

## Fill your skills shortage

The 2015 Employer Skills Survey reported that there were 210,000 skill-shortage vacancies in the UK, which are those employers find hard to fill due to a lack of skills or experience in the market. The Government hopes to tackle this problem with 3 million new apprenticeships by 2020. But how do you gain by hiring an apprentice?

Firstly, it allows you to grow your own - as part of their apprenticeship programme, all apprentices learn core skills about the workplace from you, bring their maths and English (and IT, where relevant) up to a required level and also gain nationally recognised vocational qualifications in the relevant industry, all handled by a training provider rather than you having to source it yourself. Secondly, apprentices are generally very keen to learn and succeed, and can offer new, innovative ideas and solutions to problems that could have existed for some time. Having young people working around your current team can energise your existing workforce and therefore increase productivity. Finally, if you have under 50 employees and are new to apprenticeships or have not enrolled a new recruit or existing employee onto an Apprenticeship programme in the previous 12 months, then you may be enti-

tled to up to 5, AGE 16 to 24 grants worth £1,500.

There are still the traditional apprenticeships designed for 16 to 18 year olds which cover many trades including construction; child-care; and hairdressing. In addition, they now cover other service-related roles like

1. Decide on the type and level of apprentice you wish to hire.
2. Choose a training provider or college who will help you to recruit an apprentice. See <https://findapprenticeshiptraining.sfa.bis.gov.uk/>
3. A useful guidance booklet: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499039/NAS\\_Employer\\_Support\\_Pack-090216.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499039/NAS_Employer_Support_Pack-090216.pdf)
4. Advertise for your apprentice – this is a free service provided by the training provider.
5. Shortlist, interview and select the best candidate for your role.
6. Draft an agreement to take on your chosen apprentice – use the template provided, see <https://www.gov.uk/government/publications/apprenticeship-agreement-template>
7. Claim your Apprenticeship Grant for Employers (AGE) – if you employ an apprentice aged 16 to 24 and meet certain criteria.

administration; hospitality; client care; and retail. There are now higher level apprenticeships which cover qualifications such as Level 4 NVQs, BTECs and Foundation degrees. They can also be used as part of the admission process into a full Honours Degree course at university or as part of a professional qualification from certain UK industry governing bodies, aimed at professions such as Accountancy, Law and IT.

Apprentices are employees on an apprenticeship agreement, they are entitled to the same benefits as other employees and the apprentice rate of pay of £3.40 per hour if they are under 19, or over 19 and in the first year of their apprenticeship. Once they have completed the first year, they are entitled to the National Minimum Wage (NMW) for their age. They must be registered on an official apprenticeship programme to allow you to pay them at this rate, otherwise, they will be entitled to the NMW from day one.

Within the next two years, the Government will reform the system for taking on apprentices, putting control with the employer rather than the training providers, colleges and awarding bodies. Currently though, the steps to the left will give you an indication of the process.

## Uber and out

A recent case which is being hailed as a landmark judgment has led to organisations reviewing the way they treat those who they consider to be contractors, consultants or freelancers. The case was brought against Uber, the US based on-demand taxi organisation. Two drivers brought the claim stating that they felt that they were 'workers' and not contractors and should therefore be paid the National Minimum Wage (NMW) and receive paid holiday.

Deciding whether your self-employed contractors are in fact this or instead a worker or employee is not straightforward to answer, as firstly an individual's status in employment law may differ from

their status in tax and pension law. However, there are some basic tests that organisations can use to ensure they do not find themselves in the same position as Uber. Beststart Human Resources have written a more detailed article on the case and the tests that you can use which is available on our website [www.beststarthr.com/library/article/Uber+and+Out](http://www.beststarthr.com/library/article/Uber+and+Out). We recommend that all companies who use self-employed contractors take this opportunity to review their contractors based on the outcome of this case.

**Beststart HR can provide you with tailored advice on this case and how it might impact your business.**

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## Legal News

### Calculating part-time holiday causes employers frequent headaches

Employers must ensure that their staff have at least the statutory minimum annual leave entitlement and that part-time employees are not treated less favourably than full-time employees. The main issue is around the 8 English bank holidays. For many, the obvious thing to do would be to let an employee have the day off, if a bank holiday should fall on one of their working days. However, this method means that part-timers who work different working patterns are not treated consistently – it favours those who work on Mondays as more public holidays fall on Mondays.

The key to achieving fairness is to provide part-time employees with a pro-rated annual leave entitlement as well as a pro rata entitlement to the 8 English bank holidays, calculated in accordance with the number of days per week they work. Then if a bank holiday falls on one of their working days, they simply book it as holiday and it would be deducted from their holiday allowance. For example, if an employee works 3 days per week and the full-time holiday allowance is 20 days plus bank holidays, then they would be entitled to 3/5th of 28 days which equals 16.8 or 17 days.

This works well for those working an equal number of hours per day, but what about those with varying hours? Here the most sensible option is to calculate part-time holiday in hours, rather than days, then it makes no difference which day of the week is taken as holiday as the employee is booking the appropriate number of hours. For example, if an employee works 23 hours per week, full-time hours are 37.5 per week and the full-time holiday allowance is 20 days plus bank holidays, then they would be entitled to 23/37.5th of 210

hours (28 days x 7.5hrs) which equals 129 hours. Where the annual full-time holiday, including bank holidays, is 28 days, any part hours or days should *always be rounded up* to at least the nearest half unit.

What about an employee on a zero hours contract? Individuals who are employed on a zero hours contract will attract 'worker' employment status and they will qualify for paid annual leave of at least the statutory minimum of 5.6 weeks a year.

Although a 'worker' accrues the right to the leave from day one of their employment, this may not necessarily be the case if their hours are irregular. If they do work irregular hours, which they often are under this type of contract, their entitlement to paid leave is normally calculated using the average hourly rate with only the hours worked and how much was paid to them counted. The average rate is taken over the past 12 weeks before leave being taken. Where no pay was awarded in any week, the employer should count back a further week or weeks, so that the rate is based on 12 weeks in which wages were paid.



Image courtesy of Stuart Miles at FreeDigitalPhotos.net

### Edwards v Bramble Foods Ltd

In the case of Edwards v Bramble Foods Ltd, the company wished to make a formal overtime arrangement to ensure they could fulfil the seasonal consumer demand from mid September to December. They asked all employees to work between 4 and 8 Saturday mornings during this period. As there was already a clause in the contract that stated the working hours and 'such additional hours as necessary' they did not consider this to be an issue. Mrs Edwards refused to work because she wanted to spend time with her husband.

Following several discussions between the company and Mrs Edwards where they tried to come to an agreement, Bramble Foods Limited dismissed Mrs Edwards because they felt that if they made an exception for her, others would also refuse to work. Furthermore, it was considered that Mrs Edwards' behaviour, including mocking others for agreeing to work, was having a detrimental impact on the morale of other staff and threatened to derail their festive planning.

Mrs Edwards claimed her dismissal was unfair; however, the tribunal disagreed. The tribunal found that Mrs Edwards had no legitimate reason for refusing what she accepted was a reasonable management instruction. The employer had undertaken a reasonable course of action as the consequences, if dismissal had not taken place, could have been 'disastrous' for the business.

		LEGAL TIMETABLE	
1 Oct 2016	National Minimum Wage rises take affect for those between 21 and 24 years of age	April 2018	Changes to tax treatment of termination payments introduced
Autumn 2016	Increase to salary threshold for Tier 2 migrant workers	TBC	Reforms to rules on trade union ballots for taking industrial action
Early 2017	Tax-free childcare scheme comes into force replacing childcare vouchers	TBC	Caste to be introduced as an aspect of race under the Equality Act 2010

## Armed Forces Covenant

Remembrance Day has been growing in prominence over the last 5 years or so, with larger memorial services, more businesses and individuals marking the one minute silence and this year it even caused controversy on the sports field. However, there are now more ways that employers can demonstrate, on a more ongoing basis, their support for our armed forces whilst also addressing some of their own challenges.

Between 12,000 and 20,000 veterans leave the armed forces each year in the UK and recent research suggests that the skills acquired through military service such as leadership, adaptability, commitment and discipline are not being utilised by employers. So what are the benefits to an employer, of whatever size, of hiring veterans (anyone who has served time in the armed forces), a Reservist, or those who provide other forms of support to the armed forces such as Cadet Leaders?



When talking to clients they all concur that one of their biggest challenges is accessing potential employees who have the right skills and attitudes. This is even more important for SMEs where employing the right people with the right skills may be the make or break of their success. Veterans and Reservists can come from a range of disciplines including: engineers; technicians; trainers; administrators; IT managers; drivers; chefs; nurses; operations managers; facilities managers; project managers; and communications experts. All of whom have developed their expertise through working in

complex environments, maximising the benefits of teamwork whilst using cutting edge technology.

Skills training can be one of the biggest expenses that companies and organisations face but as part of a successful career in the services as a regular or reserve, individuals will develop their leadership, problem-solving and team working skills, all of which they bring into civilian jobs. An employer would have to budget for more than £8,000 on equivalent training to provide the same amount of development that an average Reservist can gain in just one year of spare-time Reserve military service. In addition to personal skills, this can cover recognised qualifications in areas such as health and safety, logistics, first aid and IT.

On top of the skills training, the majority of veterans and Reservists will be committed, dedicated and disciplined. One SME in Hertfordshire reported that the absence rate of his Reservists was significantly lower than other employees. He put this down to their commitment to their team as you cannot stay in bed if you feel under the weather when on a military exercise!

How can employers realise these benefits and support our armed forces?

The first step is to sign up to the Armed Forces Covenant, joining the ranks of other organisations who also have done this like Accenture, Airbus, Chubb Fire & Security, CityBank, Virgin Media and other smaller organisations who you may not recognise. This is a written 'promise' which is publicised on the Government website and sets out how an employer intends to support veterans, Reservists or other military personnel in whatever way they can. The level of support will depend on the size and nature of the organisation, but typically includes policies that encourage reserve service and supports employment of veterans and service spouses/partners. There is no prescribed things that a company must do – employers are encouraged to give whatever support they can which will obviously de-

pend on their size and the industry they are in but guidance is provided on [www.gov.uk/government/publications/corporate-covenant-guidance](http://www.gov.uk/government/publications/corporate-covenant-guidance). More than 800 businesses and charities have signed an Armed Forces Covenant, and that number continues to grow. By signing a covenant, a company can publicise their commitment on their website as part of their CSR commitment; use the Armed Forces Covenant logo; and attract custom and potential employees from a large, often untapped pool. More information is available on [www.armedforcescovenant.gov.uk](http://www.armedforcescovenant.gov.uk).

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Secondly, you can engage with the MOD's Career Transition Partnership (CTP) which connects a wide range of experienced, trained and skilled ex-service people with employers. The CTP provide a personalised, no cost recruitment service to employers, regardless of size throughout the UK which includes advertising on a free online job board, a CV matching service and the opportunity to present/advertise at recruitment fairs. So for SMEs who are frequently trying to access skilled employees without high recruitment fees, this can be a cost effective solution. Further details are available on [www.ctp.org.uk/employers](http://www.ctp.org.uk/employers).

In addition to supporting those who are willing to make the ultimate sacrifice to keep us safe, can you afford not to tap into this pool of skilled and dedicated workers?

## Is 'locker room' banter acceptable in the workplace?



Image courtesy of vectorolie at FreeDigitalPhotos.net

During the US presidential election campaign, Donald Trump's horror tape containing grotesque comments about women was unearthed. The fact that they were made in a 21st-century workplace should send chills down the spines of employers and HR personnel on both sides of the Atlantic. Equally shocking, from an employment law perspective, was his attempt to downplay his comments as 'locker room talk'.

According to a UK study conducted in August 2016 by the Everyday Sexism Project in collaboration with YouGov, more than half (52%) of women, and nearly two-thirds (63%) of women aged 18-24 years old, said they have experienced sexual harassment at work. The study is based on the opinion of women who are working or who have ever had a job, and were happy to be surveyed about this topic from an overall sample of British adults.

Sexual harassment at work can take many forms, from suggestive remarks, jokes about a colleague's sex life, circulating pornography, to inappropriate touching, hugging or kissing, or demands for sexual favours.

From the study, the vast majority of cases (88%), the perpetrator of the sexual harassment was male, and nearly one in five (17%) women reported that it was their Line Manager, or someone with direct authority over them.

Is this acceptable and what should employers do?

Employers can avoid liability if they can show they have taken all reasonably practicable steps to prevent employees committing acts of unlawful harassment. A clear and consistently applied equal opportunities policy, commitment to diversity training, and a comprehensive complaints procedure all demonstrate that an employer has taken such steps. Where unacceptable behaviour occurs, organisations should act promptly and consistently, and send out a clear message that it will not be tolerated, irrespective of who is involved. Employers must have a zero tolerance attitude to sexual harassment and treat any complaint seriously.

While it is impossible to eliminate the risk of a renegade worker who is aware of the rules but chooses to operate outside them, employers can use this 'reasonable steps' defence to demonstrate they consciously acted to prevent such behaviour.

Although the scent of cigar smoke has gone from the boardroom, Trump's comments illustrate that the complexities of gender discrimination may be hard to eliminate completely. The message to UK employers could not be clearer: lock up the locker room and throw away the key as this kind of behaviour is unacceptable in 2016.

### Peace of mind if things blow up



HR has a reputation for putting a straitjacket on Managers. Beststart's expert HR Specialists are different, presenting creative and strategic solutions to employee related problems. Knowing and managing the risks associated with various courses of action allows Managers to act decisively and with confidence.

We understand that most businesses can tolerate some uncertainty but the threat of big tribunal costs can be unsettling and financially unpalatable; now there is a solution.

We have teamed up with Irwin Mitchell Solicitors - one of the UK's major law firms - to offer peace of mind through their IMHR*plus* platform. Irwin Mitchell are renowned for their forward thinking and this is reflected in IMHR*plus*' main benefits:

- ◆ A fixed price employment law and HR advisory service that complements Beststart's hands on HR consultancy
- ◆ Direct and unlimited access to a dedicated employment law solicitor – no call centres, no telephone queuing and consistent advice
- ◆ Optional insurance for employment tribunal claims. Irwin Mitchell will defend a claim and all representation costs will be covered by the insurer. Awards insurance will help pay successful compensation claims against you

To view the complete IMHR*plus* benefits visit <https://www.imhrplus.com/about>



Registered Address:

1st Floor, Building 16, Gateway 1000,  
Arlington Business Park, Whittle Way,  
Stevenage, Herts., SG1 2FP

Registration Number. 06371479

Our Second Office Address ("Streets HR"):

Enterprise House, 38 Tyndall Court  
Commerce Road, Lynch Wood  
Peterborough, Cambridgeshire, PE2 6LR

T +44 (0)1438 747 747  
[enquiries@beststarthr.com](mailto:enquiries@beststarthr.com)  
[www.beststarthr.com](http://www.beststarthr.com)

