

# Employing workers who are under 18

Employers with workers under 18 years of age on their books should consider a range of legal issues both before and during employment. Peter Finding explains.

**M**any organisations employ young people and will therefore be affected by the protective employment regime that applies to individuals who are under 18. This regime will be particularly relevant to organisations that run apprenticeships or work experience placements for young people, in addition to those that permanently employ workers under 18 years of age.

## What to do before employing workers under 18

First, can you employ the individual? An employer should identify whether or not the individual has reached school leaving age, as different rules apply for children and young people.

The Children and Young Persons Act 1993 provides that children under the age of 14 may not be employed unless the child is:

- at least 13 years old and is employed in a category of light work permitted by a local authority bylaw, for example, delivering newspapers;
- employed by a parent or guardian in light agricultural or horticultural work and only on an occasional basis (for example, helping with putting out animal feed, provided this is not done regularly); or
- employed to take part in public performances (such as television, sport or modelling), under a performance licence granted by a local authority.

The employment of children over the age of 14 is also heavily regulated by statute and by local authority bylaws. Many local authorities require employers to apply for a permit, and, generally, a separate permit is required for each child.

## RELATED EMPLOYMENT LAW

The regulation of the employment of people under 18 years of age is covered by two separate, but related, protective regimes. The key distinction is whether an individual is a "child" or a "young person":

- **Child:** a child is anyone who is of compulsory school age, ie has not reached the official age at which they can leave school. A person can leave school on the last Friday in June in the academic year in which they turn 16, provided he or she continues to receive some form of education or training until the age of 18. Such compulsory education or training will often be provided by an employer – for instance, in the form of an apprenticeship or training scheme.
- **Young person:** a young person is anyone who is over compulsory school age, but under the age of 18.

Usually, permits will be granted only if the local authority is satisfied that the child's health, welfare and education will not be jeopardised by the employment. In practice, this means that children will largely be limited to a traditional Saturday job, or an early morning paper round before the school day begins.

An exception is made for children in the last two years of school, who are permitted to take part in work experience placements, provided that the placement does not involve:

- tasks that are unsuitable for the child's physical or mental capacity, or could damage the child's health;
- heavy industry; or
- working at premises where alcohol is sold (unless the child is accompanied at all times).

Employers seeking to take advantage of one of the various exceptions should act cautiously; an employer that unlawfully employs a child (even if it believes it has the benefit of an exemption) risks committing a criminal offence, and could be liable for a fine of up to £1,000.

## What to do before employing young people

The general position is that young people can be employed, but this is subject to a few specific restrictions.

Young people should not carry out work that is beyond their physical or mental capacity. Unfortunately, there is no reported judicial or administrative guidance on what "capacity" means in this context. However, it is the capacity of the particular individual that is in issue, and employers may not comply with this obligation where they make generalisations (for instance, regarding individuals of a particular age).

In particular, young people cannot generally be employed in roles that involve:

- contact with chemical agents, toxic material or radiation; or
- extreme cold, heat or vibration that poses a risk to the person's health.

These latter restrictions will not apply if such risks are necessary to the young person's training, there is proper supervision, and the risk has been reduced to the lowest level that is reasonably possible. Again, the extent to which an employer is able to mitigate risks will depend on the situation in each case. As a result, best practice is to consider each case on its own merits, rather than applying a blanket rule.

For instance, it may not be appropriate to apply a rule that states simply that 17-year-olds may be employed in a warehouse operative role, as particular individuals'



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physical strength may differ; while one such individual may be able to perform the role without risk to health, another 17-year-old may not.

### What to do before employment begins

Once an employer has identified that the child or young person can be engaged in a particular role, there are these further steps to be taken before employment begins:

■ **Assessment of the role:** A detailed assessment should be carried out to ensure that the nature of the work, the level of supervision, and the working hours are suitable for the individual, taking into account any knowledge the employer has of the individual's capacity and capabilities. This assessment may result in a need to make adjustments to the role. For instance, close supervision may be appropriate when undertaking particular tasks or operating particular equipment.

■ **Health and Safety Risk Assessment:** Employers are required by the Management of Health and Safety at Work Regulations 1999 to carry out such risk assessments in respect of all employees – not only children or young people. However, organisations that employ children or young people must carry out the assessment with those individuals specifically in mind. They must consider a number of factors, such as the inexperience and immaturity of young people, the suitability of work equipment for use by young people, and the extent of health and safety training that will be required. If employing a child, the child's parents must be provided with a copy of the assessment.

■ **Safeguarding:** Disclosure and Barring Service (DBS) checks must be carried out on any employees who will have day-to-day responsibility for a child or are likely to work with a child unsupervised. This would ordinarily include the child's line manager and/or supervisor. DBS checks are not usually necessary when employing young people, unless there is a residential or travel element (for instance, a weekend residential course).

■ **Employers' Liability Insurance:** Employers should check that their cover includes the employment of children and young people.

### What to do during employment of workers under 18 years of age

During their employment, children and young people benefit from largely the same employment rights as those that apply to adults, although there are the following various additional duties and requirements that apply specifically to children and young people:

■ **Training and supervision:** Employers should ensure that children and young people are properly trained and supervised, and that those responsible for their supervision have themselves received suitable training. Indeed, it is likely that a young person's role will involve training, as the Education and Skills Act 2008 requires young

people to receive some form of education or training until their 18th birthday.

■ **Ongoing safeguarding:** All of the pre-employment steps described above, including risk assessments and safeguarding, should be kept under review and updated as required. DBS checks should be carried out in relation to new employees when appropriate.

■ **Working time:** Children on work experience and young people may not work for more than eight hours per day, or 40 hours per week. Furthermore, subject to specific exceptions, young people cannot work between 10pm and 6am.

■ **Minimum wage:** Children are not entitled to the minimum wage, but young people (16- to 17-year-olds) are entitled to at least £3.79 per hour (at current rates).

■ **Time off work for study or training:** A young person is entitled to paid time off work to undertake study or training leading to a qualification.

■ **Termination of employment:** Individuals engaged under a common law contract of apprenticeship benefit from significantly greater protection, relative to "ordinary" employees and those who are apprentices under a statutory scheme, in relation to the termination of their employment. These issues will be explored further in the second article in this series, in February 2015.

### Practical suggestions

The following steps may help to create a suitable working environment for children and young people and help demonstrate compliance with safeguarding duties:

■ Ensure that any individuals on work experience placements or apprenticeships are managed by a suitably trained manager, and that a senior manager has overall responsibility for such schemes.

■ Appoint a safeguarding officer to oversee the protection of children and young people in the workplace, and arrange training for relevant members of staff.

■ Develop a clear policy in relation to potentially harmful behaviour, and ensure that whistleblowing policies provide clear procedures for reporting any suspected risk of harm. Such a policy may address conduct such as bullying and sexual harassment, or conduct that exposes people to physical harm.

■ Where children and young people are likely to have contact with staff employed by third-party contractors, ensure that commercial contracts require the contractor to comply with safeguarding requirements. It may also be possible to obtain an indemnity against any loss suffered as a result of a contractor's failure to meet such requirements.

### THE AUTHOR

■ Peter Finding is an associate at Burges Salmon LLP.  
Email: peter.finding@burges-salmon.com.  
Telephone: 0117 307 6282