

# UK Employment considerations for Start-up Founders

## What should you be thinking about?

### Type of Engagement

How will your business engage individuals – as employees, workers or consultants? The distinction is significant for various reasons, including that there are core legal protections which only apply to employees and tax implications for the engagements can differ significantly.

### Contract of Employment

Have you got a written statement to be provided to employees on or before their first day containing minimum prescribed particulars of employment? Have you considered other terms and conditions in the employment contract (e.g. confidentiality, protection of intellectual property and post-termination restrictions)?

### Key Terms

#### Salary

Are you paying national minimum wage? Failure to do so can result in employment tribunal claims and enforcement action may be taken by the UK tax authority, HM Revenue & Customs.

Salary is also based on market forces and the employee's ability. Consider other factors such as level of productivity, company performance and ensuring competitive market rates.

#### Holidays

Full-time workers are entitled to at least 5.6 weeks' (or 28 days') paid holiday each year (pro-rated for part time workers). Employers can include paid UK public and bank holidays within this annual entitlement.

#### Restrictive Covenants

Restrictive covenants will only be potentially enforceable if they go no further than is reasonably necessary to protect your business' legitimate business interests (for example its confidential information or client contacts). Enforceability is highly fact dependent and, in particular, more onerous covenants may not be enforceable against more junior employees.

### Discrimination

An employer, in broad terms, may not act in a way that discriminates against any worker because of their sex, race, age, sexual orientation, marital or civil partnership status, pregnancy or maternity, disability, religion or belief, nationality or national origin, or gender reassignment. In the UK, the main unlawful types of discrimination are direct, indirect, harassment and victimisation.

### Data Protection

How do you process employee data? You must do so in accordance with prescribed data protection principles under UK data protection laws. Failure to comply can have serious legal, financial, reputational and employee relations repercussions.

### Terminating Employment

- Have you given the employee the correct notice to terminate?
- Have you consider making a payment in lieu of notice or placing the employee on garden leave? Unless there is an express contractual right to do so, these actions will constitute a breach of contract.

Could the employee bring an 'unfair dismissal' claim? They can do so if they are dismissed other than for one of five potentially fair reasons or if the employer does not behave in a fair and reasonable manner in dismissing them. The period of continuous service required to bring a claim for unfair dismissal is two years in most cases, but in some instances no period of continuous employment is required to bring a claim.

Don't forget to consider other elements which can affect employment arrangements such as tax, pensions and immigration. We can direct you to a member of the relevant team for more information.

### Any questions? Get in touch



#### Gary Henderson

Partner

T +44 20 7071 7320

E gary.henderson@cms-cmno.com