN TO:

**XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX**

**EQUAL OPPORTUNITIES MONITORING FORM
(in strictest confidence)**

1 Perceived Religious Affiliation

I am a member of the Protestant community

I am a member of the Catholic community

I am a member of neither the Protestant nor the Catholic community

Please specify _____

2 Gender

I am FEMALE MALE

3 Marital Status

I am MARRIED SINGLE OTHER

4 Disability

Under the Disability Discrimination Act 1995, a disability is defined as “a physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day to day activities”

Having read this definition do you consider yourself to have a disability?

YES NO

5 Age Band

16-20 21-30 31-40 41-50 51-60 61-65

6 Cultural/Ethnic Origin

Chinese Traveller

Indian Black/African-Caribbean

Pakistani White

Asian Others Other

(please specify) _____ (please specify) _____

7 Dependants (please specify) _____
Appendix 6

INTERVIEW ASSESSMENT SHEET

Job Title _____

Name of Applicant _____

Interviewer _____ Date _____

Criteria	Notes	Marks Available 100	Marks Awarded
Attainments (Qualifications and Experience)		50	
Special Aptitudes		30	
Interests		15	
Disposition		5	
Total Score _____			
General Comments			

Appendix 7

REGRET BEFORE INTERVIEW

Date

Name
Address

Dear

SHORTLISTING FOR THE POST OF

Thank you for submitting an application form for the above position.

I regret to inform you however that you have not been shortlisted for interview on this occasion.

May I take this opportunity to thank you for your interest in our organisation and to wish you every success in the future.

Yours sincerely

Chair of Panel

Appendix 8

INTERVIEW LETTER

Date

Name
Address

Dear

INTERVIEW FOR THE POST OF

Thank you for your application for the above position. I have pleasure in inviting you to these offices on _____ at _____.

I would be grateful if you could confirm that you will be attending the interview by phoning myself on _____. Please advise if you have any requirements we should be aware of to assist you in the interview.

I look forward to meeting you.

Yours sincerely

Chair of Panel

Appendix 9

REGRET AFTER INTERVIEW

Date

Name
Address

Dear

INTERVIEW FOR THE POST OF

I am sorry to give you the disappointing news that you have not been successful in your interview for the above post.

The Panel appreciates the time you took in preparing for and attending the interview and regrets that you have not been successful.

I would like to take this opportunity to thank you for your interest in our organisation and wish you every success for the future.

Yours sincerely

Chair of Panel

Appendix 10

RESERVE LETTER

Date

Name
Address

Dear

Re: NAME OF POST _____

I am sorry to give you the disappointing news that you have not been successful in your interview for the above post.

The Panel was, however, very impressed by your interview, and would like to hold your application on reserve should this vacancy arise again in the next six months.

We appreciate the time you took in attending the interview and regret that you have not been successful on this occasion.

Thank you for your interest in our organisation and its work.

Yours sincerely

Chair of Panel

Appendix 11

LETTER OF OFFER

Date

Name
Address

Dear

INTERVIEW FOR THE POST OF

I am pleased to formally confirm our offer of employment for the above post, subject to receipt of satisfactory references from your two referees.

I enclose two copies of written statement of terms and conditions of employment. I would request that you sign these and return one to me for your personnel file.

I list below the main terms and conditions:

1 **Salary:**

You will be placed on £_____ per annum - ____ grade.

2 **Commencement Date:**

I confirm that your start date will be _____.

3 **Status of post:**

Your post is a full-time/part-time permanent/fixed-term position.

4 **Annual Leave:**

You will be entitled to 25 days paid holidays per annum (pro rata). Your current entitlement will be ____ days from your commencement date. Statutory days are in addition to this.

5 **Probationary Period:**

Your probationary period will last for three months.

6 **Hours weekly**

You will be required to work ___ hours per week. The office closes at 4.30 pm on Friday.

I have enclosed a copy of our Terms and Conditions of Employment booklet for your information.

Please contact me if you have any queries about the terms and conditions. We would like to take this opportunity to wish you well in your new appointment and look forward to you joining the organisation.

Yours sincerely

Chair

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Equality Commission for Northern Ireland
Andras House
60 Great Victoria Street
Belfast BT2 7BB

Tel: 028 9050 0600
Fax: 028 9033 1544
Textphone: 028 9024 0010
Website: www.equalityni.org

Disability Action
Portside Business Park
189 Airport Road West
Belfast BT3 9ED

Tel: 028 9029 7880
Fax: 028 9029 7881
Minicom: 028 9029 7882
Website: www.disabilityaction.org

Employers Forum for Disability
Banbridge Enterprise Centre
Scarva Road Industrial Estate
Banbridge BT32 3QD

Tel: 028 4062 4526
Fax: 028 4066 9665
Email: efd.ni@virgin.net

Northern Ireland Council for Ethnic Minorities
3 F Ascot House 24-31 Shaftesbury Square
Belfast BT2 7DB

Tel: 028 9023 8645
Fax: 028 9031 9485

Email: nicem@n-ireland.freeseve.co.uk

A Guide to Good Employment

Chapter 3. Terms and Conditions of Employment

Overview

This chapter outlines details with regard to contracts of employment and the provision of the written statement of main terms and conditions and associated legal obligations placed on the employer.

Terms and Conditions of Employment

The terms and conditions of employment refer to the understood obligations between an employer and employee. Some terms and conditions must be included in a written statement. Other terms and conditions should be referred to and include details of where they can be easily accessed, for example in the Personnel Office or in a staff handbook. These terms and conditions form an important part of the contract of employment.

There are a number of different types of contracts depending on the employment situation. The main ones are full-time or part-time (both can be either permanent or temporary), fixed term or casual. These contracts are for people employed by the organisation. A different type of contract (usually referred to as a contract for services) would be used by an organisation if a person is self-employed or working on a consultancy basis. A contract of employment between the employer and the employee exists from the time the employee accepts an offer of work.

The Legal Position

The Employment Rights (NI) Order 1996 states that:

- employers must provide all employees with a written statement of main terms and conditions of employment within two months of commencing employment
- the right to a written statement applies to all employees whether full-time or part-time, permanent or temporary, irrespective of hours worked.

Legal Exception

These provisions do not extend rights to any employee who is employed for less than a period of one month.

Written Statement

An employer is legally obliged to provide an employee with a written statement incorporating the following information relating to their terms and conditions of employment:

- the names of the employer and the employee
- date on which employment began, whether any previous employment counts as continuous employment and if so, when it began
- current scale or rate of pay
- intervals at which wages are to be paid
- hours of work and normal working hours
- entitlement to holidays, holiday pay and accrued holiday pay on termination of employment
- terms and conditions relating to sickness including any provision for sick pay
- details of pensions and pension schemes
- length of notice employee is entitled to receive or required to give to terminate employment (this cannot be less than the statutory minimum)
- job title and a brief description of the role
- details of disciplinary rules and name of person to whom an appeal can be made (since 1 June 1992 this does not to organisations where the number of employees at the date of their commencement of employment was less than twenty)
- details of grievance procedure and name of person to whom an employee can refer a grievance
- if the contract is a fixed term contract, the date on which the contract expires or if the contract is not intended to be permanent, the period for which it is expected to continue
- the place of work, or where various places of work are required or permitted, an indication of that fact and of the address of the employer
- particulars of any collective agreements affecting terms and conditions (ie employment issues pre-agreed between employer and trade unions affecting all workers)
- were the employee is required to work outside the UK for longer than one month - the period involved, the currency of payment, any additional payment or benefits, and any terms attached to return to the UK.

Some individuals are NOT covered by these regulations:

- seamen, including fishermen
- employees working wholly or mainly outside Northern Ireland
- those working for less than a month
- crown servants if disclosure would jeopardise national security
- Self-employed workers, independent contractors and some trainees

Refer to Appendix 1 for a sample written statement at the end of this chapter.

Contracts of Employment: Short-Term, Fixed-Term, Casual Employees

Most contracts of employment are for an indefinite period and can be terminated by giving notice in accordance with the terms and conditions of the contract or any longer period of entitlement to notice arising from statute. There are, however, other types of

contract which specify a limited length of time over which an employee will be working and this in turn affects some of their entitlements.

Fixed-term contracts

These are written contracts for any length of time but specifying a termination date. It is possible to end these contracts early if such a provision is included, otherwise it is a guarantee of employment until the given date. A fixed-term contract for two years or more may include a clause waiving the employee's right to claim a redundancy payment. Such an agreement must be in writing and will only apply to termination by expiry of the contract without renewal.

Good practice recommends that all workers be extended the right to protection against unfair dismissal, regardless of length of contract or length of service- the use of such waiver clauses in this area should be strictly limited. However, since short- and fixed-term workers understand that their job will come to an end on an agreed date, they may be willing to waive their rights to redundancy payments by signing a waiver clause.

Casual employment

So-called casual staff are engaged for a limited number of hours or sessions with no obligation for either the member of staff to take further work or the employer to offer it. There is no 'mutuality of obligation' and no continuing relationship, simply a one-off contract, although it may be repeated. Although they have no employment contract as such, income tax should be deducted. If this arrangement continues, however, there is a risk that the employee will acquire rights to continuity of employment. Organisations should set out the basis on which casual staff are employed and the anticipated duration of their employment.

Employed or Self-Employed

- An employed person is someone who works under a contract of service. They will normally be integrated into the organisation, and their work will be carried out for the employer, according to their instructions. An employee will often work exclusively for one organisation.
- A self-employed person is someone who contracts out their services and who is therefore normally free to work for more than one organisation. This might be done by a Consultant's Agreement under which a person, usually with specialist skills, is contracted to complete a particular piece of work or whose services are retained for a certain number of days per year.

The distinction of employed or self-employed is important because a self-employed person must organise their own income tax and National Insurance contributions. A contract for such a person is known as a contract for services and is therefore not a contract of employment. Great care should be taken before treating someone as self-

employed as, if incorrect, the organisation could be liable for the income tax and national insurance it should have deducted under PAYE legislation.

Appendix 1

STATEMENT OF MAIN TERMS AND CONDITIONS OF EMPLOYMENT

(In compliance with the Employment Rights (NI) Order 1996 this sets out the main terms and conditions of your employment contract)

1 Employee Name

2 Name and Address of Employer

3 Period of Employment

This post is subject to funding from an external source and it is currently anticipated that such funds will be available for _____. Your period of employment will therefore be subject to this funding, to the sections on probation and notice and to the satisfactory performance of the duties. Your employment will end if this funding ceases.

4 Continuity of Employment

Previous employment with this or any other employer, prior to the date specified in 3 above will not count as part of your period of continuous employment.

5 Job Title and Location

You are employed as _____

Your job is located at _____

The duties of your post are specified in your job description already supplied to you.

6 Salary

Your salary is _____ per annum and will be subject to annual review. Salary is paid weekly/monthly in arrears by cheque/credit transfer (delete as appropriate).

7 Subsistence and Travelling Expenses

You will be entitled to subsistence and travelling expenses in the course of your work. The current rates applicable can be obtained from _____.

8 Hours of Work

Normal office hours are Monday to Friday from _____ to _____.

You are required to work _____ hours per week (exclusive of meal breaks).

Your post may involve evening and weekend work in excess of contracted hours. In that event you will be entitled to equivalent time off in lieu on dates agreed by your line manager.

Time in lieu must be taken within two months of it being incurred or as soon as is reasonably practicable thereafter.

9 Leave Arrangements

The leave year runs from _____ to _____ each year.

Your annual holiday entitlement is _____ (pro rata) with pay.

Statutory holidays with pay will be granted in addition to annual holiday entitlement, dates to be specified from the employer.

On termination of your employment you shall be entitled to annual holiday with pay based on your length of service in that holiday year less any holidays already taken. Where holidays have been taken in excess of accrued entitlement at the date of termination of employment, such excess shall be deducted from monies due.

10 Maternity Leave and Pay

The maternity procedure of this employer follows the maternity provisions of the Employment Rights Order 1996 and the Maternity and Parental Leave Regulations (NI) 1999.

11 Sickness/Absence

There is no provision for an Occupational Sick Pay Scheme relating to your employment. You may however qualify for Statutory Sick Pay, details of which are available from _____. Your attention is drawn to the absence notification and certification procedures which are enclosed in the staff handbook.

12 Pension

There is no provision for an Occupational Pension Scheme relating to your employment. The organisation will comply with the provisions relating to Stakeholder Pensions.

13 Probationary Period

You will be on probation for a period of _____ months during which time your progress will be monitored. At the end of this period, if a satisfactory standard is achieved, your employment will be confirmed. In the event of unsatisfactory progress, your employment will not be regarded as confirmed and will be terminated either during or at the end of probation in accordance with the provision on notice set out below. After probation and providing your employment is confirmed, you will be subject to employer's disciplinary procedure.

14 Notice Entitlement/Requirements

The period of notice you are entitled to receive in the event of termination is as follows:

Period of continuous service	Notice
Less than one month	Nil
At least one month but less than two years	one week
More than two years but less than three years	two weeks

one additional week's notice for each further complete year of continuous employment to a maximum statutory requirement of twelve weeks

15 Grievance Procedure

The grievance policy and procedures for dealing with grievance matters are enclosed in the staff handbook.

16 Disciplinary Rules and Procedures

The disciplinary rules and procedures for dealing with disciplinary matters are enclosed in the staff handbook.

17 Equal Opportunities Policy

We are an equal opportunity employer. The aim of our policy is to ensure that no job applicant or employee receives less favourable treatment on the grounds of sex, marital status, disability, race, religious belief or political opinion, nor should they be disadvantaged by conditions or requirements which are neither justified nor relevant to the job. The Equal Opportunity Policy is enclosed in the staff handbook.

18 Changes in Terms and Conditions

From time to time your main terms and conditions of employment may be subject to change (by mutual consent). Should any change be agreed, this will be confirmed, within one month from the change taking effect, by individual written notification.

I hereby acknowledge receipt of this statement together with a copy of the staff handbook.

Signed

Date

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax: 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827

Department Of Higher and Further Education, Training & Employment
Employment Rights and New Deal Division
Room 203 Adelaide House
39/49 Adelaide Street
Belfast BT2 8FD

Tel 028 9025 7956
Fax 0800 585811
Email erbooklets@dhfetni.gov.uk

A Guide to Good Employment

Chapter 4. Employee's Rights

Overview

There are certain conditions of employment which employees are entitled to follow by law. An employer can choose to be more generous than the requirements of these statutory regulations but may not opt out of them or provide less than is specified. Other than the rights specified by statutes and expressed by the written statement, there are also certain other obligations which are implied by the fact that a contract exists and although not written down, both employers and employees are obliged to abide by them.

The employee must:

- render faithful service (to an employer) and not compete with the employer
- obey lawful and reasonable orders (consistent with his or her contract)
- exercise reasonable care and skill
- maintain confidentiality

The employer must:

- pay agreed wages
- provide work
- provide a safe workplace
- pay out of pocket expenses
- maintain the relationship of trust and confidence by behaving reasonably towards the employee

The Legal Position

In addition to a written statement of main terms and conditions of employment, the Employment Rights (NI) Order 1996 grants employees a number of other entitlements. The Employment Relations (NI) Order 1999 is a major new piece of legislation covering a wide range of individual and collective employment rights. The Order puts into effect the Labour government's proposals on fairness at work and implements various obligations under European law.

Statutory Sick Pay

All employers are obliged to pay Statutory Sick Pay to eligible employees for periods of absence of four or more days up to a total of 28 weeks in one period of incapacity for work.

The employer is not required to issue sick pay when:

- an employee has been under contract for three months or less (in cases where the existing contract is not a renewal of a previous contract)
- an employee's earnings are below the Lower Earnings Limit
- an employee is over 65 years old at time of illness

Employers should note that:

- Statutory Sick Pay is liable for tax and national insurance contributions
- their notification requirements must conform to statutory requirements
- proper records must be kept for three years after the existing tax year in which the payments were made. Records should detail absences lasting four or more days, payments and documentation to enable employees who are not entitled to this payment or whose entitlement has ended, to transfer to State Sickness Benefit
- some of this payment may be recoverable: If the employer qualifies under the percentage threshold scheme: if the total gross Class 1 National Insurance Contribution (the combined contributions of employer and employee) multiplied by 13 per cent is less than the total amount of Statutory Sick Pay paid out, then employers can reclaim the difference
- employers can be more generous than the law dictates and supplement an employee's basic entitlement to Statutory Sick Pay

Maternity Rights

It is unlawful for employers to discriminate against an employee because of pregnancy or maternity. All pregnant employees, regardless of hours worked or length of service, are entitled to:

- 18 weeks maternity leave beginning at any time after the eleventh week before the expected week of childbirth, and after giving twenty-one days notice or, if this is not possible, notice should be given as soon as possible
- reasonable time off with pay for ante-natal care
- all their normal terms and conditions except wages or salary during maternity leave
- the right to return to their original job
- suspension on full pay, known as a medical suspension, if it is considered that working conditions are detrimental to their health and the organisation is unable to improve those conditions satisfactorily

Pregnant employees who have completed one or more years service before the eleventh week before the expected week of childbirth are also entitled to:

- an additional 29 weeks leave (known as additional maternity leave) after the beginning of the week the baby is actually born.

Maternity pay

Statutory Maternity Pay is payable by an employer for up to eighteen weeks to women who:

- have worked for the same employer for at least 26 weeks by the end of the fifteenth week before the expected week of childbirth
- are still in work at the end of the qualifying week
- earn at least the minimum of the National Insurance Lower Earning Limit.

The payment is:

- six weeks at 90% of full pay; plus
- twelve weeks at the current Statutory Maternity Pay level

Returning to work

Following eighteen weeks maternity leave, an employee who intends to return to work is not required to give any notice and may simply return to work, where she is entitled to resume her original job. If the employee intends to return to work earlier than the end of the eighteen weeks, she must give her employer seven days' notice.

An employee who qualifies for and intends to take advantage of the right to return to work after additional maternity leave must give her employer at least 21 days notice of her date of return. After the longer period of maternity absence, an employee intending to return to work may receive a written inquiry from her employer asking if she intends to return to work. This inquiry may be sent to the employee to ask her whether she intends to return to work at the end of 29 weeks leave any time from eleven weeks after the start of her maternity leave. An employee must:

- must confirm her intention to return within fourteen days
- must give at least 21 days notice of her intended date of return (the employer should make it clear that failure to do so will remove her right to return).

A woman returning to work after Statutory Maternity Leave is entitled to return to the same job she left, as if she had not been absent. If a redundancy situation arises during her maternity leave, she should be offered any suitable alternative job.

A woman returning to work after Maternity Absence (29 weeks) is also entitled to return to the same job she left unless:

- a redundancy situation has arisen. In this case she is entitled to be offered a suitable alternative vacancy if one exists.
- there is a reason other than redundancy that makes it impractical for her to do the same job. In this situation a suitable alternative job must be offered.

To enjoy these maternity rights it is vital that the employee informs the employer of the following (preferably using forms available from ante-natal clinics):

- her pregnancy
- the intended date she will begin her maternity leave at least 21 days in advance and also the fact that she intends to exercise her right to 29 weeks' additional maternity leave after the birth, if applicable
- the expected week of childbirth
- the date of childbirth if she gives birth early
- her absence from work from the sixth week onwards if she is unable to attend work because of reasons connected with her pregnancy

Maternity and part-time employment

An employee returning to work following maternity leave has the legal right to request to resume her original, full-time job on a part-time basis. The employer, however, has the right to assess the feasibility of such an arrangement. If the employer refuses the employee's request, they must give reasons for the refusal in writing, showing strong commercial or other justifications for turning the application down. In practical terms, however, it is becoming increasingly difficult for employers to deny requests for part-time work on the part of employees returning from maternity leave and a number of legal cases are currently pending. It may be advisable to seek a solution through job-sharing, rather than to risk entering into a legal battle.

Employer's Rights

Maternity regulations provide certain rights to the employer as follows:

- maternity pay is only paid to employees who are on leave and therefore no longer working
- employers whose gross National Insurance liability is £20,000 or less will be reimbursed in full by the government in respect of Statutory Maternity Pay, with an additional 5% to cover administrative costs. Other employers will be reimbursed at 92 % of the Statutory Maternity Pay they have paid out
- an employer is entitled to delay the return of an employee who has taken the 29 weeks' additional maternity leave by up to four weeks if her return is not operationally convenient
- if an employer refuses to allow an employee to resume her job after maternity leave, this may be regarded as unfair dismissal unless the employee has been offered a suitable alternative (because her job has been made redundant or it was impractical to give it back to her) and she has unreasonably refused

Parental Leave

The Maternity and Parental leave Regulations (NI) 1999 gives an employee's entitlement to Parental Leave as follows:

- an employee who has been continuously employed for one year and has or expects to have responsibility for a child is entitled to parental leave of thirteen weeks in respect of each child born or adopted after 15 December 1999
- each parent is entitled to leave in respect of each child up to his/her fifth birthday or his/her 18th birthday where the child is entitled to Disability Living Allowance. For adopted children, the entitlement is five years from the date of placement or up to the child's eighteen birthday whichever is earlier.

Presently, the right is to unpaid Parental Leave although this is under review and may change.

Dependant Leave

The Employment Relations (NI) Order 1999 inserts new provisions in the Employment Rights (NI) Order 1996 to allow employees to take a reasonable amount of (unpaid) time off during working hours in order to take action when necessary:

- to provide assistance on an occasion when a dependant falls ill, gives birth or is injured
- to make arrangements for the provision of care for a dependant who is ill or injured
- in consequences of the death of a dependant
- because of unexpected disruption or termination of arrangements for the care of a dependant
- to deal with an incident involving a child of the employee occurring unexpectedly while in an educational establishment which is responsible for the child.

The right does not apply unless the employee tells their employer the reason for their absence as soon as is reasonably practical, except where this condition cannot be complied with until after the employee has returned to work.

A dependant means a spouse, a child, a parent, a person who lives in the same household as the employee except where the person lives in the house because they are an employee, tenant, lodger or boarder. A dependant also means a person who reasonably relies on the employee for assistance on an occasion where the person falls ill or is injured or assaulted or to make arrangements for the provision of care in the event of illness or injury. Important points to note include:

- the meaning of dependant is broader than the employee's immediate family and might include the unmarried partner of the employee (who may be of the same sex) or an elderly relative who may be living with the family includes an elderly neighbour
- there is no limit to the amount of time off an employee is permitted to take. The right is limited to the amount of time that is reasonable in the circumstances of the case

- there is no payment for time off for dependant leave although employers may provide for payment as part of the employee's contract

If an employee is unreasonably refused time off, then a complaint can be made to an industrial tribunal within three months. Where the complaint is upheld the employee can obtain a declaration and an award of compensation which will be determined having regard to the employer's default and also any loss sustained.

Time Off for Public Duties

Employers are obliged to allow employees reasonable time off to perform certain public duties. Such leave may be unpaid or paid at the discretion of the employer. Good practice would be to consider granting paid time off where no loss of earnings compensation is offered by the relevant public body. These public duties are:

- Justice of the Peace
- local councillor
- member of a statutory tribunal or regional or area health authority
- governor or manager of a state school
- jury service
- member of a police authority

Working Time Regulations

Until 1998, for most employees, there was no limit as to the number of hours an employer could ask an employee to work. On 23 November 1998 the Working Time Regulations (NI) came into effect which gives new rights to employees in relation to annual leave and working hours.

These regulations cover workers who are working under a contract of employment or who carry out work in person, but not those who are self-employed. There are however some exclusions to this:

- those in specified sectors of activity which includes air, rail, sea, inland waterway and lake transport, sea fishing and other work at sea
- doctors in training
- those in specified services such as the armed forces or police or those with specific activities in the civil protection services

Working Hours

Within the regulations, adult workers have different rights from young workers. Adult worker means aged eighteen and over while younger worker is defined as over compulsory school leaving age but not yet 18.

An adult worker covered by the regulations has:

- the right to work no more than an average of 48 hours per week
- the right to a daily rest period of eleven consecutive hours
- the right to a weekly rest period of 24 hours
- the right to a daily rest break of twenty minutes where the working day is more than six hours

Additional rights apply for a night worker. These include:

- a limit of an average of eight hours work in each 24 hour period
- a limit of eight hours work in each 24 hour period for a night worker whose work involves special hazards or heavy physical or mental strain
- the right to a health assessment before being required to do night work
- the right for a night worker suffering from health problems connected to night work to be transferred to suitable day work whenever possible

A young worker covered by the regulations has:

- the right to work no more than an average of 48 hours per week
- the right to a daily rest period of twelve consecutive hours
- the right to a weekly rest period of 48 hours
- the right to a daily rest break of thirty minutes where the working day is more than four and a half hours

A young night worker has the following additional rights:

- a limit of an average of eight hours work in each 24 hour period
- a limit of eight hours work in each 24 hour period for a night worker whose work involves special hazards or heavy physical or mental strain
- the right to a health and capabilities assessment before being required to work between 10.00pm and 6.00am
- the right for a night worker suffering from health problems connected to night work to be transferred to suitable day work when available

Exclusions

These rights relating to working hours do not apply in full to the following:

- a domestic servant in a private household
- where the worker's working time is not measured or predetermined, eg a managing director, a family worker
- where the activities are in a place distant from their place of residence
- where the worker is engaged in security and surveillance activities which require a permanent presence
- where the worker's activities involve the need for continuity of service or production

Opting out of the 48 hour limit

The regulations permit a worker to opt out of the 48 hour limit by agreement with the employer. The agreement to do this must be in writing and can be for a specified period or apply indefinitely. The worker however maintains the right to bring the agreement to an end.

Paid Annual Leave

Employees are entitled to a minimum of four weeks' paid annual leave. This entitlement arises after a qualifying period of thirteen weeks' continuous employment. The right to annual leave cannot be replaced by payment in lieu except where the employee's employment is terminated.

Under the regulations, the employer may require employees to take leave on giving the necessary notice. In relation to taking leave, the amount of notice to be given is for the employer to decide. However good practice would require twice as many days as the period of leave.

Part Time Workers Regulations

The Part-Time Workers' Regulations came into force on 1 July 2000 to ensure that part-time employees enjoy equivalent rights to full time employees in the same workplace. The regulations may be summarised as follows:

- part-time employees must not receive a lower basic rate of pay than comparable full time employees
- rights to contractual maternity and sick pay must apply to part-time employees pro rata
- part time employees must not be excluded from training opportunities and as such training should be structured wherever possible to be at the most convenient times for the majority of staff including those working part-time
- part time employees should not be treated less favorably than full timers in a redundancy situation

Further Information

The Department of Higher and Further Education, Training and Employment have produced a series of information booklets and fact sheets detailing all aspects of Employment Rights in Northern Ireland. These are available free of charge from offices of the Training and Employment Agency and the Department. Contact details can be found at the end of this chapter.

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax: 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827

Department Of Higher and Further Education, Training & Employment
Employment Rights and New Deal Division
Room 203 Adelaide House
39/49 Adelaide Street
Belfast BT2 8FD

Tel: 028 9025 7956
Fax: 0800 585811
Email: erbooklets@dhfetni.gov.uk

PRESS RELEASE

Department for Employment and Learning

STRICTLY EMBARGOED UNTIL 00.01 HRS ON SUNDAY, 6 APRIL 2003

4 April 2003

NEW RIGHTS FOR WORKING PARENTS INTRODUCED

Fathers and adoptive parents will, for the first time, be entitled to paid leave under new employment legislation designed to help parents balance their family and employment responsibilities.

The new legislation, which comes into full effect today, applies to parents who are expecting or will adopt a child on or after that date. Eligible working parents will have new and improved rights in employment including:

- up to 26 weeks' paid maternity leave and a further 26 weeks' unpaid leave to expectant mothers;
- two weeks' paid paternity leave for working fathers;
- adoption leave and pay, similar to maternity and paternity leave, for parents adopting a child who is newly placed with them;
- facility for parents with children under the age of 6 or disabled children aged under 18 to request flexible working arrangements;
- reimbursement through refund of National Insurance Contributions of maternity, paternity and adoption payments made by employers. Small employers are entitled to a full 100 per cent reimbursement, as well as a further compensation payment.

Welcoming the new legislation, Jane Kennedy, Minister with responsibility for Employment and Learning said: **"These new rights are some of the most**

Adelaide House, 39-49 Adelaide Street, Belfast BT2 8FD
Telephone:(028) 9025 7790 Fax: (028) 9025 7795

significant for employers and employees in recent years. They constitute a balanced package of measures, reflecting the needs of parents wishing to continue in paid employment and also of employers who need to ensure that the work gets done.

“Employers with good work practices are better able to attract staff and retain staff in whom they have invested through training. It is vital that all employers understand their obligations and responsibilities in relation to the new legislation.

“Working parents will be more content in the knowledge that they will be able to fulfil their parental responsibilities and consequently will contribute more in the workplace, helping businesses to retain a competitive edge.”

Further information is available from the Department for Employment and Learning website www.delni.gov.uk Individuals and organisations may also obtain advice on the new rights from the Labour Relations Agency (Tel. 028 9032 1442).

NOTES TO EDITORS

1. Interviews with employers that already offer a range of flexible working options are available by contacting the Press Office.
2. The package of new and improved rights for working parents was developed following a series of public consultations during 2001 and 2002. The rights are being introduced in Northern Ireland at the same time as parallel rights in GB.
3. The new rights result from the Employment (Northern Ireland) Order 2002 and related Regulations. The Employment (Northern Ireland) Order was made at Privy Council on 20 November 2002. It contains provisions of the former Employment Bill which had almost completed its progress through the Northern Ireland Assembly, but which lapsed when suspension of the Assembly occurred.
4. Changes to the rate of maternity pay are contained in the Social Security Act (Northern Ireland) 2002.
5. Printed copies of the Order, the Act and related Regulations are available from the Stationery Office, Arthur Street, Belfast.
6. For further information contact Clare Baxter on 028 9025 7872 or Gwyn Treharne on 028 9025 7790 in the DEL Press Office.

MATERNITY LEAVE AND PAY POLICY

Introduction of new statutory entitlements: Maternity/Paternity/Adoption leave and pay

1. This policy has been amended due to the new statutory entitlements resulting from the Employment (Northern Ireland) Order 2002 and the Maternity and Parental Leave etc (Amendments No 3) Regulations (Northern Ireland) 2002.

Conditions of entitlement to Maternity Leave

Ordinary Maternity Leave (OML)

2. All women whose expected week of childbirth (EWC) begins on or after 6 April 2003, will be entitled to 26 weeks ordinary maternity leave, irrespective of the hours they work or the length of time they have served with NICVA.

Additional Maternity Leave (AML)

3. Women who have completed at least 26 weeks continuous service at the beginning of the 14th week before their EWC will be able to take additional maternity leave of 26 weeks, starting immediately after their ordinary maternity leave.

Conditions of entitlement to Maternity Pay

Statutory Maternity Pay (SMP)

4. Statutory Maternity Pay (SMP) will be paid for 26 weeks. SMP will be paid at 90% of average weekly earnings for 6 weeks and £100 per week (or 90% of average weekly earnings if this is less) for 20 weeks. To qualify for SMP a woman will need to have been employed for 26 weeks by the 15th week before the EWC and earn over the NI lower earnings limit.

Women who are not entitled to SMP but meet the qualifying conditions based on their recent employment and earnings record may claim from their Social Security Office up to 26 weeks' Maternity Allowance.

5. Additional maternity leave will continue to be unpaid.

Company Maternity Pay

- (i) **Category A:** Employee with one or more year's service at the qualifying week

Such an employee shall be entitled to be paid for 18 weeks' maternity leave, that pay which is the equivalent of normal full pay (made up of that Statutory Maternity Pay which is applicable plus the balance from NICVA).

- (ii) **Category B:** Employee with between 26 and 52 weeks' service at the qualifying week

Such an employee will receive during her period of maternity leave:

- a) the equivalent of full pay for the first four weeks of leave
- b) half-pay plus SMP for the remaining 14 weeks of leave (subject to the total thus received not exceeding what would be payable on full pay) or for the remaining weeks of the contract if this is a shorter period.

(iii) **Category C:** Employee with less than 26 weeks service on the qualifying date

Such an employee will receive during her period of maternity leave

- a) the equivalent of full pay for the first four weeks of leave
- b) half-pay plus Maternity Allowance (if she is eligible for it) for the remaining 14 weeks of leave, (subject to the total thus received not exceeding what would be payable on full pay) or for the remaining weeks of the contract if this is a shorter period.

Notice of intention to take maternity leave

6. The employee is required to notify NICVA of her intention to take maternity leave by the 15th week before the EWC, the employee should notify the Human Resources Officer
 - That she is pregnant
 - The week her baby is expected to be born by means of a medical certificate (MatB1)
 - When she wants her maternity leave to start (the earliest date for this is 11 weeks before the EWC).
7. Human Resources will respond within 28 days of receiving her notification, giving the date of her expected return to work following the full period of maternity leave to which she is entitled (ordinary and/or additional).
8. If the woman wishes to change the start date of her maternity leave, she must advise the Human Resources at least 28 days in advance (unless this is not reasonably practicable).

Right to return to work

10. If the woman wishes to return to work before the end of her full maternity leave (ordinary and/or additional), she must give Human Resources 28 days' notice of the date she wishes to return.
11. If the woman attempts to return to work earlier than the end of her ordinary or additional maternity leave without giving NICVA 28 days' notice, NICVA may postpone her return until 28 days' notice has been given.
11. Returning after;
OML-The employee will have the right to return to the previous job she was employed in before her absence.
AML-The employee will have the right to return to her job or if not practicable to a suitable alternative which is not less favourable in terms of status, pay, terms and conditions, and location provided she satisfies all the appropriate conditions.

12. An employee on a full-time contract has the legal right to request her original job on a part-time basis on her return to work. (See flexible working policy)
13. Employees on short-term contracts shall have the right to return to work for the balance of their contractual period.

Sickness trigger

16. A woman's maternity leave will start automatically if she is absent from work for a pregnancy-related illness during the 4 weeks before the start of her EWC, regardless of when the actual date of maternity leave is due to start.

Attendance at Clinics

17. A member of staff will be allowed a reasonable period of time off with pay for attendance at ante and post-natal clinics (up to four hours), and this will not count against sick leave entitlement.

A Guide to Good Employment

Chapter 5. Employee Benefits

The Legal Position

Benefits are not subject to legal obligation and are therefore given at the discretion of the employer. Such benefits are normally offered to attract and retain suitable employees. There are many benefits which an organisation may offer to its employees in addition to the obligatory terms and conditions of employment. These will depend on the organisation's policies, financial position and future security.

Holidays

From November 1998, the Working Time Regulations (NI) made it obligatory for employers to provide employees with four weeks of paid holiday per year. This can include bank and public holidays. Paid or unpaid holiday time beyond the legal requirements may be offered as a benefit to workers. All holiday entitlement should be stated in the contract of employment. The average paid holidays in the Northern Ireland Voluntary sector are between twenty and 25 days per annum plus eleven public/bank holidays.

Employers should also make provisions for employees from different ethnic and religious backgrounds to take time off in order to observe different holidays.

The policy on this must be set out in the written statement of the terms and conditions of employment.

Pensions

At the present time employers can decide whether or not to offer employees access to an occupational pension scheme. Such a scheme can be contributory or non-contributory but must offer the same normal retirement age to both men and women.

Where occupational pension schemes are offered in the voluntary and community sector, it is often on a basis that both employees and employers contribute to the scheme.

If an employer does not offer access to an occupational scheme to employees, it will have to offer access to a stakeholder scheme.

Stakeholder Pensions

Stakeholder Pensions have been designed by the Government on the basis that anyone who does not have an opportunity to join an occupational pension scheme should have the same potential advantages embodied in a new privately funded individual plan. The main issues are:

- Stakeholder Pension Schemes started on 6th April 2001 however employers are required to provide access to them by 8th October 2001. They are aimed at low to moderate earners with incomes between £9500 and £21000 per annum.
- Employers will be obliged to offer employees access but will not be obliged to make a contribution towards the pension.
- Stakeholder Pensions will be regulated by both the Financial Services Authority (FSA) and the Occupational Pensions Regulatory Authority (OPRA).
- The maximum charge that can be made by a Stakeholder Pension (SP) Provider is 1% per annum of a member's fund calculated on a daily basis.
- SP will be able to contract –out of part of the State Pension arrangements.
- Employers are required to provide access to Stakeholder Pensions where their employees are not eligible to join an occupational pension scheme. Regulations, however, set out the circumstances in which employers will not be required to comply with access requirements.
- An employer will not be required to facilitate access to a Stakeholder pension if it has less than five relevant employees. However, once the fifth relevant employee is employed, the employer has three months in which to put the regulations into effect.
- Employers will not be required to meet the access requirements for SP where they are willing to make contributions to a Personal Pension, for those employees who wish to join, of at least three percent of the member's basic pay.

Occupational pension schemes are of greater benefit to employees as the employer makes a contribution to these. With Stakeholder pensions, employers merely provide access to these schemes for employees.

The Pensions Trust in conjunction with NICVA provide the NI Charities Pension Scheme and their trustees believe that the best possible pensions for employees in the voluntary and charitable sectors is through providing occupational pension schemes at an affordable level rather than a Stakeholder Pension. For those organisations that do not or could not have an occupational scheme, it would be possible to offer a "Money Purchase Plan " on the basis of the employer paying at least a low contribution.

Extended maternity leave

As a benefit, an employer can offer a longer period of leave and hold a job open for longer than is stipulated by law.

Parental leave

The Maternity and Parental Leave Regulations (NI) 1999 gives an employee entitlement to Parental leave (refer to chapter 4, Employee Rights, Parental Leave). Presently, the right is to unpaid parental leave although an employer may consider paying part of this as an additional benefit to employees.

Dependant leave

The Employment Relations (NI) Order 1999 inserts new provisions in the Employment Rights (NI) Order 1996 to allow employees to take a reasonable amount of unpaid time off during working hours in order to deal with a crisis at home, such as caring for a partner who is extremely ill or other family emergency (refer to chapter 4, Employee Rights, Dependant Leave). Payment for such leave is at the employer's discretion, however it is good practice to allow reasonable paid time off under circumstances where, for example, there is a family bereavement.

Childcare provision

Employers are not obliged to provide childcare for employees with young children. However, many workers value such provisions highly and employers may wish to offer some form of childcare or support for childcare as a benefit. Additionally, organisations may provide childcare facilities tax free if:

- actual facilities are provided (not vouchers for external nurseries)
- the provision is offered by the employer, or in conjunction with other employers
- the facilities meet local authority requirements

If such a provision is available, it must be offered equally to both male and female employees. The employer might also consider offering vouchers to help employees pay for childcare at external nurseries.

Flexible working hours/Time Off In Lieu (TOIL)

This policy allows employees to choose their own working hours within certain limits. There is a core time during each day when all employees must be working, normally the busiest part of the day from 10.00am until around 4.00 pm. Outside of the core time employees can decide what time they wish to start or finish, as long as they work the required number of hours per week. A small excess of time worked may be carried forward and taken as 'time off in lieu' or 'TOIL' at a later date. The advantages of this scheme are that it facilitates employees with domestic commitments such as taking children to school or collecting them. Also, by giving employees the freedom to manage their working schedule, flexible working hours raises morale and leads to a better working environment.

Teleworking

Also known as telecommuting, teleworking is an arrangement whereby employees spend a proportion of their working week working from home. Previously, this situation only applied to low paid, menial tasks. With the development of sophisticated communications technology, many high level operations can be performed from home. Such employees keep in touch with their office by telephone, fax, email and teleconferencing.

Job-sharing

This is a contractual arrangement whereby two employees voluntarily share one full-time job between them. They also share the pay, the holidays and the benefits according to the number of hours each works. Each of the job-sharers should be employed on a permanent part-time contract which includes a clear statement of the terms of the job-share arrangement. Job-sharing works best for jobs in which the duties and responsibilities are clearly defined. It provides a good way of introducing part-time hours into areas of traditionally full-time work. Many traditionally full-time posts can be job-shared.

Career breaks

This is a scheme by which an employee can negotiate long periods of time away from work. The employee and employer keep in touch throughout the period and the employee's job is held for them until they return. The advantage for the employer is that the arrangement enables them to retain the skills of the experienced employee who, by wishing to take an extended leave, would normally have to forfeit their position.

Voluntary reduced time

This scheme allows employees to reduce their hours of work by an agreed percentage over a given period of time. The usual reduction is between 5% and 50 % with the right to return to full-time employment at the end of the period. Pay and benefits are reduced proportionately to the reduction in working hours. This reduction can be achieved by either shortening the working day, the working week or taking block periods off during the year.

Term-time working

This is an arrangement which allows employees with children of school-age to be given unpaid leave during school holidays to look after them. Such employees remain on permanent full or part-time contracts.

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax: 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827

Department Of Higher and Further Education, Training & Employment
Employment Rights and New Deal Division
Room 203 Adelaide House
39/49 Adelaide Street
Belfast BT2 8FD

Tel: 028 9025 7956
Fax: 0800 585811
Email: erbooklets@dhfetni.gov.uk

A Guide to Good Employment

Chapter 6. Salaries and Wages

Overview

This chapter sums up the main consideration regarding remuneration. The first part details the legal requirements for employers with regard to wages and pay. It includes information on itemised pay statements, National Insurance and PAYE contributions. The second part of this chapter examines principles behind salary policy, and suggests ways for voluntary organisations to develop a comprehensive salary structure.

The Legal Position

The Equal Pay Act 1970, as amended by the Equal Pay (Amendment) Regulations (NI) 1984, guarantees equal pay and conditions to all workers, men and women, who are engaged in:

- the same or like work;
- work of equal value;
- work rated as equivalent in the same employment.

The Equal Pay Regulations do not apply in the following cases:

- where an employer can show that the variation in pay is genuinely due to a material factor other than gender, eg location.
- where the terms of employment afford special treatment to a woman in connection with pregnancy or childbirth, such as maternity leave.

The National Minimum Wage Regulations

The Legal Position

The National Minimum Wage Act 1998 became law on 1 April 1999. It obliges employers to pay workers at a minimum rate consistent with that set by the government. The government plans to review and adjust this rate regularly, at the time of writing, but the current rate is:

- a worker aged 18-21 £3.20 per hour
- a worker aged 22 and over £3.70 per hour
- a worker who is aged 22 or over who is starting a new job with a new employer and doing accredited training can be paid a rate of £3.30 per hour for the first six months. Thereafter they must be paid at the full rate.

The act covers workers who ordinarily work in the UK and are over school leaving age. However certain groups are excluded. These include:

- unpaid volunteers;
- 16 and 17 year olds
- self-employed people
- some apprentices
- students on sandwich courses
- trainee teachers
- people living and working within the family
- members of the armed forces
- share fishermen
- prisoners

The agency responsible for enforcement is the Inland Revenue. Enforcement officers have certain powers to obtain information and can issue enforcement notices to require employers to pay national minimum wages. If an enforcement notice is ignored, the officer has the power to bring a case before a tribunal or court on behalf of the employee and/or impose a penalty on the employer. Employees have the right to recover unpaid amounts up to the level of the national minimum wage through the industrial tribunals or the courts.

Volunteers

Volunteers are exempt from the minimum wage, but only if they receive no payment or benefit in kind apart from:

- actual expenses or expenses which are reasonably estimated
- benefits in kind which are reasonable in the circumstances of their voluntary work, eg subsistence, accommodation, training
- in addition, volunteers may receive 'pocket money' for subsistence, but only if the volunteer has been placed with a charity or statutory body by a charity, eg volunteers placed by a central voluntary organisation with schools, hospitals and voluntary organisations and are most likely staying away from home. An example would be Community Service Volunteers. Such volunteers may be paid reasonable 'pocket money' to cover living expenses and be provided with accommodation and food.

Itemised Pay Statements

The Legal Position

Under Article 40 of the Employment Relations (NI) Order 1996, all employees are entitled to receive an itemised statement of pay detailing:

- gross earnings
- net pay

- amount of any deductions
- how wage is calculated

If an employer fails to provide such a pay statement, an employee may take the employer to an industrial tribunal and receive compensation equivalent to the amount deducted from their wages over the previous thirteen weeks.

Deductions from Pay

An employer may only make deductions from an employee's wages where:

- it is required or authorised under a statutory provision
- it is authorised under a provision in the employee's contract
- it has been agreed in writing by the employee
- there is a court order, eg attachment of earnings

Particular protection is given to retail employees in relation to deductions for 'shortages' so that, for example, no more than 10% of any payment of wages, other than a final payment, may be deducted for shortages. The wages provisions in the Employment Relations Order may be used to recover wages and holiday pay withheld but not wages in lieu of notice which may be recoverable in the industrial tribunal in a claim for breach of contract.

National Insurance

National insurance contributions are a tax on earnings designed to fund social security benefits. Deductions for National insurance contributions must appear separately on employee pay statements.

Employers are obliged to:

- provide the appropriate National Insurance payments each month to the Collector of Taxes in respect of both employer and employees
- make all such payments to the Inland Revenue within fourteen days of the end of the income tax month and incorporate with the monthly PAYE (Pay As You Earn) return
- note the deductions for National insurance and income tax separately on an employee's payslip
- calculate contributions with reference to the contributions table available from local Social Security offices
- note all such payments made on an employee's behalf on a Form P11 (deductions working sheet)

For further information on making National insurance calculations you should contact your local tax office.

Pay as you Earn

Often referred to as PAYE, the Pay as You Earn system places the responsibility for collecting and accounting for an employee's income tax on the employer. This is done by deducting the required amount from an employee's gross pay and giving it to the Inland Revenue as Schedule E tax. The amount deducted must appear separately on employee pay statements.

Tax codes

To facilitate the PAYE System, the Inland Revenue issues each employee with a tax code which the employer may obtain from:

- P45 certificate- a three-part form available from an employee's last employer (or Social Security Office if the employee was previously unemployed) stating the employee's tax code and total pay and total tax paid since the beginning of the current tax year
- a local office of the Inland Revenue

Where a tax code is temporarily unavailable, an employer may use an emergency tax code, placing the employee on a fixed tax contribution which is one-tenth of the lower personal allowance operated on a week-one basis. Where this contribution rate turns out to be too high, the employee should be remunerated for the overpayment by applying for a refund on a P47 form.

Tax codes consist of a number and a letter. The number represents one-tenth of the employee's annual tax allowance; the letter refers to the personal allowance to which he or she is entitled.

- **H** - personal allowance and married couple's allowance, or personal allowance and additional personal allowance
- **L** - personal allowance
- **B** - lower age allowance, single
- **V** - lower age allowance, married
- **T** - other
- **TO** - no tax allowance
- **BR** - basic rate
- **NT** - no tax to be deducted
- **D** - collect a higher rate of tax from an employee's second employment
- **F** - where State pension exceeds the personal allowance of a pensioner.

PAYE records required by law

The law requires that an employer keep the following records regarding pay and remuneration:

- **P11** - deductions working sheet – a rolling month-by-month record of an employee's PAYE and National insurance contributions, including details of sick pay and maternity pay
- **P14** - end of year return – a triplicate annual declaration of an employee's PAYE, National insurance and other details of total payments made to employee, total net tax, employer's name and address and employee's name, National Insurance number and tax code (P60)
- **P15** - coding claim form – issued to employees who do not provide a P45, this form enables the Inland Revenue to establish their correct tax code
- **P38(S)** - employment of students – allows organisations which employ students for vacation work to avoid deducting income tax or National insurance contributions from their wages unless they earn above the lower earnings limit
- **P45** - details of employee leaving, triplicate form completed by the organisation for each employee who leaves their employment, stating the earnings and deductions since the beginning of the current tax year to the date of leaving
- **P46** - PAYE codes – employees must fill in this form if they fail to produce a P45
- **P47** - application to refund tax – to be completed by employees who are eligible for a tax refund exceeding £100. Refund will be made on a P48 form
- **P50** - tax payment – to be completed by employees who leave but do not go directly to another job. Employers are only responsible for issuing this form
- **P85** - employees leaving the country – issued to employees who are leaving the UK for any reason so that they may reclaim, or be relieved of, income tax payments
- **P160** - retirement on pension to be submitted to Inland Revenue by the employer within fourteen days of an employee retiring on a pension paid by the employer or on behalf of a superannuation fund or scheme.

Tax Credits

The Tax Credits (Payment by Employers) Regulations 1999 cover the arrangements for tax credits to be paid directly to an employee by their employer. Provisions include:

- specifying which employees must be paid tax credits by their employers
- specifying cases where an employer may cease payment
- laying down duties on both the employer and employee in respect of payments and notifications
- setting out the circumstances where an employer may apply to the Inland Revenue for funds to make tax credit payments.

Reimbursement Policies

Most organisations have their own reimbursement practices when it comes to expenses. These should be well thought out (since expenses may be open to abuse), committed to writing (so that no misunderstandings can arise), made known to all employees and carefully monitored. Check with your tax adviser to find out which expenses you should reimburse. Situations in which expenses can be accrued include:

- travelling and subsistence
- hospitality costs
- home business telephone calls
- teleworking - working from home via telephone, computer and fax.

There are various methods by which an organisation may reimburse employees' expenses:

- refunding against receipts kept and submitted by the employee
- issuing an organisation credit card for expenses
- issuing a set-price policy- fixed maximum claim for particular expenses
- defining the job types and status of employees who are entitled to claim expenses

Certain employers may be eligible for a tax dispensation if they regularly reimburse their employees' expenses. The dispensation consists of a written authorisation from the Inland Revenue for certain agreed expenses not to be reported on the P11 (deductions working sheet).

The levels for each tax allowance area available are from the local tax office.

Good Practice - Creating a Salary Policy

The purpose of a salary policy for any organisation is to establish the principles which underpin its salary structure. For any voluntary organisations, regardless of size, good practice dictates that such a policy must be based on the following values:

Fairness

Any process for determining remuneration organisation-wide should be fair to staff of all levels and grades, as well as to other stakeholders including users, trustees and funders. It should be universally viewed as an equitable means of determining rewards based on relevant factors which are non-discriminatory on grounds of gender, race, disability, age etc. By no means should the pay of any single post be or seem to be excessive in relation to that of others. In cases where it is necessary to pay premium rates in order to attract the calibre of individual needed for a job, such as qualified IT professionals, differentials should be based on valid and, where possible, quantifiable data such as industry survey data.

Openness

Given the highly accountable and public nature of most voluntary sector organisations, any process for determining remuneration must be an open one. Organisations should be prepared to demonstrate that they have nothing to hide and that the process of determining reward levels is open to informed debate.

Objectivity

The process of determining remuneration should be objective. To this end, organisations need to establish objective criteria that enable comparisons to be made between jobs within the organisation and with those in comparable organisations. This is normally done using a job evaluation scheme (see below for details). This helps ensure that pay-related decisions are consistent and made to a common standard.

Responsibility

It goes without saying that the process of determining reward packages in any organisation must be legally responsible, taking into account basic statutory requirements for fairness, non-discrimination, and the minimum wage. In the voluntary sector, organisations may wish their systems to be socially responsible as well. As a way to further their role as social motivators, voluntary organisations may decide to build core values into their salary structures, values that reflect the organisation's beliefs in equity and social justice, for instance.

Effectiveness

While the ideal remuneration policy expresses all the right values, the most important issue is whether or not it works. In an increasingly competitive environment, the main objective of any reward system is to allow organisations to attract the calibre of people required to deliver their objectives and advance their mission. Many workers will be attracted to the voluntary sector by the nature of the work, but organisations cannot count solely on goodwill. Even sincere personal commitment can be undermined by disputes over pay and benefits. The voluntary sector needs trained professionals in order to carry out its work – and it must be prepared to pay them fairly and competitively.

Developing a salary structure

Some voluntary organisations may be new to the idea of a formal salary structure; small organisations tend to make do with an ad hoc system. Larger organisations may take a more formal approach but could have systems in need of updating due to technological innovations, changing work duties, shifting responsibilities, or new kinds of staff. If an organisation experiences a large number of pay disputes, employee complaints regarding fair remuneration, or difficulty in retaining staff, it may indicate that the time is right for a review. Relative pay between individuals and groups of employees is vital for successful recruitment, retention and employee relations in all organisations.

Gathering information toward a salary structure

Once the basic legal requirements are taken into account, the process of developing a salary structure begins with gathering information. Some organisations may be able to hire a trained consultant already familiar with current salary levels and remuneration practices in the voluntary sector. Others will have to do this research themselves,

appointing a salary structure committee responsible for looking internally and externally for answers.

The salary structure committee should be made up of individuals representing a cross-section of the workforce, management and trustees. This committee should begin its work by familiarising itself with the organisation's existing salary structure, taking stock of what workers are currently paid, what jobs they are doing, how they are assessed, recruited and dismissed.

Then it should gather information from a wider sphere. Some of the best guides to fair remuneration lie outside the organisation. To develop a realistic sense of current remuneration levels, the committee should familiarise itself with how workers are being rewarded throughout the voluntary sector. Some sources of information are:

- local and national salary surveys
- pay rates in similar organisations
- local job clubs at which managers meet informally to exchange information on terms and conditions of employment
- recruitment pages of the local and national press (keeping in mind that these will give an idea of salaries being offered but will not reveal how much recruits are actually being paid)
- specialist publications related to the organisation
- local authority pay scales
- Northern Ireland Council for Voluntary Action

Carrying out job evaluations

The process of job evaluation is a means of determining the relative worth of jobs within an organisation. Armed with the best information it can gather on remuneration practices, the committee (or consultant or other trained individual) begins the process by writing job descriptions for every job in the organisation. The descriptions must be:

- written in a standard format to enable valued comparisons to be made between jobs
- complete and take account of all major tasks and responsibilities
- suitable in style and content for use in all departments of the organisation
- checked and agreed by the jobholder and the jobholder's manager

Grading and banding

The salary committee (or consultant or job analyst) uses the information they put together during the job evaluation stage to assign pay rates to jobs. Each job is 'graded', assigned to a scale reflecting minimum and maximum levels of pay for that job. Employees with greater experience, skill, market worth, or seniority will command higher pay rates, while those with less expertise or experience will, logically, be paid less. Then, jobs which fall into the same rate of pay category are 'banded' together, giving the organisation the

opportunity to see which types of jobs command similar salary levels and adjust any perceived discrepancies.

Maintaining the structure- pay review

To maintain and develop an adequate salary structure, organisations should conduct an annual pay review for all workers. Much of the information that is brought to bear on setting salaries in the first place will come into this review. Other factors that may warrant a change in salary are:

Changes in duties

Have the worker's duties and responsibilities changed significantly in the period since the last review? Any significant changes in work patterns, hours, etc, should be taken into account when adjusting pay. Job descriptions should also be adjusted when necessary.

Cost of living

Has the cost of living increased significantly since the last review? Salaries should be adjusted accordingly.

Performance

A number of organisations link salary increases directly to performance. In these cases, the worker will be awarded higher pay when he or she has met pre-agreed performance targets or objectives. Such targets may include concrete achievements such as lowering the operating costs in a certain area or may involve demonstrating competence in a new area, such as the use of information technology.

Merit

This differs slightly from performance review in that it is more subjective. Usually a merit review is based on the manager's opinion of the worker rather than on set criteria.

Annual increments

Some organisations that operate pay scales may automatically award annual increments to all employees based on these scales. Should the organisation operate such a system, incremental rises should be built into funding applications to ensure equity of treatment for all staff in the organisation.

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Inland Revenue (General Enquiries)
Beaufort House
31 Wellington Place
Belfast BT1 6BH

Tel: 028 9053 2300
Fax: 028 9053 2310

A Guide to Good Employment

Chapter 7. Health and Safety

Overview

This chapter sets out an overview of the main areas of health and safety legislation.

The Legal Position

The Health and Safety at Work (NI) Order 1978 requires you to ensure, so far as is reasonably practicable, the health, safety and welfare of yourself and others who may be affected by what you do or fail to do. You have duties towards people who:

- work for you including volunteers, casual workers, part-timers, trainees and contract workers
- use workplaces you provide
- are allowed to use your equipment
- visit your premises
- may be affected by your work (your neighbour, the public and other work people)
- use products you make or supply
- use your services

Specific Duties

If you are an employer you must

- take measures to safeguard the health, safety and welfare of your employees
- provide and maintain a safe working environment and safe systems of work
- make provision for the safe use, handling and storage of substances or equipment used at work
- provide employees with information, instruction, training and supervision in order to ensure their health and safety at work
- produce a safety policy (if the organisation has five or more employees) which is available to all employees and states the intention to provide a safe and healthy working environment
- define health and safety responsibilities and safe working methods throughout the organisation
- name and state the duties of the person responsible for the policy
- ensure that anyone working in a potentially hazardous job is aware of the risks and necessary control measures
- inform employees of their role in maintaining a safe working environment

If you are an employee you must:

- take reasonable care of your own and other people's health and safety at work

- co-operate with your employer in complying with the statutory provisions (note- non-co-operation should be a disciplinary offence)
- not intentionally interfere with or misuse anything provided in the interests of health, safety and welfare specially provided to make the working environment safer

Getting Organised

Prepare a Safety Policy

If you have five or more employees, you must have a written safety policy which sets out the organisation (people and responsibilities) and arrangements (systems and procedures) for carrying it out. Bring it to the attention of your employees.

Organise the duties

Decide who is responsible for which safety duties and that everyone knows their responsibilities. Ensure that:

- everyone is familiar with the safety policy
- employees are trained and aware of the hazards
- employees know where to find first-aid and fire-fighting equipment
- supervision is available at all times particularly for young or inexperienced employees
- safety rules are observed at all times
- good standards of housekeeping are maintained
- accidents and incidents are investigated and ways of preventing further recurrences are recommended

Accidents and Emergencies

You need to respond quickly in an emergency whether it is a simple accident or a major incident. You can plan for reasonable foreseeable incidents, for example an accident, fire or flood. You must inform staff

- what might happen and how the alarm will be raised
- what to do including how to call the emergency services
- where to go to reach safety or get rescue equipment
- who will control the incident and the names of other key people such as the First-aiders

After an accident or serious incident:

- treat any injuries and deal with immediate emergency
- make the premises safe

- if applicable report the details to your inspector
- record any injuries in your accident book

First-Aid

The Legal Position

Immediate and proper examination and treatment of injuries may save life and are essential to reduce pain and help injured people make a quick recovery. First-aid in the work place is regulated by the Health and Safety (First-Aid) Regulations (NI) 1982. First-aid does not include treating minor illnesses and those acting as first-aiders are not authorised to dispense drugs, including aspirin tablets. Therefore a first-aid kit should not contain any drugs. The British Red Cross Society and the St John's Ambulance Brigade provide training in first-aid, under the above regulations.

The main provisions of these regulations are that an employer should:

- appoint someone to take charge in an emergency, to call an ambulance, and to look after the First-aid equipment. At least one 'appointed person, must be available at all times when people are at work
- have a suitable number of workers trained to perform first-aid as approved by the Health and Safety Executive (HSE) for Northern Ireland in low risk workplaces. In high risk workplaces this ratio is increased to one first-aiders to five employees, with one additional first-aiders for every fifty employees. The HSE (NI) recommends one such person for every fifty employees. Good practice also recommends expanding this body of trained personnel to include volunteers.
- appoint a person capable of covering the absence of a trained first-aiders. Such a person is responsible for calling ambulances when required and maintaining first-aid equipment. There may be no need for a trained first-aiders if a capable person has been appointed and the premises are considered low risk
- first-aid facilities and equipment suitable to the size of the premises and the number and distribution of employees and volunteers
- have a first-aid box containing only first-aid material (eg sterile, individually wrapped dressings and bandages. Under no circumstances should this contain tablets, sprays, creams or any other medication). This should be a damp proof and dust-proof container which is clearly marked (it is recommended that this has a white cross on a green background). It should also contain a guidance leaflet on basic first-aid, in particular how to keep someone alive by artificial respiration, how to control bleeding and how to deal with an unconscious patient.

Reporting Accidents and Disease

The Legal Position

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (NI) 1997, commonly known as RIDDOR, require the reporting of certain specified work-related accidents, diseases and dangerous occurrences to the proper enforcing authority. The purpose of the regulations is to enable the enforcing authorities to identify where and how risks arise and to investigate serious accidents. These regulations apply to all work activities, but not to all incidents.

Under the regulations an employer is required to:

- 1 report immediately by phone if as a result of (or in connection with) your work
 - someone dies, receives a major injury, or is seriously affected by, for example electric shock or poisoning
 - there is a dangerous occurrence ('near miss')
- 2 send a written report to
 - confirm within seven days, a telephone report of a death, major injury or dangerous occurrence
 - notify within seven days of the accident, any injury which stops someone from doing their normal job for more than three days
 - report certain diseases suffered by workers who do specified types of work
 - report certain events involving flammable gas in domestic or other premises

Keep records of reportable accidents for at least three years, generally, in an Accident Book. The Environmental Health Department of the District Council for your area is the place to report for office-based organisations.

Risk Assessment

The Legal Position

If you are an employer, the Management of Health and Safety at Work Regulations (NI) 1992 require you to carry out a suitable and sufficient assessment of the risks arising out of your work activities known as a 'Risk Assessment'. This Assessment should cover not only the risks to your employees, but also anyone else who may be affected by your undertaking.

A risk assessment is finding out what in your work could cause harm to people and deciding if you have done enough or need to do more to protect them. The purpose of risk assessment is to make sure that no-one gets hurt or becomes ill as a result of your work activities.

Risk assessment is basically a five stage process which consists of the following steps:

Step 1

Divide your work into manageable categories.

It is sensible and practical to break the task up into manageable categories such as separate work areas, eg stores, offices, kitchens, different floor levels.

Step 2

Look for the Hazards

A hazard is anything that can cause harm, eg slipping/tripping hazards, poor wiring, fumes, poor lighting, low temperature, noise.

Step 3

Evaluate the Risk

The risk is the chance or likelihood that someone will be harmed to some extent by the hazard, eg staff, members of the public, people with disabilities

Step 4

Prepare a Plan for Controlling the Risks

Have you already taken precautions against the risks from the hazards you listed, eg adequate training, information systems or procedures? Do these precautions meet legal standards, represent good practice or reduce risk as far as reasonably practicable? If so, then the risks are adequately controlled but you must indicate the precautions you have in place. If not, you must prepare a plan of action to control the risk, eg remove the risk, re-organise work to reduce exposure or issue protective equipment or clothing.

Step 5

Review and Revise the Assessment

Risk assessment should be seen as a continuing process. Review of the risk assessment is important to ensure that it is kept up to date and takes account of other activities and hazards, changes in procedures or new work methods and new employees.

Sample forms for conducting a risk assessment are in Appendix 2 at the end of this chapter.

General Working Environment

The Legal Position

The Workplace (Health, Safety and Welfare) Regulations (NI) 1993 cover all offices and factories and regulate basic conditions for work, providing for the minimum comfort and safety of workers. Its burden falls largely on the employer who is responsible for the following:

Hygiene and Welfare

- separate toilets for each sex (subject to certain exemptions)
- toilets ventilated, kept clean, in working order and easily accessible
- ventilated space between toilet and workroom
- wash basin with hot and cold (or warm) running water
- soap and towels or hand drier
- waste bins (regularly emptied)
- clean drinking water supply
- adequate facilities for taking food and drink

Cleanliness

- premises, furniture and fittings kept clean
- good housekeeping
- rubbish and food waste regularly removed to free premises of pests
- regular cleaning up of spillages
- floors and steps washed or swept regularly

Floors and Gangways

- kept clean, dry and not slippery
- gangways well marked and kept clear
- level even surfaces without holes or broken boards
- use of proper rubber edged mats to prevent tripping

Lighting

- good general illumination with no glare
- regular cleaning and maintenance of lights and windows
- no flickering from fluorescent tubes
- adequate emergency lighting

Comfort

- comfortable working temperature (usually above 16 degrees centigrade)

- good ventilation (avoiding draughts)
- good heating system free from fumes
- controlled noise levels
- room dimensions should generally be such that each employee has at least eleven cubic metres of space, calculated by dividing the volume of the room by the amount of people in it
- seating must be suitable, safe and comfortable and workstations must be suitable for the intended tasks

Use Of Computers

The Legal Position

The introduction of computers into the workplace has given rise to a whole new area of safety legislation. The Health and Safety (Display Screen Equipment) (NI) Regulations 1992 concern the safe use of Visual Display Units (VDU) and Digital Screen Equipment (DSE). Work with display screen equipment is not generally high risk, but it can lead to muscular and other physical problems, eye fatigue and mental stress.

Employers have special obligations toward employees working with VDUs and DSEs. They must:

- analyse workstations to ensure that employees are not put at risk and improve facilities, for example providing adequate seating or proper light levels
- pay for an appropriate eye or eyesight test and any spectacles, or an appropriate proportion of the cost if spectacles are needed, specifically for VDU or DSE work
- provide adequate training and information regarding health and safety in the use of DSEs and VDUs, teaching employees the risks of using such equipment and the steps necessary to minimise the risks such as taking regular screen breaks.

Fire Safety

The Legal Position

There are two main bodies of legislation concerning fire safety in the workplace- the Fire Precautions (NI) Order and the Fire Precautions (Workplace) (NI) Regulations 1997.

They oblige the employer to provide:

- employees with a suitable means of escape in case of fire
- appropriate, maintained and readily available fire-fighting equipment on site
- an effective fire alarm, tested at least every three months
- training for all employees in escape routes and fire drill
- a fire certificate, provided by the local fire brigade following an inspection

The Order sets out the basic conditions under which work premises must be inspected by the fire authority and be issued with a current fire certificate. To date, the premises are required to have a fire certificate if they are a hotel, boarding house, open air workplace or church. In addition factories, offices and shops are required to have a fire certificate if they meet the following conditions:

- more than twenty people are at work, or more than ten are working elsewhere than on the ground floor
- multiple occupation buildings contain two or more individual offices where the aggregate number of employees exceeds twenty, or ten elsewhere than the ground floor

The main provisions of the regulations apply to all workplaces which are not 'exempted'.

The requirements are to:

- provide effective means of detecting and fighting, and giving warning of fire
- prepare an emergency procedure plan
- appoint a person(s) to implement that plan
- liaise with local emergency services
- provide adequate fire escape routes and exits, and ensure they are kept clear at all times

The following should be taken into account:

- ensure escape routes lead directly to a place of safety
- satisfactory evacuation procedures are implemented
- emergency exit doors open in the direction of escape
- emergency doors open quickly and easily
- emergency routes are clearly signed
- provision of emergency lighting in the event of mains lighting failure

Manual Handling

The Legal Position

Manual handling, as defined by the Manual Handling Operations Regulations (NI) 1992, is *“any transporting or supporting of a load, by one or more workers, including lifting, putting down, pushing, pulling, carrying or moving of a load, which by reason of its characteristics or unfavourable ergonomic conditions involves a risk particularly of back injury to workers”*. An employer is required to:

- identify and avoid hazardous manual handling operations for employees where possible

- carry out an assessment of any hazardous manual handling operations that cannot be avoided, taking into account the load, task, environment and the individual performing the task
- remove or reduce any risk of injury based on the assessment
- provide information to those affected

Beyond Legislation - Good Practice

Smoking

There is currently no specific legislation on smoking in the workplace save that tobacco smoke-free rest areas should be available for non-smokers. However, employers do have a legal duty to protect the health of their employees and lawsuits have established the employer's right to expressly incorporate a no-smoking policy in the workplace. Whatever stance your organisation takes, it is good practice to spell it out in a policy statement on smoking at work. Such a policy should state whether or not smoking is permitted on work premises and, if so, where this is allowed. Many organisations now have policies upholding the right of non-smokers not to be forced to passively smoke. The following is an example of a policy statement.

Policy Statement on Smoking at Work

It is the policy of this organisation not to permit smoking within its premises, except where specified. This policy has been introduced to protect the health, safety and comfort of employees who would otherwise be subject to the risks of passive smoking, and to allow for an unpolluted working environment. Employees who wish to smoke may do so in the specified rest room and outside the main building. Smoking is not permitted in the toilets. Any employee found to be in breach of these rules might be subject to disciplinary action.

Acquired Immune Deficiency Syndrome (AIDS)

Some organisations have found it useful to formulate a policy on AIDS and HIV infection in the workplace. Such a policy might explicitly state that no employee will suffer unfair treatment or discrimination on the grounds of their AIDS or HIV status. Additionally, it might provide for protection against discrimination for employees who care for those with AIDS or other chronic life-threatening illnesses. Organisations where employees run a risk of infection in the course of their duties, such as laboratory staff, doctors, nurses, first-aid workers, and those who care for the elderly, will certainly wish to formulate a detailed code of practice designed to protect their workers.

Violence

The Health and Safety Executive (NI) defines violence as *“any incident in which an employee is abused, threatened or assaulted by a member of the public, in circumstances*

arising out of the course of his or her employment". The HSE (NI) has outlined a seven-state approach to deal with workplace violence:

- establish whether or not there is a problem
- record all reported incidents
- classify the incidents according to scale
- search for preventative measures
- consult with employees and decide on monitoring the effectiveness of measures
- where violence at work is an issue, an organisation should produce a written policy stating how it will prevent violence, protect its workers, and deal with incidents should they occur. Such policies should explicitly extend to vulnerable workers, such as those who work alone or in potentially dangerous situations.

Safety Representatives

Where there is a recognised trade union, it has the right to appoint an employee as a safety representative. If two safety representatives request it, the employer must form a safety committee from elected health and safety representatives. The point at which a safety committee is formed is dependent on the number of employees and the type of work activity.

Employers must:

- provide the representatives with certain health and safety documents such as plans for workplace changes, details of safety studies and information about equipment.

Representatives must:

- consult with management on arrangements for appointing a competent person
- consult with management on health and safety matters as employee representatives
- consult with and receive information from officers of the Health and Safety Executive
- conduct health and safety inspections following a written notice to do so
- conduct investigations into potential hazards and dangerous occurrences at work
- consult with management on the organisation of health and safety training
- receive time off with pay for training

APPENDIX 1

SAMPLE HEALTH AND SAFETY POLICY STATEMENT

POLICY STATEMENT

This organisation regards the promotion of health and safety measures as a mutual objective for management and employees at all levels. It is therefore our policy to do all that is reasonable to prevent personal injury and damage to property and to protect everyone from foreseeable work hazards including the public in so far as they come into contact with the organisation.

SPECIFIC RESPONSIBILITIES

ORGANISATION

The organisation has a responsibility:

- to provide and maintain safe and healthy working conditions taking account of any statutory requirements
- to provide training and instruction to enable employees to perform their work safely and efficiently
- to make available all necessary safety devices and protective equipment and to supervise their use
- to maintain a constant and continuing interest in health and safety matters applicable to activities of the organisation, in particular, by consulting and involving employees or their representatives wherever possible.

EMPLOYEES

Employees have a duty to co-operate in the operation of this policy:

- by working safely and efficiently
- by using the protective equipment provided, and by meeting statutory obligations
- by reporting incidents that had led or may lead to injury or damage
- by adhering to the health and safety procedures for securing a safe workplace
- by assisting in the investigation of accidents with the object of introducing measures to prevent a recurrence.

All other details pertaining to health and safety in the organisation, including emergency evacuation procedures, first-aid responsibilities, accident reporting, etc, may be found in the staff handbook.

APPENDIX 2

HAZARD IDENTIFICATION AND RISK EVALUATION

Name of Organisation _____ Completed By _____

Date _____

ACTIVITY	HAZARDS	PERSONS EXPOSED	SEVERITY	LIKELIHOOD

ACTION PLAN

Name of Organisation _____ Completed By _____

Date _____

Activity _____

Review Date _____

HAZARDS	EXISTING PRECAUTIONS	ADDITIONAL PRECAUTIONS NECESSARY	ACTION BY WHOM	A

FOR FURTHER INFORMATION

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax: 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Health and Safety Executive for Northern Ireland
83 Ladas Drive
Belfast BT6 9FR

Tel: 028 9024 3249
Fax: 028 9023 5383
Website:

A Guide to Good Employment

Chapter 8. Supervision and Appraisal

This chapter provides an overview of the supervision and appraisal process and outlines good practice in carrying out supervision and appraisal procedures as well as providing sample documentation in the appendices at the end.

Supervision

Overview

Supervision, whilst being a managerial tool and a key aspect of a line manager's role, also benefits the employee. The approach taken to supervision will reflect and reinforce the organisation's culture. The key purpose of supervision is to ensure that staff performance is up to standard, organisational and unit targets are met and that staff are developed, valued and supported in their role. The key task on which managers need to focus in order to improve performance is the way in which people are managed. Clear standards and expectations, a specific work programme, training and development, support and feedback are some of the important features of supervision. Delivering quality services requires competent, motivated and committed staff. A person's contribution to the organisation and the extent to which they are meeting their tasks is monitored and assessed through supervision. This chapter intends to outline key requirements of line managers and staff when it comes to supervision and to offer guidance on the conduct of supervisory relationships.

Key features of supervision are:

- to review and account for work
- to plan and prioritise work
- to be supported in the work
- to receive feedback about the work and to give feedback
- to periodically identify training and development needs in relation to work

Objectives of Supervision

Supervision should seek to meet the needs of the job and of the individual performing the duties of the job. The former refers to whether or not staff are performing the duties to an acceptable standard in order to achieve the aims and objectives of the organisation. This is the aspect of supervision that is concerned with accounting for work and planning ahead. Meeting the needs of the individual involves ensuring that training and development needs are met in order that staff can perform well in their role. The organisation should be concerned with recognising the importance of providing an environment where staff can develop in their work, explore concerns, and get support and feedback when they are experiencing difficulties.

Features of Supervision

Frequency

It should be the line manager's responsibility to arrange and ensure supervision happens on a regular basis (normally every 6 - 8 weeks is acceptable). Dates should be set in advance by the line manager and ideally sessions for throughout the year should be planned at the beginning of the year so that the time is allocated in both the supervisor and supervisee's diaries. Changing or cancelling supervision can indicate a lack of commitment and is not good practice.

Duration

Line managers should allocate a reasonable period for each supervision session and ensure that each session begins and ends on time to allow for individual work schedules.

Location and Statement on Interruptions

Supervision should ideally take place away from the workstation and in a quiet and uninterrupted space. Both supervisor and supervisee should agree that the venue is conducive to this. Due to practicalities the venue may change from session to session.

Method of Supervision

This will predominantly focus on reviewing and accounting for work as well as planning and prioritising work. Any issues of a disciplinary nature must not be dealt with in supervision but rather in line with the disciplinary procedures of the organisation. Supervision may be used, however, as a way of monitoring corrective behaviour. In this instance supervision may occur more regularly. Supervision will be on a one to one basis. However it can sometimes be three way in a job-share situation or where two part-time staff share one role.

Recording of Supervision

A note of each session should be taken but this may be completed on a rotating basis by the supervisor and supervisee as this leads to greater openness in the process. Recording decisions and action at supervision is essential. Notes provide continuity to the process and offer a point of reference to be used as the basis for the annual appraisal process. Notes should be written up as soon as possible after the session and preferably within one week.

Confidentiality

A record of each supervision session should be retained on the individual personnel file. Usually the manager and the member of staff should only see these notes, however in disciplinary and capability situations, other managers may see supervision notes.

Ongoing Support

It is important to link each supervision session back to discussion and decisions made in the previous session, hence the importance of maintaining notes. Line managers will inevitably have ongoing and informal contact with staff between sessions that may be picked up on in the formal sessions. Line managers may also have meetings with staff in between formal sessions to discuss specific pieces of work. Lack of supervision or irregular supervision can result in a breakdown in the relationship, poor communication and a lack of clarity in the work programme which in turn can result in a lack of development in the role which can be the source of demotivation and mediocre performance.

Linking Supervision to other Organisational Processes

Supervision is a continuous process of management and support and it is the responsibility of line managers to reinforce this in supervision sessions. Other key processes may include the organisation's appraisal and planning process. Discussions in supervision will sometimes refer back to an individual's appraisal meeting. For example progress against targets or the meeting of development needs can be reviewed.

Format of Supervision

Introduction

At the start of each supervisory relationship it is good practice to agree a format for each session. Appendix 1 at the end of this chapter suggests a format or supervision agreement proforma to assist in this process. The following are important elements of supervision and should be covered although the order may vary according to individual styles and approaches.

Agreeing an Agenda

Once a format has been agreed, the line manager ought to agree the specific items to be discussed. An agenda may be drawn up for each session that is either determined in advance or drawn up at the beginning of each meeting. Both manager and employee should contribute to this agenda.

Supervisor Preparation

The line manager should give feedback to the staff member on observations made about the positive and negative aspects of their work since the previous session. Thinking about this in advance is important as it enables the supervisor to be more specific about observations of someone's work. Appendix 2 at the end of this chapter suggests a format which can be used for supervisor preparation. The supervisor should log/acknowledge work done since the last session. Depending on the situation or work area, this may

involve discussing some of the work to identify strengths, weaknesses and possible future opportunities.

Supervisee Preparation

The supervisor should invite feedback from the staff member on how they feel they have performed since the last session. The line manager should encourage them to look at areas of work they are particularly pleased about as well as areas where improvement might be made. Appendix 3 at the end of this chapter may be used for supervisee preparation. The supervisee should consider work done since the last session. Depending on the situation or work area, this may involve discussing some of the work to identify strengths, weaknesses and possible future opportunities.

Account for Work

Supervision is where staff formally account for the work they have done and where the line manager ensures that they are working to satisfactory standards. This will involve checking that specific work has been completed and keeping up to date with other work progress.

Plan and Prioritise work for the next session

Discuss what needs to be done between now and the next session, either new work or continuing work, what takes priority and what can wait? What is the source of the work ie is it planned or unplanned work? Staff will look to the supervisor to give them some direction as to what is essential and what can wait. Staff may come back to their supervisor to renegotiate priorities. It is best that they do this and have a realistic work programme than go away from supervision with priorities they cannot deliver. If there is disagreement, this will need to be discussed and resolved.

Summary of an Employee's Responsibilities

- to prepare for the session and contribute to the agenda
- to do what was agreed in the last session
- to think about supervision before attending, what is to be discussed, what individuals wish to get out of the session
- to tackle difficulties if they arise in the arrangements for the supervision or the relationship

Summary of a Line Manager's Responsibilities

- to prepare for the session, check notes and consider feedback to the employee
- to supervise staff in a planned and structured way every six weeks
- to listen, respond and give adequate time to an employee
- to agree date, time and venue for supervision in advance
- to tackle difficulties if they arise in the arrangements for the supervision or the relationship

Dealing with Difficulties

- however difficult, confront the problem, talk about it, don't avoid it
- pinpoint specifically what the problem is and discuss how it might be constructively overcome
- do not wait for the supervision session to occur if problems arise, try to arrange a meeting earlier if matters are particularly tense
- look at what each party is doing to contribute to the situation
- acknowledge if the particular difficulty or problems lie with you
- if supervision is not happening regularly or satisfactorily, employees are encouraged to raise the matter with the management committee

Appraisal

Overview

Conducting a staff appraisal is the process of ensuring that staff know what is expected of them in their work and measuring how performance meets these expectations. It gives managers and staff the opportunity to sit down together and take time to discuss performance, career progress and career and development issues. It leads on naturally to setting future objectives/goals. An appraisal should be used for disciplinary or grievance purposes and each organisation should have other formal procedures for this purpose.

Key features of a staff appraisal scheme are:

- to integrate organisational objectives with the assessment of staff
- to enhance communication between managers and staff
- to assist the organisation to determine general training needs
- to review job descriptions
- to provide a vehicle for managers and individual members of staff agree specific training requirements.

Frequency

Organisations normally set key targets and objectives during January/February for the year beginning 1 April. During the financial year, these objectives should be reviewed formally at least once, although it is expected that key targets and objectives will be the basis of frequent discussions through the formal supervision sessions as appropriate. The actual appraisal itself should take place in the year or at the end of the financial year, when the staff member's performance against objectives has become obvious. At this time, or shortly thereafter, key targets and associated objectives should be agreed for the coming year and action plans can be added to the objectives. This process may require a series of meetings rather than a single interview.

Roles and Responsibilities

All staff should share an ongoing responsibility to monitor and review their performance and all line managers should, as a matter of course, observe and monitor the performance of their staff and offer feedback whenever appropriate in terms of recognition, praise or constructive criticism. This should be conducted through a formal supervision process referred to earlier in this chapter.

The Appraisee (postholder)

The role of the appraisee is as follows:

- to prepare adequately for the interview (refer to Appendix 4 at the end of this chapter for a sample form)
- to be open in discussion of the performance and the context of that performance
- to participate in the process of setting key targets, associated objectives and action plans for the achievement of objectives
- to contribute to the process of drawing up a plan to address training or development needs

The Appraiser

The process of appraisal is not meant to replace the normal process of managers and staff talking about work progress. Ongoing progress will be discussed through the formal supervision sessions. The appraisal is the opportunity to sit down to review performance over a period of time. The appraiser's role is to help ensure that the appraisee's past and current performance is jointly and fairly reviewed, based on evidence which describes what the person has actually achieved in the job according to the agreed objectives. The appraiser will:

- agree with the appraisee the date, time, location of the interview
- give the appraisee a preparation form (see Appendix 4)
- ensure both parties have details of the key targets and objectives agreed the previous year and discussed during the formal mid-year review
- gather the information necessary for a meaningful discussion to take place, in particular, details of the appraisee's actual performance
- manage the appraisal discussion so that both parties can effectively contribute
- jointly agree key targets and associated objectives
- complete the form after the interview and give it to the appraisee for confirmation of the content and to add any comments
- pass the completed document to review appraiser for comments and signature
- return the document to the appraisee for any final comments following review and signature
- pass the final document to the Director or person reviewing the overall appraisals of the organisation
- carry out agreed actions
- monitor the appraisee's performance on an ongoing basis

The Reviewing Officer

The Reviewing Officer may be the Director, Human Resources Manager or another member of staff appointed for this purpose. The role of the Reviewing Officer is to help ensure there is no unjustified bias, to help the overall system to work consistently across the organisation and to guard against appraiser inexperience. This person will:

- read and sign the appraisal form and add further comments if appropriate
- return the form for further comment by the appraiser and appraisee and for signature

Confidentiality

All staff appraisal documents should be treated as confidential. This includes the contents of preparation forms and the staff appraisal form together with any notes taken by either party during the interview. Only the appraisee, appraiser, reviewing officer or management should have access to the information.

Training

The organisation should ensure that each appraiser is provided with appropriate training before appraisals can take place and all appraisees are entitled to have the process explained to them in detail.

Procedure for Dealing with Disagreements

An appraisee who is not satisfied with the appraisal report should have in the first instance the opportunity to discuss the matter with his/her appraiser. In the event of disagreement remaining unresolved, it shall be the role of the Reviewing Officer to decide the matter. The aggrieved appraisee, if not satisfied with the Reviewing Officer's response, may then refer the matter through the grievance procedure.

Preparation

- employees should be given the employee's guidelines and the self-assessment form at least two weeks prior to the date of the appraisal interview and be informed of the time, place and venue of the appraisal interview
- at least two hours should be set aside for the interview
- prior to the interview, the employee's job description, last appraisal form (if applicable), self-assessment form (if the employee has given this to you) should be considered
- the line manager should study the individual's job description and consider his or her overall performance during the last year
- the line manager should note any points for discussion for example the major achievements or shortcomings during the year
- the line manager must have knowledge of what levels of performance the postholder should be achieving and make notes of these

The Appraisal Interview

The appraisal interview is above all a two-way joint communications session. There should be thorough frank discussion between the employer and his/her line manager. The appraisal interview itself may consist of two parts. Part one is primarily concerned with assessing performance and the appraisal should concentrate on:

- the appraisee's work performance during the last twelve months
- the line manager's assessment of the employee's work performance
- the employee's own assessment of his/her work performance
- how work performance can be improved upon
- identifying training and development needs and how these can be met

A suggested format for this part of the meeting is as follows:

- review the current job description – is it still current?
- explain clearly the levels of performance expected
- ask the employee to outline his/her work performance
- introduce your review of his/her work performance and provide feedback of same
- review targets and plan of action set during previous appraisal (if applicable)

This system should lead to an open discussion as to:

- why someone has performed well or badly
- what you/they think they have achieved
- how performance can be improved
- strengths and weaknesses and how these can be improved
- obstacles and barriers which affect job performance and satisfaction
- how training and personal development needs can be met
- discuss an individual's longer term ambitions

During the interview the manager should:

- listen
- ask open questions
- strike a balance between negative and positive
- focus on performance not an individual's personality
- deal with key points
- encourage discussion
- make notes highlighting key points that have been discussed
- summarise at appropriate points

Concluding Part One of the Interview

During the course of the appraisal interview you will have had the opportunity of telling the employee how you feel he or she is performing and if they are meeting the necessary levels of performance. Similarly the employee will be given the opportunity of making an assessment of his/her own performance. At the end of the interview the key points should be shared so that the appraisee is aware of what is being written down. This is useful as it helps to summarise the discussion which has taken place prior to moving on to the second part of the appraisal interview, ie the action plan.

The Action Plan

The second part of the appraisal interview consists of the drawing up of the action plan to assist employee development and job performance. In drawing up the action plan, the employee should be encouraged to think things out for him/herself. It should be the employee who is instrumental in setting the action plan. The action plan is vital to the success of performance appraisal as it contains the action required not only to assist employee development but also the steps required to improve work performance. The plan may therefore contain:

- action needed to improve employee work performance
- action the employee may need to enable him/her to perform more effectively
- the setting and/or resetting of key targets and objectives
- the identification of training needs and how these will be met
- dates when progress will be reviewed

Refer to Appendix 6 for a sample form.

Appraisal Record Form

The purpose of this form is to enable a record of the appraisal to be written up. It must be completed after the interview and not during it. It is an important document especially for the appraisee and great care must therefore be taken in its completion. The notes taken during the appraisal interview will assist in the completion of the form. It is essential that both parts of the appraisal record form be completed as fully and comprehensively as possible (refer to Appendix 5 for a sample form).

Appendix 1

SUPERVISION AGREEMENT

Name of Employee: Signature:	Date:
Name of Supervisor: Signature:	Date :

ARRANGEMENTS	
a) Frequency	
b) Duration/setting	
c) Statement about interruptions	
c) Primary method of supervision	
d) Use of records (confidentiality)	
e) Expectations of Employee	
f) Expectations of Supervisor	
g) Review	

Appendix 2

PREPARING FOR A SUPERVISION SESSION

SUPERVISOR

1	What has the employee done since the last session that I am particularly pleased about (successes, improvements, etc)?
2	What has the employee done since the last session that I am unhappy about (consider reasons, future prevention)?
3	Has the employee done what was agreed in the last session?
4	Have I completed action points arising from the last session?
5	Am I satisfied with the quality and quantity of the work?
6	Is the person overworked/underworked?
7	Are there any problems affecting employee's ability to carry out workload?
8	What are the next major priorities before the next session?
9	Any other comments?

Date

Signed

Appendix 3

PREPARING FOR A SUPERVISION SESSION

SUPERVISOR

1	What have I done since the last session that I am particularly pleased about (successes, improvements, etc)?
2	What have I done since the last session that I am unhappy about (consider reasons, future prevention)?
3	Have I done what was agreed in the last session?
4	Am I satisfied with the type and conditions of work?
5	Is there anything or anyone at work creating a problem for me?
6	Are there any problems affecting my ability to carry out workload?
7	What do I want to do before the next session?
8	Any other comments?

Date

Signed

Appendix 4

SELF-ASSESSMENT FORM

This form has been drawn up to help prepare for the appraisal interview. It is up to you how you use it; you may wish to pass it to your appraising manager prior to the formal interview, or you may wish to keep it for reference during the interview. After your appraisal interview, you may wish to keep this form or you may wish it to be filed in your personal file. Prior to completing the self-assessment form, you should ensure that you have an up to date copy of your job description, job specification and previous action plan (if appropriate).

- 1 Is your job specification a true and accurate reflection of the content and scope of your job? Is it clear what the precise objectives of your job are? Do any changes need to be made?

- 2 What areas of your work do you consider you have performed well, and/or have given you the greatest satisfaction, during the last twelve months?

- 3 What areas of your work have not gone so well, or have caused most dissatisfaction during the last twelve months? How could they be improved?

- 4 Overall, how would you describe your work performance during the year?

- 5 What do you believe to be your main strengths – how can these be built upon?

Appendix 5

APPRAISAL RECORD

NAME:
JOB TITLE:.....
LINE MANAGER:
DEPARTMENT:
DATE APPOINTED:
DATE OF LAST APPRAISAL:

- 1 Having considered the current Job Description and Personnel Specification for the post – do either/both need changed? **YES/NO**

If **YES** – outline changes required below (please specify which document you are referring to):

- 2 Achievement/against agreed key targets and objectives

In what areas of the job do you consider the appraisee has performed well during the appraisal period and how far have the agreed targets and objectives been met?

- 3 Areas of Concern

What areas of work have not gone so well, or have caused most dissatisfaction during the appraisal period? How could they be improved?

4 Overall Assessment

Overall how would you describe the appraisee's work performance during the appraisal period?

5 Positive Aptitudes

Consider the employee's main strengths/abilities and how these can be further developed/utilised.

6 Limitations

Consider the areas where there is room for improvement and how this can be addressed.

7 Training Needs

Address all training needs, whether they are to be met formally or informally, internally or externally, on the job or in a group setting, and note here.

8 Career Ambitions

Longer term career ambitions – how can the organisation facilitate this?

TO BE COMPLETED BY THE POSTHOLDER

I have read and understood this record of the interview.

I wish to add the following comment(s):

Signature of Appraisee

Position: Date:

Signature of Appraiser:

Position: Date:

Signature of Reviewing Officer:

Position: Date:

Appendix 6

ACTION PLAN

What are the main goals/targets over the next appraisal period (or to the end of contract – whichever is appropriate)?

ACTION	PERSON RESPONSIBLE	TIMING	REVIEW

Signed: **(EMPLOYEE)**

..... **(MANAGER)**

Date:

A Guide to Good Employment

Chapter 9. Discipline and Grievance

Overview

This chapter sets out a summary of the main issues and legislation concerning discipline and grievance at work. It also outlines the importance of dealing with disciplinary matters in many situations at an informal level before formal action is taken.

Disciplining staff is not a pleasant activity, but it remains important to the overall well-being of an organisation and must be carried out correctly. As it is the employer who is ultimately responsible for the actions of their employees, if wilful misconduct goes unrebuked the organisation will suffer. An employee engaging in misconduct can upset a friendly working environment, encourage good staff to leave, cause an injury, and even bring the organisation into public disrepute. In some circumstances the employer could be liable for damages for breach of contract.

To prevent this potential disruption, disciplinary procedures should be used where necessary. All employees should receive a copy of the rules regarding conduct and the consequent disciplinary procedures for breaking them when they join the organisation. Copies of this document must be available to workers at all times.

The Legal Position

The following minimum legal requirements must be observed:

The Employment Rights (NI) Order 1996 states that:

- Within two months of starting employment, employers must provide employees with a written statement of main terms and conditions of employment.
- The terms and conditions must set out disciplinary rules and procedures, including to whom an employee should appeal if dissatisfied with a disciplinary decision.
- If such procedures are not contained within the written terms and conditions, the document should refer the employee to other relevant documents eg staff handbook
- An employee has the right to a minimum period of notice and to minimum pay during any notice period, except in the case of gross misconduct.
- An employee has the right to receive a written statement of the reasons for dismissal and the right to appeal against any disciplinary action.

Legal Exceptions

Article 35 of the Employment Rights (NI) Order 1996 exempts employers with fewer than twenty employees from providing written details of disciplinary procedures.

However, good practice in voluntary and community organisations is to provide a written disciplinary procedure for any number of employees.

Disciplinary Policy

In order to maintain the quality of service and provide for the wellbeing of staff, an organisation requires a number of systems and procedures. The disciplinary procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The disciplinary procedure is essential to assist the organisation in operating effectively and to create a fair, efficient and caring working environment. Every manager has a responsibility to maintain discipline by encouraging and ensuring that all employees perform responsibly and effectively at work.

Whilst it is necessary for managers to provide support and guidance to employees on a day to day basis, it is also important for organisations to have a clear formal procedure to enable disciplinary action to be taken against an employee when necessary. The first aim of this procedure is to ensure consistency in the manner and circumstances in which managers may take such action. The second aim is to make clear the rights and responsibilities of managers and employees when such action is being taken. This procedure is intended to protect employees against unfair dismissal whilst enabling managers to carry out their responsibility to manage the services provided by the organisation as appropriate.

The Labour Relations Agency Code of Practice advises that disciplinary procedures should:

- be in writing
- specify to whom they apply
- provide for matters to be dealt with quickly
- indicate the disciplinary actions which may be taken
- specify the levels of management which have the authority to take the various forms of disciplinary action, ensuring that where possible immediate line managers do not normally have the power to dismiss without reference to senior management
- provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case directly to those considering disciplinary action before decisions are reached
- give individuals the right to be accompanied by a trade union representative or by a fellow employee of their choice (this is a legal right under the Employment Relations (NI) Order 1999)
- ensure that disciplinary action is not taken until the case has been carefully investigated
- ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline
- ensure that individuals are not suspended without pay either pending investigation or as a disciplinary penalty unless the contract of employment so permits

- ensure that individuals are given reasons for any disciplinary action taken
- provide a right to appeal and specify the appeals procedure to be followed and the actions which may be taken by those hearing the appeal.

Disciplinary Procedures in Operation

Informal Procedure

When a disciplinary matter arises, the supervisor or manager should first establish the facts promptly before recollections fade, taking into account the statements of any available witnesses. After establishing the facts, a supervisor or manager may consider that there is no need to resort to the formal procedure and that it is sufficient to talk the matter over informally with the employee. Action taken at an early stage before the formal disciplinary procedure is used can lead to an improved standard of performance or behaviour.

At this stage the following discussion with the employee could be helpful:

- check that the standards of performance or behaviour expected of employees has been explained
- check that they have had sufficient time to understand and learn the tasks involved in their job
- check that they had adjusted to any change in culture or management style
- check that they have had sufficient training for the particular job
- check that there is no domestic or personal problem causing high levels of anxiety and affecting performance.

Formal Procedures

Investigation

In order to conduct disciplinary proceedings fairly, the organisation may need to carry out a disciplinary investigation to establish the facts as follows:

- appoint an individual or panel of individuals to conduct the investigation, eg Personnel Officer, member of Management/Committee
- gather information as soon as possible, speaking to witnesses and concerned parties while memories are still fresh
- take formal statements from witnesses and concerned parties
- collect any relevant documents or material evidence
- avoid making judgements based on hearsay
- keep a record of the investigation and its outcome.

Disciplinary Interviews

It is essential that disciplinary proceedings are handled effectively and conducted in a fair and systematic manner. The purpose of such interviews is not simply to inform employees of the offence and to establish whether or not someone is at fault, but also to enable them to improve. Poorly conducted proceedings may result in unfair warnings or dismissal which will both undermine other employees' confidence in the disciplinary system, and result in the organisation being found guilty of unfair dismissal at an employment tribunal. If the preliminary investigation decides that a disciplinary interview is appropriate, then certain procedures should be observed.

Before the interview:

- the employee accused of misconduct should be told in advance of the purpose of the interview, the alleged offence, given any supporting documents or statement, given an indication of the penalty if the allegation is upheld, and given sufficient time to prepare for the interview
- the employee should be informed of his or her right to be accompanied by a colleague or a trade union representative of their choice

At the interview:

- the employee should be told of the facts that stand against them and given a full opportunity to respond
- more than one manager should be present at any formal proceedings
- the manager (or possible committee member in a small organisation) holding the interview or making the decision should not be the manager making the complaint and should be, as far as is reasonably practical, free of any possible bias
- the interview should not be attended by any manager or committee member to whom an appeal may be made
- an accurate, unbiased account of the proceedings should be taken and kept
- no decision concerning disciplinary action should be taken until the interview has concluded
- the manager conducting the interview should sum up and adjourn for further considered discussion
- the manager should then return and announce whether or not disciplinary action is to be taken and what it will consist of. (the outcome of a disciplinary hearing or interview should be given in writing)
- the employee must be advised of their right of appeal

After the interview:

- the organisation should keep careful records of all disciplinary proceedings, including an accurate transcript of the disciplinary interview

Disciplinary Procedures

Disciplinary action usually proceeds through a number of stages. A serious offence may lead to the process being started at the second or even the third stage. It is vital that any disciplinary procedures are both procedurally fair and that the results are fair. The first stage must be to investigate thoroughly.

A formal spoken warning:

should be issued by a manager or supervisor when an employee's conduct or performance does not meet acceptable standards. The employee should be informed that such a meeting is a disciplinary situation, the outcome of the discussion will be recorded and placed in the employee's personnel file and a copy given to the employee. The matter should be reviewed within a specified period of time (three to six months).

A first written warning:

should be given if an employee's conduct or performance continues to be unsatisfactory, or if an offence is serious. To avoid prejudice, the warning should be written after a meeting has taken place between the employer and employee, and the employee should be advised of their right of appeal. The warning should refer to the cause of dissatisfaction and specify the improvements required and a review date. A copy of this should be placed in the employee's personnel file. The matter should be reviewed within a specified period of time (six months to one year).

A final written warning:

should be issued if an employee's conduct or performance has still not improved, or if the misconduct is serious enough to merit only one written warning. This should again refer to the cause of the dissatisfaction, specify the improvements required within a timescale and warn that a further failure to reach the required standard may result in dismissal. The employee should be advised of their right of appeal. As before, a copy of the warning should be placed in the employee's personnel file. The matter should be reviewed within a specified period of time (minimum one year).

Dismissal:

may result if an employee still fails to reach the required standard of conduct or performance after a final written warning, or is guilty of gross misconduct. Only a senior manager or trustee can take this decision, providing, as soon as reasonably practical, a written statement of reasons for the action, the date on which employment will terminate and the right of appeal. Suspension is often enacted while an investigation into a serious disciplinary offence takes place pending dismissal. If the employee is cleared of the charge they should be reinstated. Suspension is normally with pay, but if it is without, this should be stated in the contract of employment.

Dismissal should only be considered as a last resort as it represents a communication breakdown between management and the employee indicating that the expectations of performance as clarified in the terms and conditions of employment have not been met.

Rights on Dismissal

Unless the employee is guilty of gross misconduct, they have certain rights regarding dismissal:

- a minimum period of notice of dismissal should be given depending on the length of service- one week if the employee has been continuously employed by the employer for more than one month but less than two years, two weeks if employed for at least two years and one additional week's notice for each further complete year of continuous employment up to twelve weeks
- an employee is entitled to a greater period of notice if the amount specified in their contract of employment exceeds the legal entitlement
- minimum pay must be given during the notice period if the employee is available for work but none is given, incapable of work through illness, absent for maternity reasons or on holiday in accordance with the terms of employment (this minimum hourly rate is calculated by dividing a normal week's pay by the number of weekly working hours)
- the law does not prevent employees from waiving their right to notice or accepting payment in lieu of notice if this is by mutual agreement with their employer
- certain types of employee cannot claim unfair dismissal as the result of disciplinary action (they include employees who have served less than one year's continuous service and employees who have reached retirement age)

Gross Misconduct

This term refers to misconduct which is so serious that it warrants immediate dismissal without notice, or money in lieu of notice. Employees suspended or disciplined for gross misconduct, however, still have the right of appeal.

The Right Of Appeal

An employee who has been officially warned or dismissed has the right to an appeal if they think they have been treated unfairly. A senior manager who has not been involved in the original hearing must hear such an appeal. If the employee is still unhappy after the appeal they have the right to apply to an employment tribunal. It is therefore important that the employer can justify the disciplinary action.

Dismissal - Fair or Unfair?

Dismissal will be fair if the employer acts reasonably in deciding to dismiss and follows the disciplinary procedures. Dismissal is automatically unfair if the reason for dismissal is connected with certain statutory rights` for example if the employee is:

- a member of a trade union, or takes part in union activities
- not a member of a trade union, or refuses to take part in union activities
- pregnant or is taking maternity leave
- taking legal action on health or safety grounds
- demanding a statutory employment right
- discriminated against because of their gender, religion, disability or ethnic or national origin
- transferring to another job
- acting as an employee representative, or is a candidate for such a position
- discovered to have previously been a convict and served a required period or rehabilitation
- engaged in 'whistleblowing'.

Examples of Offences Attracting Disciplinary Action

Although not intended to be an exhaustive list, some examples of breaches of discipline which may render an employee liable to disciplinary action are as follows:

- failing to take reasonable care of the property of the organisation including failing to act to prevent loss or damage to it
- failure to meet conditions governing hours of duty
- failing to perform duties to an acceptable standard where the duties are normally performed by that person or are known to be in the capacity of that person
- refusal to carry out a reasonable work instruction
- breach of confidence not amounting to gross misconduct
- falsehood or prevarication
- causing a serious nuisance to or offering discourteous behaviour to any staff colleague, committee member or visitor
- lack of cleanliness which fellow employees might reasonably consider to be offensive
- being persistently absent without leave or reasonable excuse
- refusal to work normally with colleagues because of their actual or assumed problems relating to alcohol, drugs or AIDS
- canvassing in the course of promotion or recruitment to a staff member of the organisation for oneself or another
- wilful or excessive wastage of materials
- misuse of telephone or other organisational resources.

Examples of Offences Considered Gross Misconduct

Examples of those breaches of discipline which could lead to summary dismissal or which warrant suspension which after investigation may lead to dismissal are as follows:

- words, gestures or actions contravening the principles set out in the organisation's Equal Opportunity Policy
- harassment of any colleague, member of or visitor to the organisation which causes the individual to feel threatened, humiliated, patronised, or which interferes with the individual's job performance, undermines job security or creates a threatening or intimidating work environment
- intimidatory remarks, gestures or actions likely to cause distress or offence to colleagues, members of or visitors to the organisation on account of their sectarian nature
- malicious mischief resulting in danger to fellow employees or other persons on the premises in contravention of the organisation's Health and Safety Policy
- in the course of employment, inflicting bodily injury on another person
- failing to account for money or other property received on behalf of the organisation
- stealing from the organisation or a client of the organisation while on the premises or engaged elsewhere on work associated with the organisation
- the fraudulent obtaining of money or other property from the organisation or members/users of the organisation
- committing a criminal offence other than one which has clearly no bearing on the staff member's suitability for employment
- repeated acts of misconduct as outlined above under offences attracting disciplinary action
- improperly removing a document from the organisation or knowingly altering, destroying or mutilating such a document or resource
- misrepresenting work history, details of experience, education, qualifications, capabilities or performance when being considered for engagement or promotion
- disclosing to any person other than one specifically authorised or known to be entitled to be entrusted with it, information about the organisation or its work which is known by the member of staff to be confidential
- failing to comply with the provisions of any statutory notice served on the organisation and as notified to staff.

Grievance

There will be occasions on which individual employees may feel aggrieved about an aspect of their work, working conditions or conditions of service which affect their wellbeing and ability to do their job effectively. These can include harassment, intimidation, incompetent colleagues, a dangerous work environment, a lack of resources to do their job, too great a workload or bullying.

Grievance procedures are intended to provide a mechanism for resolving any grievance fairly and speedily and should therefore reduce the likelihood of these developing into major problems. Grievance procedures do not apply in cases where an employee is

dissatisfied with any disciplinary action taken, in which circumstances the disciplinary appeals procedure should be utilised.

The Legal Position

Employers are not required by law to have a grievance procedure but under the Employment Rights (NI) Order 1996 they are required to include in the written statement of terms and conditions of employment, the name or job title of the person to whom an employee can apply if they have a grievance.

Employers should also provide in their grievance procedure for employees to raise concerns about workplace practices or suspicions of criminal acts, miscarriages of justice and dangers to health and safety. Under the Employment Rights (NI) Order 1996, as amended by the Public Interest (NI) Disclosure 1998 or 'Whistleblowing', employees who honestly and reasonably raise concerns are legally protected in specified circumstances if they raise concerns in the manner required by the Order.

As a matter of good practice it is recommended that a grievance policy should be drawn up and given to employees.

Grievance Policy

A grievance policy should include that employees must:

- be given a fair hearing concerning any grievances they may have
- have the right to be accompanied by a colleague or trade union official when raising a grievance
- not be treated unfairly because they have raised a grievance against a senior employee concerning health and safety or asserting a statutory right.

Organisations may also wish to create specific grievance policies which address particular areas of concern, such as sexual harassment, violence or bullying. Such policies should clearly define the behaviour they prohibit and spell out the disciplinary consequences to those who breach their requirements.

Informal Procedure

Wherever possible, individual grievances should be resolved on an informal one to one basis with an employee's line manager. Where such discussion does not resolve the matter, the following stages should apply:

Formal Procedure

- 1 The employee should first seek to resolve the issue with the person concerned.

- 2 A verbal complaint should first be made to an employee's immediate supervisor or another person if the cause of the complaint is the employee's immediate supervisor.
- 3 A written complaint followed by a meeting with a senior manager or trustee should be sought if the matter remains unresolved.
- 4 A hearing by a third party such as the Labour Relations Agency should be arranged if the grievance cannot be satisfactorily resolved internally.

As with disciplinary procedures, a record of an employee's grievance should be kept in their personnel file. Again it is important for employers to take grievances seriously because if they are not addressed and resolved, an employee may consider that they are unable to continue working as a consequence of their continuing grievance. They may then resign claiming constructive dismissal against the employer as a result of their inaction to resolve the reported grievance.

Particular sensitivity needs to be used in cases of alleged religious, sexual or racial harassment. External advice may be needed in such cases.

Steps should be taken to ensure that there is no unreasonable delay in the implementation of the grievance procedure.

Appendix 1

SAMPLE DISCIPLINARY POLICY AND PROCEDURE

Purpose of the Procedure

In order to maintain the quality of service for members and users and provide for the wellbeing of staff, the organisation requires a number of systems and procedures. The disciplinary procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The disciplinary procedure is essential to assist the organisation in operating effectively and to create a fair, efficient and caring working environment.

The first aim of this procedure is to ensure consistency in the manner and circumstances in which disciplinary action may be taken. The second aim is to make clear the rights and responsibilities of employer and employees when such action is being taken. This procedure is intended to protect employees against unfair dismissal whilst enabling management to carry out its responsibility to manage the services provided. The procedure will apply to all employees whether full-time or part-time, permanent or temporary, with the principle of ensuring fair treatment for all.

Operation of the Procedure

The disciplinary procedure is intended to be used in situations where an employee's work or conduct at work is unsatisfactory. In many instances, disciplinary matters can be dealt with on an informal basis by the line manager discussing the situation with the employee concerned and agreeing any necessary corrective action. Inevitably, there will be times when disciplinary matters need to be formalised. When such situations arise, it is of the utmost importance that the following disciplinary procedure is strictly followed. Appendix A lists a range of circumstances, although not exhaustive, where disciplinary action against an employee may be appropriate.

An alleged disciplinary offence may be brought to a line manager's attention in a number of ways. He/she may have witnessed the alleged offence, or a complaint may have been made by another member of staff or member/user. In all such circumstances, the alleged offence/complaint should be fully investigated in accordance with the agreed procedures

and a decision taken as to whether formal disciplinary action is appropriate. During the course of the investigations, the investigating officer must not prejudice the situation and a full enquiry must be made as to the full facts of the alleged offence/complaint.

Initial Investigation of Complaint or Misconduct

As soon as a complaint or allegation of misconduct has been made against an employee, his/her line manager should initiate an investigation into this complaint to form an initial judgement on the facts of the case. The employee will be informed in writing of the nature of the complaint or allegation and the employee (with his/her representative) and any witnesses will be interviewed to gather any information pertaining to this. Following a full investigation, the line manager will make a decision as to whether disciplinary action is appropriate.

Suspension

In the event of a breach of the disciplinary rules constituting gross misconduct, the line manager or disciplining officer may take the decision to suspend, with or without pay, during the initial period of investigation. The completion of the investigation shall be followed by the immediate reinstatement of the employee, if it is decided that no disciplinary action is required, or by arrangement of a disciplinary interview to consider the case.

Support

Following an initial investigation, it may transpire that due to the extenuating circumstances of the case, disciplinary action against any individual employee would be inappropriate. In such cases, the line manager may need to provide support and guidance to the employee and as such this can be a positive means of resolving both disciplinary and grievance problems without the need to invoke formal procedures.

Formal Disciplinary Interview

If it becomes clear that formal disciplinary action is appropriate, a disciplinary interview should be arranged in line with the following procedure:

- (i) The employee shall receive a formal letter requesting attendance at the disciplinary interview, clearly stating the nature of the complaint against him/her. The employee shall be given five working days notice of this interview and be offered the opportunity to have representation either by a trade union or employee representative.
- (ii) The manager conducting the disciplinary interview shall explain to the employee (and their representative, if appropriate) the procedure for the interview, including

reminding the employee of the nature of the complaint and explaining that a decision on disciplinary action will be taken once all facts have been presented.

- (iii) The nature of the complaint and any supporting evidence will then be outlined to the employee by the manager presenting the case. Any witnesses or other members of staff called will be interviewed independently to corroborate this information as appropriate.
- (iv) The employee concerned will then be allowed to state his/her case and to call in any other members of staff or witnesses to attend the interview to substantiate this. The manager hearing the interview may ask questions of the employee or any other participant at the interview in order to arrive at the full facts of the matter.
- (v) If, during the course of these discussions, any new facts emerge which cannot be fully substantiated during the interview, the manager hearing the interview shall determine whether any further investigation is required and, if so, adjourn the interview and reconvene when such investigations have been completed.
- (vi) The manager will adjourn before reaching a decision on the appropriateness of disciplinary action.
- (vii) It is the responsibility of the manager hearing the interview to decide the appropriate penalty. The options for disciplinary action are outlined below. In deciding the appropriate action to take, the manager shall take the following into account:
 - the gravity of the offence
 - the penalty applied in similar cases in the past
 - the individual's disciplinary record
 - any mitigating circumstances
 - whether the proposed penalty is reasonable in all circumstances
- (viii) The disciplinary interview shall then be reconvened to:
 - inform the employee of the decision and disciplinary penalty if any
 - explain the employee's right of appeal and how it operates
 - in the case of a warning, explain what improvement is expected, how long it will last and what the consequences of failure to improve may be.
- (ix) The manager will confirm the decision in writing. If an improved level of performance or conduct is expected over a particular timescale, the arrangements for monitoring and reviewing this should also be made clear to the employee.

Stages in the Disciplinary Procedure

Following a disciplinary interview and consideration of all the relevant facts, the following courses of action are open to the manager concerned. Depending on the seriousness of the offence, action can be taken at any of these stages at an initial disciplinary hearing:

No Disciplinary Action

The manager considers the complaints against the employee are false or unproven or of an exceedingly minor nature and that no disciplinary action should be taken. All reference to the investigation will be removed from the employee's personnel file. The employee will receive a letter within five working days confirming that no disciplinary action has been taken. The manager will arrange for informal support sessions where appropriate.

Verbal Warning

The manager considers that, either on the employee's own admission or, on account of the facts presented during the course of the investigation and disciplinary interview, the complaints against the employee are upheld but the nature of this misconduct is of a sufficiently minor nature that a verbal warning is most appropriate. The employee will receive a plan for improving their work conduct or performance. This will be communicated to the employee within five working days and all reference to the warning will be removed from the personnel file after six months, provided the employee's conduct and performance have improved. The employee will be informed of his/her right of appeal.

Written Warning

A written warning should be given if the employee's conduct or performance remains unsatisfactory during the period that the record of a verbal warning remains on their personnel file, or the misconduct or poor performance of which the employee is guilty is of a more serious nature.

Such a warning will be confirmed in writing to the employee within five working days of the disciplinary interview, and will detail the complaints against the employee, the improvements required and the expected timescale. It shall also indicate that further disciplinary action may be taken if the employee fails to improve his/her performance/conduct. A copy of the written warning should remain on the employee's file but will be disregarded for disciplinary purposes after twelve months, subject to satisfactory conduct/performance during this time. The employee will be informed of his/her right of appeal.

Final Written Warning

A final written warning may be given to an employee who persists with conduct or performance for which they have previously been given a written warning or for

conduct of a more serious nature regardless of whether previous warnings have been issued. A final written warning should be confirmed in writing to the employee within five working days of the disciplinary interview. This must detail the complaint and the improvements in performance/conduct required and advise the employee that if such improvement is not forthcoming, further disciplinary action, including dismissal, may take place.

A copy of this warning will remain on the employee's file but will normally be disregarded for disciplinary purposes after two years. The employee will be informed of his/her right of appeal.

Dismissal

If all previous warnings produce no improvement in an employee's conduct/performance, the decision may be taken to dismiss the employee. The decision to dismiss an employee rests ultimately with the Chairperson who will ensure that the full circumstances of the case are investigated.

Following a disciplinary interview at which a decision to dismiss an employee has been taken, the employee should receive within five working days, a letter confirming the reasons for the dismissal, the effective date of the dismissal and the employee's right of appeal. Employees may receive either notice in accordance with their contract of employment or, if more appropriate, payment in lieu of notice.

Summary Dismissal

Where a disciplinary hearing finds that an employee has committed an act of gross misconduct (see Appendix B) he/she may be dismissed by the Chairperson without notice. The employee will be informed of his/her right of appeal.

Appeals

At any stage in the disciplinary process, an employee may appeal against any of the above disciplinary decisions. If an employee wishes to exercise the right of appeal, he/she must do so in writing within five working days of receiving confirmation of disciplinary action.

Appeals Procedure

- 1 At stages one, two and three this would be to a sub-committee established for the purposes of dealing with staffing issues and thereafter to the full committee.
- 2 On no occasion will the original disciplining manager hear an appeal. In a form similar to the original disciplinary interview, both the employee's line

- manager and the employee (and/or representative) will present their version of the facts and each may call witnesses to substantiate their case.
- 3 The employee (and/or representative) should be asked to state why he/she is appealing against the disciplinary penalty. The panel hearing the appeal may ask questions of the employee's line manager or the employee or any witness in order to arrive at a full understanding of the facts of the matter.
 - 4 If any further evidence concerning the employee's conduct/performance has arisen in the period between the original interview and the appeal, it can only be considered at the appeal hearing if it is relevant to the original complaint(s).
 - 5 The disciplinary penalty originally imposed will be reviewed by the panel hearing the appeal but may not be increased.
 - 6 Where an employee successfully appeals against dismissal, he/she should be reinstated to their original (or at least comparable) position within the organisation.
 - 7 Following an appeal, if the original disciplinary action is upheld, the panel hearing the appeal must inform the appellant of their decision within five working days of the appeal hearing.

Appendix A

Although not intended to be an exhaustive list, some examples of breaches of discipline which may render an employee liable to disciplinary action are as follows:

- (i) failing to take reasonable care of property including failing to act to prevent loss or damage to it
- (ii) failure to meet conditions governing hours of duty
- (iii) failing to perform duties to an acceptable standard where the duties are normally performed by that person or are known to be in the capacity of that person
- (iv) refusal to carry out a reasonable work instruction
- (v) breach of confidence not amounting to gross misconduct
- (vi) falsehood or prevarication
- (vii) causing a serious nuisance to or offering discourteous behaviour to any staff colleague, committee member or visitor
- (viii) lack of cleanliness which fellow employees might reasonably consider to be offensive
- (ix) being persistently absent without leave or reasonable excuse
- (x) refusal to work normally with colleagues because of their actual or assumed problems relating to alcohol, drugs or AIDS
- (xi) canvassing in the course of promotion or recruitment to staff for oneself or another
- (xii) wilful or excessive wastage of materials

- (xiii) misuse of telephone or other organisational resources.

Appendix B

Examples of those breaches of discipline which could lead to summary dismissal or which warrant suspension which after investigation may lead to dismissal are as follows:

- (i) words, gestures or actions contravening the principles set out in the Equal Opportunity Policy
- (ii) harassment of any colleague, member or visitor which causes the individual to feel threatened, humiliated, patronised, or which interferes with their job performance, undermines job security or creates a threatening or intimidating work environment
- (iii) intimidatory remarks, gestures or actions likely to cause distress or offence to colleagues, members or visitors on account of their sectarian nature
- (iv) malicious mischief resulting in danger to fellow employees or other persons on the premises in contravention of the Health and Safety Policy
- (v) in the course of employment, inflicting bodily injury on another person
- (vi) failing to account for money or property received on behalf of the organisation
- (vii) stealing from the organisation or a client while on premises or engaged elsewhere on business
- (viii) the fraudulent obtaining of money or other property from the organisation or its members/users
- (ix) committing a criminal offence other than one which has clearly no bearing on the staff member's suitability for employment
- (x) repeated acts of misconduct as outlined in Appendix A

- (xi) improperly removing a document from the organisation, or knowingly altering, destroying or mutilating such a document or resource
- (xii) misrepresenting work history, experience, education, qualifications or capabilities when being considered for engagement or promotion
- (xiii) disclosing to any person other than one specifically authorised or known to be entitled to be entrusted with it, information about the organisation or its work which is known by the member of staff to be confidential
- (xix) failing to comply with the provisions of any statutory notice served on the organisation and notified to staff

Appendix 2

SAMPLE GRIEVANCE POLICY

There will be occasions on which individual employees may feel aggrieved about an aspect of their work, working conditions or conditions of service. The following Grievance Procedure is designed to ensure that all employees have a fair and consistent means of taking up such grievances and is designed to cover matters which are personal to an individual's conditions of service.

The Grievance Procedure is intended to provide a mechanism for resolving any grievance quickly and practically and should therefore reduce the likelihood of disputes arising. The procedure is not, however, intended as a means of taking issue with the organisation or structure. For example, where a policy has been drawn up or management decision taken which affects all staff equally, then the Grievance Procedure does not apply.

This procedure does not apply in cases where an employee is dissatisfied with any disciplinary action taken, in which circumstances the disciplinary appeals procedure should be utilised.

Informal Procedure

Wherever possible, individual grievances should be resolved on an informal one to one basis with an employee's line manager. Where such discussion does not resolve the matter, the following stages should apply:

Stage 1

Discussion of the grievance between employee and the *eg Manager, Co-ordinator, etc*).

The employee may request in writing a formal meeting to state his/her grievance and may be accompanied to that meeting by an employee/union representative. The person hearing the grievance may be accompanied by a member of the committee or someone who will record a minute of the meeting. The person hearing the grievance should

consider the points made by the employee and interview other relevant parties. On completion of the investigation, they should communicate his/her response in writing within five working days. If this person initiates the grievance, stage 2 of the grievance procedure will automatically apply.

Stage 2

Discussion of the grievance between employee and (*insert name of next level eg staffing sub-committee*).

If the employee remains aggrieved with the decision under Stage 1 of the procedure, he/she may raise the matter in writing with the *Staffing Sub-Committee*. The grievance should be acknowledged in writing and a date set for the meeting to which an employee/union representative may again accompany the employee concerned. At that meeting, the *Staffing Sub-Committee* will consider the views expressed by the employee concerned followed by the *Co-ordinator* who will attend the meeting to explain the reasons for his/her original decision under Stage 1 of the procedure. All staff members will withdraw to allow the committee to reach a decision which will be conveyed to all parties concerned within five working days.

Stage 3

Conciliation and Arbitration

If an employee is still dissatisfied, he/she may request that the matter be referred to the Labour Relations Agency for conciliation. Should the grievance still remain unresolved following all stages of conciliation, each side shall have unilateral right to refer the matter to arbitration.

Appendix 3

SAMPLE WARNING

Dear

Re: WRITTEN WARNING

Further to your recent disciplinary interview and an investigation regarding the points raised by _____, I wish to confirm that you should receive a written warning for

1

2

3

This warning will remain on your personnel file for a period of one year after which all reference to the warning will be removed provided your conduct improves and remains satisfactory.

As agreed in the disciplinary interview, the organisation will commit to resolving the situation in a manner which is suitable to all parties.

I must advise you that you have right of appeal against this decision which should be made in writing to _____, within five working days of receipt of this letter.

Yours sincerely

signed

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG

Tel: 028 9032 1442
Fax: 028 9033 0827

Department Of Higher and Further Education, Training & Employment
Employment Rights and New Deal Division
Room 203 Adelaide House
39/49 Adelaide Street
Belfast BT2 8FD

Tel 028 9025 7956
Fax 0800 585811
Email erbooklets@dhfetni.gov.uk

A Guide to Good Employment

Chapter 10. Termination of Employment

Overview

This chapter sets out a summary of the main issues and legislation concerning redundancy, incapability, dismissal and resignation from work.

Dismissal

Reasons for dismissal

An employee can be legally dismissed when:

- he or she persistently fails to reach the required standard of conduct or performance after verbal and written warnings
- he or she is guilty of gross misconduct
- he or she is no longer capable of doing the job for reasons which are due to a medical condition or long-term sickness
- his or her job is made redundant
- there are other 'substantial' reasons for dismissal.

Gross misconduct

This term refers to misconduct which is so serious that it justifies immediate dismissal without notice or money in lieu of notice. Examples of gross misconduct include theft, fraud, deliberate damage to an organisation's property, inept or dangerous incapability through indulgence of alcohol or drugs, serious negligence which results in damage to property, loss or injury, serious acts of insubordination, unauthorised accessing of confidential information and assault. Employees suspended or disciplined for gross misconduct, however, still have the right to a disciplinary hearing and investigation as laid down in the organisation's disciplinary procedure. They also have the right to appeal (refer to Chapter 10 Discipline and Grievance).

Rights upon dismissal

Unless the employee is guilty of gross misconduct, they have certain rights regarding dismissal:

- a minimum period of notice of dismissal should be given depending on the length of service: one week if the employee has been continuously employed by the employer for more than one month but less than two years; two weeks if employed for at least two years and one additional week's notice for each further complete year of

continuous employment up to twelve weeks. If the contract provides for greater notice, this should be given

- minimum pay must be given during the notice period if the employee is available for work but none is given, if the employee is incapable of work through illness, is absent for maternity reasons or on holiday in accordance with the terms of employment. This minimum hourly rate is calculated by dividing a normal week's pay by the number of weekly working hours
- the law does not prevent employees from waiving their right to notice or accepting payment in lieu of notice if this is by mutual agreement with their employer.
- certain types of employee cannot claim unfair dismissal as a result of disciplinary action. They include employees who have served less than one year's continuous service, employees who have reached retirement age, and employees who have reached a settlement with their employer through independent legal advice in which they have waived their rights to complain to an employment tribunal. Exceptions to the above are if the dismissal is connected to pregnancy or trade union membership.

The right of appeal

An employee who is dismissed has the right to an appeal. Such an appeal should be heard by a senior manager or trustee, who is ideally someone not involved in the disciplinary hearing. It is obviously important that an employer can justify the reason for any action otherwise an employee has the right to take the matter to an employment tribunal and claim unfair dismissal. An employee is required to have served at least one year of employment to be eligible to bring a claim for unfair dismissal.

Dismissal may be fair if the employer acts reasonably in deciding to dismiss and follows the disciplinary procedures after considering other forms of disciplinary action, and:

- the employee is unable or unqualified to do their job in accordance with their job description
- the employee's behaviour is unacceptable
- a legal requirement prevents the employee from doing their job (for example, a delivery driver losing their driving licence)
- the employee is made redundant in accordance with the correct procedures
- there is some other substantial reason of a kind which would justify the dismissal

Dismissal is automatically unfair, and there is no requirement for a one-year qualifying period, if an employee is dismissed because he or she:

- is a trade union member, or takes part in such activities
- is not a trade union member
- is pregnant or is taking maternity leave
- takes action on health or safety grounds
- demands a statutory employment right
- refuses in certain circumstances to work on a Sunday
- is employed in circumstances where the Transfer of Undertakings Regulations apply

- acts as an employee representative, or is a candidate for such a position

An employee can normally only bring a claim for unfair dismissal if they have been in their job for at least one year. However, employees who have been dismissed as a direct result of their gender, colour, race, nationality, ethnic or national origins, or disability, may bring a claim under the discrimination laws at any time as there is no qualifying period.

There are two other types of dismissal in which the employer can act contrary to the law. They are:

Wrongful dismissal

This is the case when an employer has not fulfilled their contractual obligations with regard to dismissal. Employees may claim damages if they can demonstrate that they have suffered a loss due to breach of contract. There is no qualifying length of service necessary to bring such a claim. Wrongful dismissal often arises out of a failure by the employer to give proper notice.

Constructive dismissal

This is the case where an employee believes that they have been put in a position where they have no option but to resign as a direct result of their employer acting in breach of their contract of employment. Such a claim must be brought within three months of resignation.

Redundancy

The Legal Position

The Employment Rights (NI) Order 1996 states that:

- the reason for redundancy is because an employer either ceases to carry on the business in which the employee was engaged, or closes the location where or in which an employee was working, or if there is no longer a need for particular skills
- employees who have worked for more than one month are entitled to a minimum period of notice during which they must be paid or paid money in lieu of notice
- a redundant employee is entitled to undertake a trial period of at least four weeks in an alternative job, without jeopardising their right to redundancy pay
- certain employees are entitled to a redundancy payment depending on their age and length of service
- an employee who is offered suitable alternative employment before the date on which redundancy is due to take place but unreasonably refuses, will not receive redundancy payment

- trade union or elected employee representatives are consulted in relation to redundancy selection if more than twenty employees are to be dismissed for reasons of redundancy within a 90 day period
- employers should devise redundancy selection criteria which are fair, reasonable, non-discriminatory and not based on a personal whim

It is not a redundancy situation if an employer replaces a dismissed employee with another person to do the same job within a short period of time. In such cases, redundancy cannot be used as an excuse to dismiss an incapable employee. Such an act could count as unfair dismissal.

Redundancy must be handled sensitively. It not only affects the morale of those employees selected, but also those remaining. It is therefore good practice for an employer to provide redundant employees with counselling or some similar support.

Conditions for redundancy

Redundancy is considered fair when:

- selection for redundancy is non-discriminatory and based on set and agreed criteria such as skills, experience, job performance and/or attendance, length of service
- the employer has conducted the redundancy in accordance with the organisation's procedures. These procedures should have been made available to employees with their terms and conditions of employment
- the employer has consulted elected employee representatives or independent trade unions
- where possible, the employer has tried but failed to find alternative jobs for redundant employees

The employer must also be careful that the method of selecting employees for redundancy does not inadvertently discriminate disproportionately against individuals from a particular community background, a particular gender, a person with a disability or someone from an ethnic or national group. For example the 'last in first out method (LIFO)' is not considered best practice as it may discriminate against individuals from a particular community background.

Redundancy consultation

The law requires that, if the number of employees affected is to be twenty or more, the employer must consult with employee representatives or trade union officials.

The consultation should begin in 'good time' that is:

- at least thirty days before the first dismissal if between twenty and 99 employees are to be dismissed within a ninety day period

- at least ninety days before the first dismissal if one hundred or more employees are to be dismissed

Consultation must be 'fair' and the organisations must meet with representatives while the redundancy proposals are still at an early stage. They should then be given enough information on the proposed redundancies and enough time to digest it before making an informed response. The employer must then seriously consider their response.

The representatives should be informed of:

- the reasons for the proposed redundancies
- the number and type of employees intended for redundancy
- the total number of particular types of such employees
- the proposed method of selection for redundancy
- the proposed procedures and timescale of implementing redundancies
- the proposed method of calculating redundancy payments other than statutory requirements

Additionally:

- an employer is not obliged to agree with or implement the employee representatives response, but they are obliged to conduct the consultation fairly and in accordance with their organisation's procedures
- consultation also applies to employees who have volunteered for redundancy
- employees selected for redundancy should be informed of their right of appeal which, where practical, will be heard by a senior manager or trustee who is not directly involved with the redundancy situation

In cases of fewer than twenty redundancies there must still be meaningful consultation with affected employees. Failure to consult is likely to render the dismissal unfair. There is no set timetable for consultation in fewer than twenty redundancies.

Notifying the Department of Enterprise Trade and Investment (DETI)

If an employer intends to make twenty or more employees redundant they must notify DETI in writing. The purpose of this advance notification is so that the DETI has an opportunity to provide help in finding alternative work or retraining for the impending redundant employees. Such notification does not mean the redundancies will necessarily take place, but simply that the employer foresees a situation where redundancies are likely. The minimum time limits for notification are:

- at least thirty days before the first dismissal if between twenty and 99 employees are to be dismissed within a ninety day period
- at least ninety days before the first dismissal if one hundred or more employees are to be dismissed within a ninety day period

Employers who fail to notify the DETI in advance of making twenty or more employees redundant are liable to a fine of up to £5,000.

Employees' Rights to Notice

Employees who are to be made redundant are entitled to a minimum period of notice which is dependent on their length of service. The entitlements are as follows:

- employees who have served one month or less are not entitled to any notice
- employees who have served between one month and under two years are entitled to one weeks' notice
- employees who have served more than two years but less than three are entitled to two weeks notice
- one additional week's notice for each further complete year of continuous employment to a maximum statutory requirement of twelve weeks

Redundancy payments

The amount of the statutory payment, if any, an employee is entitled to receive depends on how long they have been in continuous service with an employer, how this length of service relates to their particular age band and how much they are paid. The statutory maximum is £220 per week. Employees are paid for each period in which they were in a particular age band and the payments for each of these periods should be calculated and then added together. The age bands and respective entitlements are as follows:

- employees over eighteen and up to 23 years old are entitled to half a week's pay for each complete year of employment
- employees over 22 and up to 41 years old are entitled to one week's pay for each complete year of employment
- employees over 41 but less than 65 years old are entitled to one and a half week's pay for each complete year of employment
- there is a maximum of twenty years of employment

Employees may be entitled to higher payments if their contracts of employment provide for this.

Until 1989 redundancy payments were refundable by the government, but now organisations must finance these payments from their own funds. Trustees may be personally liable to cover such payments if the organisation does not have sufficient funds and is not incorporated.

The Department of Higher and Further Education, Training and Employment publishes a 'ready reckoner' for calculating the number of weeks' payment due, maximum amounts and further information on redundancy payments. This guide is available free from local

Training & Employment Agencies or from the Department. Details can be found at the end of this Chapter.

Legal exceptions

Certain categories of employee are not legally entitled to redundancy payment. They include:

- employees whose service ends on or after their 65th birthday
- employees who work for an organisation with a normal retiring age of less than 65 and have reached that age
- apprentices whose service ends at the end of their apprenticeship contract
- employees on fixed-term contracts of at least two years' duration which include a clause, agreed to in writing by the employee, waiving their right to redundancy payment and whose service ended by expiry of the fixed-term contract

Other employee rights

Employees who have been given notice of redundancy have certain other rights which include:

- the right to reasonable and paid time off to look for another job or arrange employment-related training
- a written statement of the amount of the redundancy payment and how it was calculated
- the right to a trial period of work for at least four weeks if alternative employment is found. This will not affect the right to redundancy pay if the trial does not work out, as long as the employee gives notice to terminate the trial within the four weeks

Resignation

Resignation refers to the situation where an employee instigates the termination of their employment. The conditions under which they can do this while still retaining their legal rights should be set out in the terms and conditions of employment. These should state:

- the length of notice an employee is required to give their employer of their intention to leave. If this is not stated, then the statutory requirement of one week should be observed
- the person to whom the notice should be given to the employee's supervisor, personnel department or the head of the organisation
- the manner in which notice should be given: either verbally or in writing

Exit Interview

When an employee resigns, it is good practice to conduct an exit interview to establish the reason for the resignation. This may enable the organisation to improve selection criteria or employee retention.

Final Payments

When an employee leaves an organisation, they may be entitled to certain payments. This will consist of an employee's regular wage and various other payments owed to them and calculated to the date on which they end their employment. These may include:

- statutory sick pay, if the employee is receiving this while serving their notice
- statutory maternity pay, if the employee is receiving this while serving their notice
- outstanding holiday pay, entitlement accrued but not yet taken, subject to contract
- pension refund, depending on the particular pension scheme

The employer will make deductions from this final payment which include:

- PAYE income tax
- national insurance contributions
- any outstanding loans

Statutory Forms

An employer is also required to complete certain forms. These are:

- a P45 certificate- a three-part form stating the employee's tax code, total pay and total tax paid since the beginning of the current tax year. The employee will need to present this to a future employer
- a leaver's statement of Statutory Sick Pay- Employees leaving whilst on Statutory Sick Pay will require completion of a leaver's statement giving details of the amount of payments and the duration of sickness. This statement must be issued within seven days of the end of the contract.

Appendix 1

REDUNDANCY POLICY

Definition

This organisation notes the legal definition of redundancy as being the situation in which an employee or employees have been dismissed wholly or mainly because the employing body has ceased or intends to cease to:

- carry on the work upon which the worker or workers were employed or
- to carry on that work at the place where the worker or workers were employed

or the requirements of the employer for the employee or employees to carry out work of a particular kind at the employer's workplace or elsewhere have ceased or diminished or it is expected that they will do so.

A redundancy situation may arise because

- the financial circumstances necessitate a reduction in the number of jobs
- the particular kind of work for which an employee or employees were originally recruited has ceased or is expected to cease
- changes in working methods mean that a job or jobs no longer exist.

The dismissal of an employee on grounds of unsuitability or inefficiency does not constitute redundancy, and would follow such procedures as are prescribed in the existing disciplinary procedure.

Objectives

It is the overall objective of the organisation to maintain suitability of employment consistent with efficient operation and financial viability. The specific objectives of this redundancy policy and procedures which will be used are as follows:

- to ensure as far as possible that employees who may be affected by the discontinuance of their particular jobs are given fair and equitable treatment
- to ensure that minimum disruption is caused to employees and to the organisation.
- to ensure that as far as possible changes are effected with the complete understanding and agreement of the employees concerned and with the recognised trade union

Principles

As soon as the possibility of redundancy occurs a Redundancy Consultative Group shall be established composed of members nominated by the organisation Staffing Committee and the union representatives. The organisation shall use its best endeavors to

- absorb redundancy through natural wastage (being the creation of employment vacancies through the resignation, retirement or death in service of existing employees)
- find suitable alternative employment within the organisation for employees who might be affected by redundancy, though not necessarily on terms and conditions as favourable as those which have previously applied to the persons affected
- give the maximum possible warning of pending redundancy to individuals likely to be affected in addition to the statutory period of notice. The additional warning period will, if practicable, be not less than 4 weeks.
- in circumstances where it is known that redundancy will occur and that suitable alternative employment cannot be found, the factors which shall be taken into account in deciding who should be made redundant will include:
 - (i) disciplinary records
 - (ii) skills ability and work performance
 - (iii) length of service
 - (iv) needs of the organisation

The general principle in determining who shall be made redundant will be where a choice is possible between employees engaged in similar work, the last person to take up employment with the organisation shall be made redundant.

Exceptions to this general principle may be considered by the consultative group as follows:

- where an employee who would otherwise be protected from redundancy because of the length of service is eligible for and is willing to be considered for an offer of early retirement
- where the qualifications experience or expertise of an employee is such that the employee may be considered to be of such value to the organisation as to warrant retention in employment
- where an employee, who would otherwise be protected from redundancy because of length of service, volunteers to become redundant.

Procedures

Review of the organisation's requirements

The staffing sub committee shall keep under review possible future developments which might affect the number of employees required, and shall as far as possible plan to avoid redundancies.

Measures to Avoid Redundancy

Examples of measures which may be considered are:

- savings in the organisation expenditure other than staffing costs
- early retirement for employees within 10 years of normal retirement age
- employees volunteering to become redundant
- savings affected by temporary salary cuts, for all employees subject to Union agreement
- job-sharing
- short-time working.

An offer of early retirement shall be made only in circumstances where the Redundancy Consultative Group is satisfied that such an offer would be in the best interests of the employee and of the organisation and on the basis that the organisation will endeavor to compensate any employee concerned as generously as its resources shall permit.

Where an employee volunteers to become redundant, the organisation shall have the right to decline to accept such an offer on grounds that its operational efficiency would suffer by accepting.

Implementation

If the staffing sub committee shall at any time foresee the possibility of redundancy, it shall convene the Redundancy Consultative Group. The Group shall examine the circumstances which had led to the possibility of redundancy, shall consider the options open and shall report upon these options and their recommendations thereon to the full committee.

Equal Opportunities

The organisation as an equal opportunity employer, will have due regard for the principles of the Equal Opportunities Policy when devising redundancy arrangements.

For Further Information

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax 028 9087 7799
Minicom: 028 9087 7776
Website: www.nicva.org

Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG

Redundancy Payments Service
Room 203 Adelaide House
39-49 Adelaide Street
Belfast BT2 8FD

Tel: 028 9025 7956
Fax: 0800 585811