

EMPLOYMENT CONTRACTS

INTRODUCTION

A fundamental decision taken by any business is the way it decides to engage those who will carry out functions on its behalf. Businesses have a number of options when it comes to employing their workforce. These range from the use of contractors, the use of zero contract hours and employee shareholders to comprehensive contracts of employment which are subject to collective bargaining agreements. The Society and College of Radiographers (SCoR) believes that the precise approach used is a matter for individual businesses, but that a number of important key principles will influence this decision. It is recognised that although some of the guidance provided may not be appropriate for very small businesses it is hoped that such businesses will work towards adopting the employment principles contained in this advice even if they cannot all be met at the outset.

This guidance sets out the various options available and also the key principles that should be adopted by businesses that want to deliver safe, sustainable and effective imaging/ radiotherapy services and that want to comply with the spirit of the legislation by competing on quality rather than cost.

This guidance is intended to describe the main ways in which businesses can engage people to carry out work. It is not a legal guide to employment and members who wish to set up their own businesses will need to seek detailed legal advice on employment related matters. Such advice is available through the SCoR, in conjunction with Virtual Law, who provide legal advice for SCoR, by contacting our head office. The attached leaflet provides more details.

Members should read this guidance note in conjunction with the following additional guidance (Transfer of Undertakings regulations, Health and Safety law, Pensions, and the SCoR guidance on Professional Standards for Independent Practitioners).

THE OPTIONS

1. Employment

A business can decide to employ its workforce on a contract of employment. This is the most common way of engaging people to perform duties on behalf of the business. The employment contract should be in writing and include a statement of principles that sets out the main terms of the contract. These will include the place of work, the hours of work, the remuneration received for the work, the main duties required of the employee and the name of the employer.

In addition the contract should include other items such as details of pension schemes offered, the number of holidays, the obligation to maintain continuing professional development on the part of the employee and the number of paid study days provided to fulfil this obligation. The contract should also state whether or not the terms and conditions of employment are governed by any collective agreements reached with recognised Trade Unions/ Professional Bodies such as the SCoR, as well as details of grievance and disciplinary procedures.

A person employed under a contract of employment has a number of important legal (employment) rights. These include the right not to be discriminated against on the grounds of race, sex, disability, sexuality, religious belief and age (see www.legislation.gov.uk/ukpga/2010/15/contents for the full list of grounds contained in the Equality Act 2010).

Employees also have the right not to be unfairly dismissed (see <https://www.gov.uk/dismissal>) and also have rights in relation to the selection for redundancy, the right to a redundancy payment if made redundant and in relation to maternity and paternity arrangements.

Anyone employed under a contract of employment for more than two years continuously has the right to enforce these employment rights and the terms of their contract through an application to an Employment Tribunal if they feel these have been breached in any way.

During 2013 the Government introduced a new form of employment contract enabling businesses to offer contracts of employment that exclude some employment rights. Known as employee shareholder contracts, an employee agrees to give up their rights in relation to redundancy pay, to making an application for study or training, to claiming unfair dismissal, and in relation to requesting flexible working arrangements. Employee shareholders must also give longer notice in relation to maternity, paternity and parental leave applications. In return, the business must offer them no less than £2000 worth of shares in the business by which they are employed. During the consultation phase before becoming law, all sides of industry criticised these proposals and at the time of writing this guide the take up of such contracts had been minimal.

2. Self-employment

Some businesses choose not to directly employ their workers but instead opt to engage people who are self-employed. The employment status has implications for the payment of tax and National Insurance and is therefore a matter of law and is not something either party can simply opt for. Instead it is determined by reference to the reality of the relationship between the two parties. A self-employed worker is defined by HMRC as someone “who works under a contract for services”. More information can be obtained from the HMRC website www.hmrc.gov.uk/employment-status .

Essentially however, someone is considered self-employed if they meet the following criteria. If the answer to each of these is yes then it is likely that the HMRC will deem someone to be self-employed.

Can they hire someone to do the work or engage helpers at their own expense?

Do they risk their own money?

Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?

Do they agree to do a job for a fixed price regardless of how long the job may take?

Can they decide what work to do, how and when to do the work and where to provide the services?

Do they regularly work for a number of different people?

Do they have to correct unsatisfactory work in their own time and at their own expense?

If you are intending to engage people on a self-employed basis, both you and those you are wishing to engage will also need to read carefully the SCoR advice regarding professional indemnity insurance which can be found at www.sor.org . Please note that the SCoR indemnity policy cannot be used by third parties or employers as surrogate insurance to avoid purchasing a company specific policy.

People who are genuinely engaged on a self-employed basis do not have employment rights. However, there are many cases where people have successfully argued that, in reality, they were employees and were not engaged on a self-employed basis but under a contract of employment therefore successfully arguing that they were in fact accruing employment rights.

3. Partnership

An alternative is to set up a Limited Liability Partnership. Under such arrangements those setting up the partnership are not considered employees but are partners in the business sharing in the success of that business in relation to the capital invested. There are also other types of company that can be formed and members will need to seek qualified advice as to which will be the most suitable for their particular circumstances. Details of all of the possible arrangements can be found at http://www.companylawclub.co.uk/topics/types_of_companies.shtml

The publication of the Mid Staffordshire NHS Foundation Trust Inquiry (Francis) Report (2013) is a timely reminder to the entire workforce, and those who aspire to be part of it, that the duties and responsibilities of practitioners set out by the framework of accountability are non-negotiable. The report's core message is 'put patients first' and it stresses the need for a renewed focus on patient safety and quality of compassionate care. This applies to all members of the workforce even those who do not work directly with patients. Managers have a vital role in ensuring compliance.

Professional accountability that puts patients at the centre with standards and fostering a climate of prioritising patients also requires practitioners to work collaboratively and challenge poor practice when it is seen, either directly or by escalating the concern.

This advice is consistently applied whether members work in the NHS, in the private sector or in the independent sector. The SCoR Code of Professional Conduct for independent practitioners can be found at <https://www.sor.org/learning/document-library/code-professional-conduct> and Independent Practitioners: standards and guidance at <https://www.sor.org/learning/document-library>

In all situations SCoR works with employers to ensure that members have appropriate time off to ensure they fulfil their obligation to maintain and enhance their levels of skill. SCoR guidance also places an obligation on members to ensure patient care is paramount. When necessary, members must draw attention to standards of care that have compromised patient safety or may do so in the future. This may include a referral of the matter to an employer, statutory or voluntary regulator and, where a provider company is involved, to the Care Quality Commission (England).

We believe that it is essential that members who do wish to set up their own businesses do so in a way that supports this guidance. We have therefore listed our key employment principles below which reflect the advice given in our professional guidance documents and which we believe, if followed, will lead to businesses adopting the highest possible standards not just in patient care but also in employment matters. In fact SCoR believes it is essential for businesses to adopt such standards in these two inter-related areas if they are to demonstrate a tangible commitment to patient centred health care.

The key employment principles are;

1. **A commitment to skills.** By this we mean there should be a commitment to encouraging all employees to reach the highest level of skill they can by working within their Scope of Practice (see <https://www.sor.org/learning/document-library/scope-practice-2013> . The Society and College of Radiographers - The Scope of Practice 2013) through using the career progression structure SCoR guidance, and supporting accreditation of assistant, advanced and consultant levels of practice in line with the professional body recommendations provided by the College of Radiographers <https://www.sor.org/learning/document-library/education-and-career-framework-radiography-workforce> . There should also be support for the appointment of SCoR union learning reps and the provision of time for them to carry out their duties. Because of the removal of the right to request time off for training under the employee shareholder approach we believe such an approach to be incompatible with this key principle.
2. **A commitment to accountability.** By this we mean the business should be run in a way that invites accountability and scrutiny. All people should be employed in a way that recognises the stake they have in the success of the business and the need to embrace accountability. Businesses should therefore think very carefully about whether it is ever appropriate to engage people on a self-employed basis and only use zero hours contracts in appropriate circumstances.
3. **A commitment to equal treatment and fairness.** A commitment to ensure the spirit of equality legislation is adhered to at all times.
4. **The rewarding of skills and experience.** Pay structures that recognise that experience gained is important and that any performance-related pay systems can demonstrate improved individual performance and improved business-wide performance/high quality service delivery.
5. **A commitment to training.** By allowing staff time to train and by having a minimum training agreement with its employees (see <https://www.sor.org/learning/document-library/protected-study-time-guidance-radiographers-managers-and-union-representatives> for more information on our guidance regarding study time). We would also expect there to be a commitment to training the future workforce. The following link explains what is expected of those providing services on behalf of the NHS:

<https://www.supply2health.nhs.uk/AQPResourceCentre/Lists/Frequently%20Asked%20Questions/DispForm.aspx?ID=85&Source=https%3A%2F%2Fwww>

<https://www.supply2health.nhs.uk/AQPRResourceCentre/Lists/Frequently%20Asked%20Questions/Grouped.aspx>

<https://www.supply2health.nhs.uk/AQPRResourceCentre/Lists/Frequently%20Asked%20Questions/Grouped.aspx>

6. **An appreciation of the work of the SCoR in maintaining the highest professional standards and in contributing to good industrial relations.** SCoR believes that the expertise we have in relation to professional matters and also in Industrial Relations, at all levels within radiography, is second to none. We believe the best way of making this expertise available to members who wish to set up their own businesses is by the business agreeing to enter into a partnership agreement with SCoR covering issues such as terms and conditions, training, time off for reps and so on. Such agreements comply with all relevant legislation including the information and consultation regulations, and requirements regarding Trade Union recognition (see www.legislation.gov.uk/uksi/2004/3426). We would also encourage businesses to seek ISAS accreditation (see www.isas-uk.org/default.shtml)
7. **A commitment to recognising the role all employees play in maintaining the highest standards of service delivery for patients.** (See in particular <https://www.sor.org/learning/document-library/team-working-clinical-imaging> and https://www.sor.org/sites/default/files/document-versions/BFCO%2813%291_RT_capacity.pdf which set out SCoR and RCR guidance on team working in clinical imaging).
8. **A commitment to empowering individuals to make decisions.** An understanding of the Francis report and the need to allow staff freedom to make decisions and the support to feel confident if raising professional and service concerns.
9. **A commitment to defining the hours of employees.** Inappropriate use of zero hours contracts when a substantive contract could be offered should be avoided.
10. **A commitment to Transfer of Undertakings (Protection of Employment) (TUPE).** If ownership changes, or if the business acquires other businesses, a recognition of the importance of ensuring transfers are conducted as if TUPE applied even where a strict interpretation would mean that it did not.
11. **A commitment to working in partnership.** And to contributing to industry-wide forums and discussions when appropriate.
12. **A commitment to ensuring a safe and healthy workplace for all.** By encouraging the appointment of SoR Health and Safety reps and the provision of time for them to carry out their duties.

The SoR recognises that individual businesses will adopt the approaches they believe are right. However, we believe that the ability of those who are part of the professional workforce for diagnostic imaging and radiotherapy to work in accordance with our professional guidance is influenced by the way they are employed. This document is intended to assist those businesses that want to be sustainable, cost-effective and successful and that recognise the need for high quality and strong governance structures focused around patient needs while at the same time creating an environment where compliance with our

professional guidance is not only encouraged but is seen as fundamental to the continued success of the business.

Note: The term 'professional workforce' includes the following practitioners: diagnostic radiographers, therapeutic radiographers, sonographers, nuclear medicine technologists, dosimetrists and others working at autonomous practitioner level.

All links accessed 8/1/14