

'how to' guide: management

the
employment
records
handbook
for voluntary organisations

Paul Ticher
with **Gill Taylor**

DIRECTORY OF SOCIAL CHANGE

Employment Records Handbook

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Published by:

Directory of Social Change

24 Stephenson Way

London NW1 2DP

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E-mail: books@dsc.org.uk

Website: www.dsc.org.uk

from whom further copies and a full publications list are available.

The Directory of Social Change is a Registered Charity no. 800517

First published 2005

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ISBN 1 903991 39 0

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Cover design by Tessa Pellow

Typeset by Tradespools, Frome, Somerset

Printed and bound by Antony Rowe, Chippenham, Wiltshire

Other Directory of Social Change departments in London:

Courses and Conferences 08450 77 77 07

Charity Centre 08450 77 77 07

Charityfair 020 7391 4875

Directory of Social Change Northern Office:

Federation House, Hope Street, Liverpool L1 9BW

Courses and Conferences 08450 77 77 07

Policy & Research 0151 708 0136



The authors acknowledge the assistance of Nathan Coffey from the Bates Wells & Braithwaite employment team in reviewing the legal advice provided.

CONTENTS

About the authors	iv	
Glossary	v	
Chapter 1	Introduction	1
Chapter 2	Checklist of recommendations	5
Chapter 3	Overview of Data Protection	9
Chapter 4	How you should keep personnel records	21
Chapter 5	Your personnel records system	33
Chapter 6	Retention periods	43
Chapter 7	The individual's right of access to their own records	49
Chapter 8	Recruitment and selection	65
Chapter 9	Contracts	91
Chapter 10	Induction and probation	99
Chapter 11	Holidays, sickness absence and health records	103
Chapter 12	Performance records and monitoring	123
Chapter 13	Disclosing information about personnel	145
Chapter 14	Employment policies and procedures	163
Chapter 15	Leaving the organisation	167
Chapter 16	Overseas workers	171
Chapter 17	Volunteers	175
Chapter 18	Resources	181
Appendix A	Relevant legislation	193
Appendix B	Definitions of 'employee' and 'worker'	201
Appendix C	Sample subject access request form	203
Appendix D	Application form template	205
Appendix E	Sample reference request letter	215
Appendix F	Sample shortlisting form	217
Appendix G	Sample letter of appointment	219
Appendix H	Sample letters related to varying the contract	221
Appendix I	Sample induction programme record sheet	223
Appendix J	Sample forms recording holidays, sickness absence, maternity absence and time off	225
Appendix K	Statutory rights to time off	231
Appendix L	Sample supervision record form	233
Appendix M	Sample staff handbook contents list	235
Appendix N	Sample IT and internet acceptable use policy	239
Appendix O	Sample leaver's checklist	245

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Disclaimer

This book does not give a full statement of the law, in particular where the position in Wales, Scotland or Northern Ireland differs from that in England, nor does it reflect changes after 31 January 2005. It is intended for guidance only, and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by the publisher or by the authors.

GLOSSARY

Certain phrases are generally used in this book with a specific meaning, often tied in with legal provisions. The main ones are given here, along with an explanation of abbreviations that have been used. In the text of the book, to indicate specifically that a word or phrase is used with a precise meaning, it may be enclosed in quotation marks.

For organisations see further information in Chapter 18. For Data Protection Act definitions see Chapter 3, except where indicated.

Acas Previously the Advisory Conciliation and Arbitration Service.

AUP Acceptable use policy (usually covering information technology and especially e-mail, sometimes also telephones).

Care Standards Used in this book to refer to all activities encompassed in the Care Standards Act 2000, its associated Regulations, National Minimum Standards and inspection regime.

CRB The Criminal Records Bureau

CSCI The Commission for Social Care Inspection

Data controller The body or individual that bears legal responsibility for Data Protection compliance (in the context of this book almost certain to be the employer in most cases).

Data processor An organisation that processes personal data on behalf of a data controller.

Data subject The individual to whom personal data relates.

Disability or 'Double tick' symbol



A green circle with two ticks inside it indicating employers who have agreed to meet five commitments regarding the recruitment, employment, retention and career development of disabled people. More details on the Job Centre Plus web site (see the Resources section on page 187).

The 'Durant' case Durant v Financial Services Authority, [2003] EWCA Civ 1746, in which the Court of Appeal considered the precise definition of personal data.

EEA	European Economic Area: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the UK (this is the European Union and three other countries).
Genuine Occupational Requirement	Permits employers to treat people differently if it is a genuine requirement that a person of one sex, a particular race, a particular sexual orientation, or with a particular religion or belief be employed in that particular job.
HSE	The Health and Safety Executive
Lawful Business Practice Regulations	The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000 No. 2699).
List 99	The ‘list of individuals who are considered unsuitable to work with children’, established by the Protection of Children Act 1999.
OPAS	The Pensions Advisory Service
Personal data	Information about an individual which is regulated by the Data Protection Act (including most personnel records, but not necessarily all).
POVA	Protection of Vulnerable Adults (normally used to refer to the list of people unsuitable to work in specified roles because of the risk they might pose to vulnerable adults).
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
SAP	Statutory Adoption Pay
Sensitive data	Data in specific categories, defined in the Data Protection Act, which by its nature carries a greater risk if misused.
SMP	Statutory Maternity Pay
SPP	Statutory Paternity Pay
SSP	Statutory Sick Pay

Subject access	The right of an individual to see, and if they wish have a copy of, personal data about them held by a data controller (see Chapter 7).
TOIL	Time off in lieu (of overtime that has been worked but will not be paid for).

1 INTRODUCTION

Unlike many books on personnel practice, this one concentrates on the very practical question of record-keeping, both the 'what?' and the 'how?'. If you are new to personnel management, or if personnel management is just one part of a wide-ranging set of responsibilities, we hope you will find this book a useful companion to those that focus more on how to manage people. Many of these say something like 'Keep a record of your disciplinary meeting', but without going into any more detail. This book gives you, in one place, a comprehensive picture of what your employment records should look like.

The book covers:

- the main legal requirements for record-keeping in areas such as recruitment and selection, employment contracts, pay and prevention of discrimination;
- practical areas where you may need to record evidence that you have followed the correct procedures, such as probationary periods;
- tricky issues that may well arise – such as when you should disclose information about your staff to other organisations and when you should not;
- good practice, both for the employing organisation and for the well-being of staff.

You will find here recommendations and practical examples for the whole of an employee's time with an organisation, from recruitment and selection through to leaving the organisation – and beyond.

You might feel that all this paperwork causes unnecessary fuss and bureaucracy. Painful experience over many years, in many organisations, suggests otherwise. Should things start to go even a little bit wrong, you will be extremely grateful that you have top quality personnel records.

Some record-keeping is legally required. It is not worth taking the risk of falling foul of the law. Much record-keeping is about being clear over contractual and procedural issues. That's why it has to be accurate and rigorous, and why it will at some point stand you in very good stead. It saves a lot of potential trouble if everything is recorded in a way that is agreed and cannot easily be challenged by different versions of events.

Experienced personnel managers and volunteer managers may well find that much of this is second nature. However, by covering all record-keeping issues in one

place, we hope that this book will enable you to carry out a quick quality-check on your organisation's record-keeping, and that it may remind you of areas you have quietly forgotten, or where the situation has changed recently.

The Data Protection Act 1998 introduced a new element into the equation: in order to promote good practice in this area the Information Commissioner has issued a Code of Practice on the keeping of employment records (see page 18). While compliance with the Code is not a legal requirement, the Code does set out an authoritative view on how the legal requirements in the Data Protection Act can be complied with. Anyone who chooses not to follow the Code may have to show how their approach complies equally well with the law.

Rather than explain the Code in isolation, this book incorporates its standards and guidance into the relevant sections. We do not explain in detail how each example or recommendation aids compliance with the Act; instead, a separate chapter summarises the Principles behind it. If you are unfamiliar with the Data Protection Act, this will put things into context.

One thing this book is not about is the actual employment procedures which your record-keeping supports, although inevitably it draws on examples of good practice. Publications and resources that can help you achieve good employment practice are listed in the Resources section on pages 183–4.

The layout of this book

The book starts with a summary, pulling together all the main recommendations into a checklist which should help you to identify any areas where you need to take action. Then there are five chapters that look at overall issues:

- the Data Protection Principles;
- how you should keep your employment records;
- the requirements of a personnel records system;
- retention periods: how long you should keep your personnel records;
- the individual's right of access to their own records.

The chapters that follow look in more detail at the stages of an employee's career with an organisation:

- recruitment and selection;
- contracts;
- induction and probation;
- holidays, sickness absence and health records;
- performance records and monitoring;
- leaving the organisation.

Separate chapters look at:

- disclosing information about your staff;
- the kind of written employment policies you may need;
- particular issues that arise with overseas workers;
- volunteer records (see also below).

The extensive appendices at the end of the book give examples of many of the forms that you are most likely to need, as well as more detail on the applicable legislation.

The book is as up-to-date as possible, in a rapidly changing world. We have tried to give examples that are detailed enough to be useful, without being so dependent on specific legislation that they rapidly become wrong or misleading. Look in the Resources section (page 181) for the best place to check on the latest position.

Legislation varies across the United Kingdom. There are small differences between England and Wales, larger differences with Scotland and Northern Ireland. However, there are very few cases where this affects good practice, and the book is written to be generally applicable. Readers in England can assume that legislation referred to in the text applies to them, unless stated otherwise. In most cases it will also apply – or equivalent legislation will apply – in Wales, Scotland and Northern Ireland. Significant variations are pointed out in the Resources section (page 181) and in Appendix A.

A note on the ‘personnel department’

Many voluntary organisations are too small to have a personnel department as such. They may not even have a staff member whose sole responsibility concerns personnel issues; often these fall to the chief officer, another manager, or even a relatively junior person. Volunteers may be recruited and administered by staff completely separate from those concerned with paid staff. In some cases payroll or other personnel functions may be outsourced, or carried out by consultants or management committee members.

To avoid having to acknowledge the full range of possibilities on each occasion, this book uses the term ‘personnel department’ as shorthand for whoever in the organisation has responsibility for the administration of personnel records and for guiding other staff in personnel matters – or their equivalent in relation to volunteers.

A note on ‘in the file’

In most cases it makes no theoretical difference whether information is held in electronic form or on paper. It is purely a matter of administrative convenience and practical arrangements. There is a discussion in Chapter 4 comparing the security and other aspects of the two options. Elsewhere, when the term ‘in the file’ or something similar is used, this should be taken to include both paper and electronic systems unless the context requires otherwise: for example where an original document is being kept.

A note on terminology for workers

In some contexts the terms ‘employee’ and ‘worker’ have specific legal meanings, which are discussed in Appendix B. In most cases there is little practical difference from the point of view of record-keeping, and we only use these terms in their strict legal sense when distinguishing between the two. The Information Commissioner’s material uses ‘workers’ as a general term, and this usage has not been changed where material is directly quoted.

Where we use the word ‘staff’ or ‘personnel’ this could include employees and/or workers according to the context. Many organisations also regard volunteers as part of their staff, but it is very important to be clear about volunteers’ different status. A volunteer is not just someone who works for you without pay. Legally there must be no employment relationship. This will be judged on all the facts of how you relate to the people you call ‘volunteers’ and the expectations you create, including the content of the records you keep. See the Resources section (page 181) for guidance on where to find more information.

Volunteer records should be treated according to the same principles, and just as carefully, as those of paid staff. In order not to introduce confusion over the legal position, volunteers are considered separately in Chapter 17.

CHECKLIST OF RECOMMENDATIONS

Throughout the book we recommend good practice as well as outlining key legal requirements. Some of the suggestions will only be relevant to particular situations, so this is not a comprehensive list. Instead, it is a list of the main things you may have to consider, and an indication of where you will find them referred to in the book.

Chapter 3

- Have you allocated overall responsibility for Data Protection issues?**
Who will oversee policies, train staff and deal with problems?

Chapter 4

- Have you allocated responsibility for personnel records?**
Who is the 'owner' of your records? Who defines what is held and how?
- Are your personnel records kept confidential?**
Do your staff know what access is allowed and do they enforce this?
- Do people outside the personnel department hold only the minimum personnel information?**
Are you sure your line managers are complying?
- Does your organisation set appropriate standards of security?**
Do these cover both electronic records and those held on paper?

Chapter 5

- Have you set up an appropriate personnel records system?**
Is each type of information held in the most appropriate way and location?

- Are different types of information separated out?**
Can people look up one area without straying into more confidential areas?
- Do you have reliable systems for keeping the information up-to-date?**
Is it easy for members of staff to update information about themselves?
- Do you have efficient procedures for passing information between the personnel department and payroll?**
What about finance? Training?
- Do you keep a record of non-routine file accesses and disclosures?**

Chapter 6

- Have you established a clear and practical retention policy?**
Do your retention periods protect the organisation as well as individuals?

Chapter 7

- Have you set up a clear procedure for handling subject access?**
Are you sure you can comply within the 40-day time limit?
- Have you decided whether to have an open files policy?**

Chapter 8

- Do your recruitment materials give a fair picture of the job?**
Are your advert, job description, person specification, etc, accurate?
- Do your application forms ask for the right information?**
Are they aimed at helping you to choose between applicants?
- Do your application procedures maintain confidentiality?**
- Do your interviewers know what to record and how?**
- Do you make the right pre-employment checks, in the right way?**
Do you check: references, qualifications, eligibility to work, CRB?

- After the decision, do records get kept or destroyed appropriately?**
- Do the right bits get transferred to the successful applicant's personnel file?

Chapter 9

- Are your employment contracts up-to-date?**
- Do they comply with the latest legal requirements?
- Do you have good records of contract dates and changes, for all staff?**
- Can you always tell who was on exactly what contract(s) at any given date?
- Are contracts issued and changed only according to set procedures?**
- Are all contracts and contract changes authorised by the right person?

Chapter 10

- Do you induct new staff systematically and record this properly?**
- Can you prove that staff were properly inducted?
- Are probationary periods clearly defined and properly managed?**
- Are you clear about how to dismiss someone if they are unsatisfactory?

Chapter 11

- Do you have a good system for recording both planned leave and unplanned absence?**
- Does it ensure that reasons for absence are confidential?
- Do you comply with the latest requirements on disability discrimination?**
- Do you know how to record disability information appropriately?

Chapter 12

- Do your line managers know how to conduct and record supervisions?**
- Are the records held confidentially and copied to the personnel department?

- Do you record staff training and other development appropriately?**
Can you quickly review an individual's training record?
- Do you have clear and satisfactory disciplinary, grievance and appeal procedures?**
Are these compliant with the latest legal requirements?
- Is your time recording system fit for purpose?**
Do people follow it?
- Is your ethnic monitoring of staff fully justifiable?**
Do you give people a genuine chance to opt out?

Chapter 13

- Are you clear about which personnel information it is appropriate to disclose?**
Do all your staff follow consistent guidelines?
- Do you have a clear and consistent policy on giving references?**
Are you clear when these are confidential?
- Do you have a procedure for authorising exceptional disclosures?**
Does this include times when you need to report staff for serious misconduct?

Chapter 14

- Do you have a staff handbook?**
Does it avoid making provision for contractual matters?

Chapter 15

- Do you have a procedure for when staff leave the organisation?**
Does it include a checklist of activities and a retention schedule for records?

RESOURCES

Employment law changes continually, and best practice evolves. In most cases the most up-to-date information can be found on the web, and you should always try to check the latest position on one or more of the web sites given below (whose addresses have been checked during January 2005).

Books can give a different perspective, and those on best practice do not go out of date so quickly. We have generally not listed shorter publications here, since many of these are most easily acquired, often at no cost, through the relevant web site. However, all publications which have been explicitly drawn on in preparing this book are included.

Sources of books and legislation

Many of the books listed are available from:

Directory of Social Change

Tel: 08450 77 77 07

Web site: www.dsc.org.uk/acatalog/catalogbody.html

Acts of Parliament (from 1988 onwards) and **Statutory Instruments** (from 1987 onwards)

Available free of charge on-line from:

Her Majesty's Stationery Office (HMSO)

Web site: www.hmso.gov.uk

To find Acts quickly, you need to know the year; they are then listed alphabetically. For Statutory Instruments it is best to know the year and number, although it is also possible to search by name.

Printed copies of legislation can be bought from some bookshops or:

The Stationery Office (TSO)

Web site: www.tso.co.uk/bookshop

PO Box 29, St Crispins, Duke Street, Norwich NR3 1GN

Tel: 0870 600 5522 Fax: 0870 600 5533

Web sites referred to in this book rarely specify whether the information they contain applies throughout the UK or only to specific parts. While in many cases good practice remains the same, readers in Scotland, Wales and Northern Ireland should check for the detailed legal position.

Information on Scottish legislation and policies is available from the Scottish Council for Voluntary Organisations (www.scvo.org.uk) or the Scottish Executive (www.scotland.gov.uk).

Information on Welsh legislation and policies is available from the Wales Council for Voluntary Action (www.wcva.org.uk) or the Welsh Assembly (www.wales.gov.uk).

Information on Northern Irish legislation and policies is available from the Northern Ireland Council for Voluntary Action (www.nicva.org) or Online Northern Ireland (www.onlineni.net) and, particularly on employment matters, the Department for Employment and Learning Northern Ireland (www.delni.gov.uk).

See also Appendix A for more on the legal background.

General resources on employment law and good practice

Acas

Helpline: 08457 47 47 47

Web site: www.acas.org.uk

(Originally the Advisory, Conciliation and Arbitration Service.) Provides helpful guidance on most areas, not just discipline and dismissal, along with model policies and procedures and a wide variety of sample forms. Acas also has regional offices and a range of other services for employers.

Sandy Adirondack

Web site: www.sandy-a.co.uk/employment.htm

Detailed updates on employment issues affecting the voluntary sector.

CIPD

Tel: 020 8971 9000

Web site: www.cipd.co.uk

The Chartered Institute for Personnel and Development. Detailed information, advice line and other resources, but mostly available only to members.

Labour Research Department

Web site: www.lrd.org.uk

A range of paid-for publications and other services, aimed at trade unionists, but relevant for good practice.

Department of Trade and Industry

Web site: www.dti.gov.uk

Covers the law and gives guidance on all areas of employment, in the section 'For employees'.

Trade Union Congress

Web site: www.tuc.org.uk

Free of charge information on employment rights, welfare, etc.

WorkSmart

Web site: www.worksmart.org.uk/rights/index.php

TUC service explaining employment rights, etc.

Employment Law Handbook Daniel Barnet and Henry Scrope

The Law Society, 2004, ISBN 1 85328 970 1

One of the more accessible standard reference works.

Just About Managing? Sandy Adirondack

London Voluntary Service Council, 3rd ed 1998, ISBN 1 872582 17 6

User-friendly guide and reference book for managers and management committees of small and medium-sized voluntary and community organisations.

Management shapers series from CIPD (see above)

A series of small books on key topics such as *Appraisal Interviewing* and *Assertiveness*, but particularly good is *Asking Questions* by Ian Mackay, ISBN 0 85292 768 1

Full list from www.cipdpublishing.co.uk

Managing Conflict Gill Taylor

Directory of Social Change, 1999, ISBN 1 900360 28 4

Techniques for understanding and resolving conflict at work and in employment situations.

Managing People Gill Taylor and Christine Thornton

Directory of Social Change, 1995, ISBN 1 873860 47 1

Scenario-based discussion of challenges faced by voluntary sector managers.

Voluntary but not Amateur Ruth Hayes and Jacki Reason

London Voluntary Service Council, 7th ed 2004, ISBN 1 872582 32 X

A guide to the law for voluntary organisations and community groups, with sections on recruitment and employment.