

Recruitment Compliance: Existing Obligations and Upcoming Changes

As Organisations return from the summer period, recruitment activity typically accelerates from September through to the end of the year. Whether replacing departing Employees, hiring to support business growth or planning for the year ahead, many Organisations will be competing to attract talent over the coming months.

While finding the right candidate is the primary focus, Organisations should not overlook the legal obligations that arise throughout the recruitment process. From ensuring recruitment practices are free from discrimination to verifying an individual's right to work and handling candidate data appropriately, recruitment is one of the most significant employment law compliance touchpoints.

With further legislative developments on the horizon, including new pay transparency requirements that will reshape recruitment practices in the coming years, now is an opportune time to review hiring processes and ensure they remain compliant, fair and fit for purpose.

Equality Must Be Embedded Throughout the Recruitment Process

The Employment Equality Acts prohibit discrimination across nine protected grounds which are gender, civil status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community.

These protections apply not only to Employees but also to applicants for employment. Consequently, recruitment processes should be designed to ensure candidates are assessed solely on their ability to perform the role.

Organisations should carefully consider the language used in job advertisements, selection criteria, interview questions and assessment methods to ensure they do not unintentionally disadvantage particular groups of applicants. Interviewers should also receive appropriate training to reduce unconscious bias and understand which questions may expose the Organisation to discrimination claims.

Organisations should also be mindful of their obligation to provide reasonable accommodation to candidates with disabilities. Employers are not required to recruit a candidate who is unable to perform the essential functions of the role, but they should ensure that applicants with disabilities are afforded a genuine opportunity to compete for the position and that any reasonable accommodations are considered before recruitment decisions are made.

Maintaining objective selection criteria and documenting recruitment decisions are also essential to provide an evidential record should the recruitment process ever be challenged.

Right to Work Checks Are an Essential Compliance Requirement

Organisations also have legal obligations to ensure every individual they employ has permission to work in Ireland.

Organisations recruiting non-EEA nationals must ensure the appropriate immigration permission or employment permit is in place before employment commences.

Depending on the circumstances, this may involve obtaining an Employment Permit through the Department of Enterprise, Tourism and Employment or confirming that the individual holds an immigration permission allowing employment without a permit.

Failure to verify an individual's right to work can expose Organisations to significant legal and financial consequences. Organisations should therefore implement consistent pre-employment verification procedures and retain copies of the relevant documentation in accordance with legal requirements.

Importantly, right to work checks should be carried out consistently for all new hires to avoid any suggestion of discriminatory recruitment practices.

Recruitment and Data Protection

Recruitment inevitably involves the collection and processing of personal data. CVs, interview notes, references and assessment records all contain personal information that must be processed in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

Organisations should ensure candidates understand how their information will be used, who will have access to it and how long it will be retained. Recruitment privacy notices should be reviewed regularly to ensure they accurately reflect recruitment practices.

Only information that is necessary for recruitment should be collected, and Organisations should avoid retaining unsuccessful candidates' personal data longer than required. Recruitment records should also be stored securely, with access limited to those involved in the recruitment process.

As candidates increasingly exercise their data protection rights, Organisations should also remember that interview notes and recruitment records may be subject to data access requests.

Preparing for Pay Transparency

One of the most significant developments on the horizon is the implementation of the EU Pay Transparency Directive which will introduce new obligations designed to strengthen pay equity and reduce gender pay gaps.

While the legislation has yet to be fully transposed into Irish law, Organisations should begin reviewing their recruitment activity now as the Directive introduces significant new obligations around the recruitment process which is expected to be one of the first areas affected when the Irish legislation is introduced.

Among the anticipated changes are requirements to provide greater transparency around salary information during recruitment and restrictions on asking candidates about their previous pay

history. These measures are intended to ensure applicants can make informed decisions about employment opportunities while helping to address historical pay disparities.

Taking a Proactive Approach

Recruitment compliance extends well beyond selecting the best candidate. It requires Organisations to balance commercial objectives with employment law, immigration/right to work requirements and data protection obligations while maintaining fair and transparent recruitment practices.

Regularly reviewing recruitment policies, training hiring managers and ensuring the recruitment process is well-documented can significantly reduce legal risk as well as improve candidate experience.

As employment legislation continues to evolve, taking a proactive approach to recruitment compliance also helps Organisations attract talent, strengthen governance and demonstrate a genuine commitment to fair and lawful employment practices from the very first interaction with prospective Employees.

How Adare Trusted People Partners Can Help

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- Retirement compliance, including contractual retirement ages, longer working requests and objective justification
- Contracts of Employment, Policies & Procedures, Managing Compliance
- HR Best Practice
- Advice on day-to-day matters
- Dedicated Client Manager
- Mitigation of Risk & Financial Liability
- Help desk support
- Commercial HR advice tailored for your Organisation

Adare is a team of expert-led Employment Law, Industrial Relations and best practice Human Resource Management consultants. If your Organisation needs advice, support, or guidance about employment law compliance, Employee relations or any HR issues, please contact Adare by calling 021 486 1420 or emailing info@adarehrm.ie to learn what services are available to support your business.