

Keeping on the right side of the law



Love it or loathe it - for most company owners the latter will be true - but complying with rules and regulations are necessary when running any business. However, forewarned is forearmed. If you make sure you know what legislation applies to your operations you will avoid falling foul of the law.

This Sage white paper rounds up all the regulatory essentials you need to know.

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Starting up

When starting a business it is necessary to comply with several regulations.

Self employed sole trader

Setting up as a self-employed sole trader is the simplest way to set up a one-person company. Doing so means fewer forms to fill in and all the profits go to you. However, it also means you are personally liable for any debts your business incurs.

It is necessary to tell HM Revenue & Customs (HMRC) within three months of becoming self-employed or you may face a penalty. To register, you'll need to fill in a special form available on the HMRC website. Visit www.hmrc.gov.uk/startingup/index.htm

Sole traders are also obliged to submit an annual self-assessment tax return to HMRC and keep records showing business income and expenses. Sole traders must also pay income tax and national insurance on all profits.

Partnership

Partnerships are a way in which two people can run a business together and share the risks, costs and responsibilities. Under law, both partners need to register as self-employed and submit an overall partnership and individual self-assessment tax returns to HMRC. Partners in a firm must also pay income tax and national insurance on all profits.

Limited Liability Partnership (LLP)

LLPs are similar to partnerships but individuals have lower exposure to any debts which occur. There are more administrative duties involved with setting up an LLP. Companies House must be informed and a deed of partnership which sets out members' rights and responsibilities should be drawn up on formation. An annual partnership tax return must be submitted which includes a partnership statement detailing how profits have been divided up. Individual members must also submit annual tax returns.

Limited company

As limited companies exist in their own right, the company's finances are completely separate from the personal finances of the owners. If you decide to go down the limited company route you must register with Companies House (the Companies Registry in Northern Ireland) by submitting the following documents:

- Memorandum of Association outlining the company's name, address, location and nature of business
- Form 10 detailing the company's registered office as well as the names and addresses of its directors and company secretary
- Articles of Association outlining how the company will be run, the rights of shareholders and the powers held by directors

For all businesses in the United Kingdom, forms are downloadable from Companies House visit

www.companieshouse.gov.uk/forms/introduction.shtml

Private limited companies must have one director, while public limited companies must have two. A company secretary is also necessary for public limited companies.

Limited companies must also pay corporation tax and submit an annual return to HMRC.

More information about setting up as a limited company is available at www.companieshouse.gov.uk/about/guidance.shtml

You can find out which structure is most appropriate for your business by using a special tool on the Business Link website. Visit **www.businesslink.gov.uk** and click on the 'Taxes, Returns & Payroll' section.

Tax and financial administration

Keeping accurate financial records is part of your legal obligation to ensure that your business pays the correct amount of tax.

On forming a company, you will need to set a date for your first financial year which will set the pattern for the years that follow. You will also need to comply with annual deadlines for filing personal and business tax returns - and paying the tax due - and also to decide whether you need or want to register as a VAT trader.

The beginning of a new financial year is a good point to check that you have the right systems in place to stay compliant for the coming financial year and to introduce new systems to improve your admin processes. Putting a good, robust administration system in place can help your business run more smoothly and give you more time to concentrate on more important areas such as boosting sales. Your accountant or business adviser can help you select an appropriate system and use it effectively.

Also visit the Sage shop for details of the UK's most popular payroll and accounting software
<http://shop.sage.co.uk>

You can also download a Sage whitepaper on the financial year end
www.accountingweb.co.uk/ipage/sage/index_nov07.html

VAT (Value Added Tax)

Value added tax is the tax businesses charge when they supply goods or services. It is necessary to register with HMRC for VAT if your business supplied taxable goods or services over the taxable limit in the last 12 months or you expect to do so in the next 30-day period. To register, you must fill in Form VAT1. Once you've registered, you will need to start keeping VAT records and fill in a regular VAT return.

PAYE (Pay As You Earn)

PAYE is the term used to describe the HMRC system for collecting income tax directly from the pay of employees including company directors. It is applied to all payments an employee receives as a result of working for a business. These include:

- Salary and wages
- Statutory Sick Pay
- Statutory Maternity/Paternity/Adoption Pay
- Overtime, shift pay and tips
- Expense allowances and claims (when paid in cash and, for expense payments, only if they fall within specific criteria)
- Bonuses and commission
- Lump sum and compensation payments such as redundancy payments unless they are exempt from tax

For guidance on getting started with PAYE call the HMRC New Employer Helpline on 0845 60 70 143.

Employment

Employment of staff is one of the biggest regulatory areas which business owners have to deal with.

Discrimination

It is unlawful to discriminate against staff on the grounds on:

- Sex
- Sexual orientation and gender reassignment
- Age
- Nationality
- Disability
- Pregnancy or childbirth
- Married or civil partnership status
- Membership of a trade union
- Part-time status

All of the above applies to the recruitment, selection, induction and training processes as well as how staff are treated during the normal course of their job. Discriminating against employees can result in expensive fines if a case is taken to an employment tribunal.

More information on discrimination can be found at www.businesslink.gov.uk

Annual leave

The majority of UK workers are entitled to a minimum annual leave. If staff work a five day week they are entitled to full entitlement annual leave each year, while for employees working three days a week the entitlement is pro-rata. Employers are permitted to include Bank Holidays in workers' leave allowance.

For more information see the Department for Business, Enterprise and Regulatory Reform (BERR) website www.direct.gov.uk

Flexible working

Parents of children under the age of six or disabled children under 18 years old and carers of adults have the right to request flexible working. Flexible working describes any working pattern adapted to suit an employee's needs. This could include working part-time, job sharing, home working and flexi-time. A request to work flexibly must be made in writing and employers have a statutory obligation to seriously consider it. The request can only be rejected if there is a clear business case for doing so. Employees have the legal right to be accompanied by another employee during any meetings about an application for flexible working.

Equal pay

Men and women must be treated equally in terms of pay if they are employed on work that is the same or broadly similar, is rated as equivalent by a job evaluation study or is found to be of equal value. Workers may complain to an employment tribunal about unequal pay within six months of leaving the job to which the claim relates.

National minimum wage (NMW)

Almost all workers in the UK are entitled to receive a minimum rate of pay. There are three rates, which are based on the annual recommendations of the independent Low Pay Commission.

The following workers are entitled to receive the NMW:

- casual labourers
- permanent employees
- part time workers
- agency workers
- homeworkers

The NMW is not applicable to:

- the genuinely self-employed
- workers based permanently outside the UK or in the Channel Islands or Isle of Mann
- apprentices under the age of 19
- apprentice over 19 years old in their first year

For more information on the National Minimum Wage visit www.bis.gov.uk

Maternity

A woman qualifies for Statutory Maternity Pay (SMP) if she has been employed by her employer for a continuous period of at least 26 weeks ending with the 15th week before the expected week of childbirth. She should also have average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. The employer is responsible for paying SMP for up to 39 weeks but it can be partly or wholly reclaimed from the government.

All pregnant women are entitled to 52 weeks' maternity leave. This is composed of 26 weeks' Ordinary Maternity Leave (OML) and 26 weeks' Additional Maternity Leave (AML). During the first 26 weeks women are entitled to all their normal contractual terms and conditions excluding monetary wages or salary. During the second 26 weeks, limited terms and conditions apply.

Under agreement with their employer, employees may take on up to 10 'keeping in touch days' in which, under normal contractual terms, they work or carry out workrelated activity such as training, conferences or meetings.

At the conclusion of OML, mothers are entitled to return to the same job with the same terms and conditions regardless of their length of service or hours worked. Employees on AML are entitled to be offered the same job or a suitable alternative if that is not reasonably practicable.

For more information about maternity leave and pay, visit www.bis.gov.uk

Paternity

A worker is entitled to paternity leave if he is:

- an employee, with a contract of employment and
- the biological father of the child, or the mother's husband or partner (including a mother's partner in a same-sex relationship) and
- has been with the employer for at least 26 weeks by the end of the 15th week before the beginning of the week when the baby's due and
- will be fully involved in the child's upbringing and are taking the time off to support the mother or care for the baby

Employees are entitled to take one or two weeks' paternity leave during which most are entitled to receive Statutory Paternity Pay (SPP) from their employer.

Please note that new legislation regarding additional paternity leave comes into force from April 2011. For more information about paternity leave pay, visit **www.direct.gov.uk**

Adoption

The following applies to children placed with their adopters on or after 1 April 2007

Adoption leave and pay is available to:

- individuals who adopt
- one member of a couple where a couple adopt jointly To be entitled to adoption leave, an employee must:
- be newly matched with a child for adoption by an adoption agency
- have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption.

For more information about adoption leave and pay, visit www.bis.gov.uk

Sick pay

Most employees who cannot work for more than four consecutive days due to illness or disablement are entitled to statutory sick pay, payable for a maximum of 28 weeks. SSP is paid at the current statutory rate.

**For more on sick pay visit the HMRC website
www.hmrc.gov.uk/employers/employee_sick.htm**

Redundancy

An employee can only be made redundant if their workplace closes or the need for their work has been reduced. When redundancy occurs, the job no longer exists so the person made redundant cannot be replaced. If an employer plans on making 20 or more employees redundant, the employees' trade union or other elected representatives must be consulted. Staff also need to be consulted individually.

Consultation must begin 30 days before the first redundancy where there are 20 to 99 proposed redundancies or 90 days in advance where there are 100 or more proposed redundancies. Staff must only be consulted individually if there are less than 20 proposed redundancies but experts advise that employers still consult their representatives.

Employees must be informed of certain issues during the consultation process including the reason for redundancies, the numbers involved, how staff will be selected and how redundancy payments will be worked out.

Most employees are entitled to redundancy payments if they have worked for their employer continuously for at least two years up to the date of the dismissal. It is based on:

- the employee's age
- the employee's amount of continuous service - up to a maximum of 20 years
- the employee's weekly pay - up to a limit which is adjusted each year in line with the retail prices index

The maximum amount for a week's pay when calculating statutory redundancy pay is based on the current statutory rate.

Employees are also entitled to an alternative job if possible and reasonable timeoff on full-pay for job hunting. Employers must also outline in writing details of redundancy pay and how it was worked out.

For more information on redundancy, visit www.businesslink.gov.uk

Different laws apply in Northern Ireland. For details call the Northern Ireland Redundancy Payments Helpline on 0800 58 58 11

Discipline, grievances and dismissals

When disciplining or dismissing a member of staff, employers must at least follow the statutory procedure. The process involves three stages:

- a statement in writing of what it is the employee is alleged to have done
- a meeting between the employee and employer to discuss the issue
- the employee's right of appeal

The minimum statutory procedures for dealing with a grievance are:

- an employee must set out in writing to the employer his or her grievance
- a meeting is called to discuss the issue
- the employee has a right of appeal

If statutory procedures are not followed and the case is taken to an employment tribunals, the dismissal is likely to be found unfair.

For more details, visit the Advisory, Conciliation and Arbitration Service (ACAS) website www.acas.org.uk

No matter how prepared you are, regulations frequently change and circumstances can take you by surprise. If you do not have an in-house HR specialist or external consultant working for you, the Sage HR Advice service can help with more detailed queries or specific HR problems.

For more information on Sage HR Advice, visit <http://shop.sage.co.uk/hradvice.aspx>

Health and safety

Employers have a legal responsibility for the health and safety of their employees and anyone who may be affected by the business and its activities. This includes:

- employees working at the business premises, from home, or at another site
- visitors to the business premises
- members of the public
- anyone affected by products and services the business designs, produces or supplies

Businesses should conduct an assessment of the risks faced and formulate a health and safety policy. If more than five people are employed, the policy must be in writing.

Employers are also legally obliged to:

- record and report accidents
- consult employees or their representatives on health and safety issues
- ensure employees understand and carry out their health and safety responsibilities

Certain businesses are required to register with the Health and Safety Executive (HSE) or the local authority. Businesses which must register with the HSE include:

- factory based manufacturers
- engineering workshops
- car-repair businesses
- some farms

Businesses which must register with their local authority include:

- offices or shops with employees
- hotels
- restaurants and catering firms
- launderettes
- car tyre or exhaust fitters

UK employers must also apply with the smoking ban in public places, workplaces and company vehicles used by more than one person.

Further health and safety assistance can be obtained from the Sage Health & Safety Advice service. Visit <http://shop.sage.co.uk/hsadvice.aspx>

Sales and marketing

Telephone and fax marketing

Companies undertaking direct marketing via telephone or fax must regular make checks with the Telephone Preference Service, the Fax Preference Service and the Corporate Telephone Preference Service to check whether individuals have opted out of receiving marketing material.

Email marketing

Under the Privacy and Electronic Communications Regulations, an individual's consent is required prior to sending them an unsolicited advertising message via email. This does not apply if they have already opted in to receive such material or have expressly consented to receiving such messages.

Businesses can send existing customers unsolicited marketing if it relates to products and services similar to those they have previously purchased.

Data protection

If a business requires that individuals' personal information is stored then it must comply with the Data Protection Act 2002. The Act applies to the personal information of living, identified or identifiable individuals. The data can be information such as names, addresses, bank details, and opinions expressed about the person. The Act outlines eight principles. Information is required should:

- be processed fairly and lawfully
- be processed for one or more specified and lawful purposes
- be adequate, relevant and not excessive
- be accurate and kept up to date
- be kept for no longer than is necessary
- be processed in line with an individual's rights
- be kept secure with appropriate technical and organisational measures taken to protect the information
- not be transferred outside the European Economic Area (European Union member states plus Norway, Iceland and Liechtenstein) unless adequate protection is provided

Businesses that collect people's information are obliged to tell them what they will use it for. Individuals must also be informed of the name of the business or organisation and their right to access the information and have it corrected if it is factually inaccurate. Individuals must also be told if the data is to be used in ways they might not expect such as passing it to other organisations or putting it on file with credit reference agencies.

If an individual does not want a business to use their personal information for direct marketing reasons they can request it in writing. Businesses are obliged to act on the request within a "reasonable" amount of time. For most firms, this is 28 days.

Most businesses must provide details about the way they process personal information to the Information Commissioner's Office (ICO) for inclusion in a public register.

For more details about data protection, visit the ICO website www.ico.gov.uk

E-commerce

Businesses which sell goods or services to businesses or consumers via the internet, email or SMS (text message) are covered by e-commerce regulations. Companies must provide recipients of online services with:

- the business' name, geographic address and other contact details including email address
- details of any publicly available register in which the business is entered
- details of the supervisory body if the service is subject to an authorisation scheme
- details of any professional body with which the business is registered
- the VAT registration number

All companies must also state on their website the company registration number, place of registration, and registered office address. If the company is being wound up, this must also be stated.

Distance selling

Distance selling regulations apply to transactions via email, the internet, telephone and mail order between businesses and consumers. They do not apply to business-to-business contracts or auctions. Under the rules, consumers have the right to receive:

- written details about the supplier and the terms of the transaction
- written confirmation of their orders
- further information including details of their cancellation rights, complaints procedure and after-sales service and guarantees
- delivery within 30 days unless stated otherwise

Consumers are entitled to a seven-day cooling off period starting from when the goods are received in which they can cancel the contract without having to give a reason. If details of the cooling-off period is not been given to the consumer, it is extended to three months. Consumers is entitled to receive a full refund for a cancelled contract within 30 days.

Certain transactions are exempt from the regulations including:

- the provision of accommodation, transport, catering or leisure services for a specific date or period
- the sale of perishable goods
- the sale of customised goods
- sealed audio or video recordings or opened software

Other rules and regulations

WEEE regulations

Under the Waste Electrical and Electronic Equipment (WEEE) legislation, most businesses are obliged to recycle, safely treat and dispose of electrical or electronic products. Businesses that manufacture, brand or import electrical or electronic equipment are affected as are companies that sell, store or dismantle the products. Manufacturers are obliged to provide an infrastructure which means “users of electrical and electronic equipment from private households...have the possibility of returning WEEE at least free of charge”.

Companies are compelled to use the collected waste in an ecological-friendly manner, either by ecological disposal or by reuse/refurbishment of the collected WEEE. Businesses may be prosecuted for failing to comply with the rules.

More details about the regulations are available from
<http://www.environmentagency.gov.uk/business/1745440/444663/1106248>

Insurance

Most employers are legally required to have employers' liability compulsory insurance. It enables employers to meet the cost of compensation for employees' injuries or illness caused on or off site.

If your company uses motor vehicles on the road, you must have at least third-party motor insurance.

Businesses in certain sectors such as law, accountancy and financial services are legally required to take out professional indemnity insurance.

To find out which insurance your business needs, use the tool on the Business Link website, visit www.businesslink.gov.uk

Keeping up-to-date

As this white paper proves, there are many rules and regulations with which business owners need to comply. There are several more which apply to specific industries, companies and individuals.

To help you stay up-to-date with the latest legislation, the Business Link website www.businesslink.gov.uk provides a checklist which can be used to work out which rules apply to you. You can also register to receive email alerts when new regulations are introduced.

We have a range of software and services designed to help keep you on the right side of the law.

About Sage

For over 20 years, Sage have been working with all types and sizes of business across the UK, delivering the very latest in thinking on business software and services for every aspect of business. We offer a full range of software and services to make managing your people a whole lot easier, and tackling all the complicated legal issues that come from employing them much more simple.

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