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# Essentials Every Early Years' Employer Should Have In Place

By Imogen Edmunds Chartered FCIPD

## **Foreword**

Thank you for asking for this guide. We think it was a really smart thing to do. We work with Day Nurseries, Pre-Schools and Out of Hours Clubs across the UK and we know getting access to good quality information regarding HR and Employment Law specifically for your industry can be a challenge. Everyone wants to tell you that they are an expert. We really are, and we've earned our reputation with Early Year's providers over the last 15 years by consistently delivering on our promises and offering great value service to our clients.

Here's what some of our Early Years' clients have said about what we do:

"Imogen has provided invaluable help managing a rapidly growing staff team. She is always friendly, quick to respond and provides great advice & assistance. She's become a part of our team."

Jim Jenner, Director, Kinderkare Ltd.

"Imogen has been a great support to me, always on the end of the phone when I need advice. Thank you for all your help in difficult situations."

Christine Egerton, Little Oaks Day Nursery, Malvern.

"Without a doubt the best HR support for Day Nursery Owners - Imogen and Angie have guided and supported me through difficult staffing issues - a personal service with exceptional knowledge of the early years sector!!! Thank you"

Jane Deighton, Little Faces, Chelmsford.

If you find this e-book helpful, please let us know. Perhaps you'd like to follow our Facebook page at [www.facebook.com/hrforearlyyears](http://www.facebook.com/hrforearlyyears)

Do let us know if there's anything we can help you with.

All the best,

Team Redwing x

- 1) Recruitment – know where to recruit your new staff, know where the performers are hanging out and make sure you have a presence there. Some Early Years' employers use their social media presence or their website. Remember you will want to attract potential employees when they are just looking. Perhaps holding a Recruitment Day is a good idea. Don't worry, many of those last an afternoon/evening not a whole day!
- 2) Make sure your team are trained in Safer Recruitment techniques and understand how to spot someone who is unsuitable to work with children. Candidates after often very experienced in answering standard interview questions, look to use more challenging interview questions such as Criteria Based questions that seek evidence of previous performance and Value Based questions that find out whether a candidates values and beliefs are aligned to your organisation's culture.
- 3) Are you checking certificates to make sure they are genuine and not fraudulent? Fake NVQ's are quite common, and cost relatively little from the internet. It is equally not uncommon for someone to say they have completed a level 3 when actually they have units towards.
- 4) Taking up references are very important. Make sure you make job offers that are subject to references that are acceptable as well as subject to probationary periods, evidence of right to work in UK and evidence of qualifications.
- 5) You can only ask questions of about someone's health after an offer of employment is made. Don't fall foul of the Equality Act by asking about health and sickness absence at interview.
- 6) Make sure your staff always use the Visitors Book and don't consider partners, boyfriends and husbands to be exempt from completing the book. Ask yourself why these people are visiting?
- 7) Always use an annual self-declaration form to record their responses to questions regarding their suitability to work in

childcare. Have you done enough to protect yourself? It is an offence to employ someone who is disqualified.

- 8) Have you registered with the Information Commissioner under the Data Protection Act 2018? Do the staff understand their responsibilities under DPA and the consequences of GDPR?
- 9) The use of an induction checklist can prove what a new employee has been shown and what has not. This piece of paper can make a massive difference in cases where an employee will allege that they have not been made aware of something; for example the correct way to move tables. Remember some employees may be very willing to make a compensation claim against you and without evidence of training and instruction, you may find it hard to defend.
- 10) All employees have the right to a written statement of terms and conditions on their first day of employment (new April 2020).
- 11) It's illegal to have a Zero Hours Contract that excludes other employment. Known as exclusivity clauses if you use Zero Hours contracts you can't expect your staff member to be exclusive to you.
- 12) Holiday entitlement for Zero Hours Contracts are now expected to be paid leave away from work, calculated using the average of the past 52 weeks worked to find out the value of 1 weeks' leave.
- 13) If using Fixed Term contracts to cover maternity leave, make sure you state in the offer letter whose maternity leave they are covering and prepare the contract carefully. Otherwise you may find you can't terminate the contract before the end of the fixed period, unless they commit an act of gross misconduct.
- 14) Use self-certification forms to record every day absent from work. It is more powerful to have your own self certification form with a declaration confirming that the information provided is accurate rather than allow your staff to use a form that they collected from the surgery.

- 15) Update Employee Information Sheets on an annual basis and make sure that you hold next of kin information, information about medication being taken on file in case of an emergency. Where would you access this information if you couldn't get back into your setting? Do you have it recorded elsewhere?
- 16) Always identify a method and time that you require your staff to report their absence by. Be prepared to contact a member of staff that hasn't reported their absence, to check that they are OK. Failure to report absence in the method you wanted and by the time you required, will mean a breach of your sickness absence policy and can be addressed as misconduct through the Disciplinary Procedures.
- 17) Always use Return to Work Interviews and if you are not satisfied that they are fit to return to work you can refuse their return. Train your Line Managers to undertake Return to Work Interviews and remember they can be motivational when someone has been off sick for some time and will have questions before they recommence their duties.
- 18) Make sure you always undertake a maternity risk assessment. Pay particular interest to the risks of certain childhood illnesses in early pregnancy, these include scarlet fever and if the employee is not immune, chicken pox. Make sure that any pregnant staff who clear cat poop from your garden areas are wearing gloves and wash hands thoroughly.
- 19) Consider whether you are going to allow your staff to wear their uniform outside of work. Think about the risks and the benefits. Employers have known staff to be smoking in uniform, drinking in uniform and swearing in uniform, the benefit may be that they are behaving completely reasonably and by wearing your uniform they are advertising your brand.
- 20) Consider whether your staff will have to repay you if they complete training you've paid for and then they leave you. You may have a policy of training all staff in paediatric first aid, what

would happen if you trained them in their induction period and they left you for the local competition within the probationary period? Without the correct paperwork in place, before the course, any deduction from wages is likely to be unlawful.

- 21) Make sure you are claiming your annual £5000 relief on Class 1 National Insurance contributions called Employment Allowance. See gov.uk for more information.
- 22) Consider whether it is safe for staff to take home a children's learning journey to work on it in their own time. Many breaches of confidentiality have occurred when employees have the information sat around at home. Memory sticks have also been lost that were not encrypted. Could this happen to you?
- 23) Do you ensure that you have signed Model Release Forms for all you staff as well as your children if you are going to take photographs of them whilst they are at work?
- 24) Do your staff understand how your Whistleblowing Policy works in practice? Do they recognise the consequences if they were to intimidate or harass a Whistle-blower for making an allegation, that was ultimately unfounded but not maliciously made? Have you revised your Whistleblowing Policy since the law was amended in summer 2013?
- 25) If you are using Social Media sites such as Facebook, who is going to be your admin and check what comments are being posted? What would happen if someone posted something negative, would it be there all day? A Social Networking Policy can cover how the setting will use social media as well as what the rules are around staff use of Social Media.
- 26) Are you staff accessing their phones whilst visiting the toilet? Do you have a policy of no phones in your Nursery, for staff, visitors and parents? Do you enforce it?

- 27) Get employees to sign for any expensive resources you allow them to take off your premises. Always think how will you be able to evidence that they have it in their possession without a receipt?
- 28) Are you using an Application Form? These are more formal than a CV and your candidate is far less likely to lie on an application form than a CV. If a staff member is found to have lied on an application form you can terminate their employment contract for fraud.
- 29) Does your No Smoking Policy include reference to e-Cigarettes? The tribunal case of **Insley v Accent Catering** proved that a tribunal would not consider an employee fairly dismissed if there was no mention of e-cigarettes being prohibited in the No Smoking Policy. Never assume.
- 30) Do you have a policy of prohibiting employees from buying gifts for the children in your care? If they did how would you mitigate against allegations of favouritism, bias or worse?
- 31) Have you a robust Social Networking Policy that prevents employees from abusing colleagues, directors, suppliers, parents etc. on line whether they are present at work or not when the posts are made. Without a robust policy and disciplinary action is unlikely to be fair.
- 32) Can your staff befriend parents on Facebook, have you stated in your contract with parents that they should not ask the staff to be their friends on Facebook?
- 33) Do you encourage Baby Sitting of the children in your care by the staff? What would happen if something was to occur when they are looking after these children, could you be liable?
- 34) Do you have a separate Capability Procedure to deal with underperformance and ill health separately from Disciplinary or conduct issues? Are your Disciplinary, Grievance and Capability Procedures non contractual, so you can't be accused of breach of contract if you chose not to follow them?

- 35) Make sure you have a Driving Company Vehicle Policy in place if you staff will use your vehicle to transport the children in your care. Make sure it covers not leaving the children in the vehicle unaccompanied.
- 36) Do you have CCTV installed? If you do you need to implement a CCTV policy and communicate about what the CCTV may be used for. If you detect any deviance from your policies and procedures on the CCTV, any disciplinary action will only be deemed fair, if staff are allowed to see the CCTV footage and/or still taken from the CCTV cameras.
- 37) Do the staff have access to the internet? Have you advised them what they can and cannot use their access to do? Do you use a shared password and if so how would you evidence who was using the internet at the time that a particular site was visited?
- 38) If applicable, can the older children in your Club access their Mobile Phones or tablets, if so how have you ensured that younger children can't see what they are doing?
- 39) Do you have a policy regarding the wearing of nail polish? Does it include what length and colour of nail you consider acceptable? What would you do if a staff member had a tattoo you found offensive, what about the length of skirts, shorts or trousers worn by your staff. A Dress Code can prevent any misunderstanding and establish a framework for staff to base their wardrobe decisions.
- 40) Do you secure the Supervision Records in the same way other sensitive information about an employee is secured? Can your staff agree the agenda for their supervision meeting and is the Supervision led by the supervisee rather than his/her Supervisor?
- 41) Appraisals are often annual and as important as Supervision. They are often led by the Appraiser and will record performance against agreed objectives. Job Descriptions are often reviewed at Appraisal and will be very important in the management of performance in your setting.

- 42) Are your staff trained in Handling Allegations of Abuse? Have you a flow diagram or similar in place for staff to follow in such a situation? Always a good idea to run through this once in a while so that you can be sure that the correct procedure will be followed, even in your absence.
- 43) Review the effectiveness of any external training courses after an event and ask the staff member to cascade their learning through the forum of a staff meeting. This method increases the cost effectiveness of the training, and emphasises the responsibility of attending a course that the employee has.
- 44) Consider implementing an Employee of the Month award that parents, fellow staff and if applicable children can nominate for. A box in reception can work well with forms asking for their nomination and importantly why.
- 45) Don't forget to ask your staff to let you acknowledge their resignation before they inform parents, colleagues and the children.
- 46) Do you collect exit information from your leavers that may impact your policies and procedures going forward? If you know the reasons why someone is leaving your employment you have a great opportunity to see if there was anything you could do to prevent this happening again. Leavers are a rich source of information and not always asked why. Don't necessarily think the reason they told their Line Manager, is the reason they are leaving either.
- 47) If someone is not performing in the probationary period, how can you be sure that they will perform if you extend it. Use probationary periods effectively and make sure that your offer letters and contracts of employment allow you to terminate within the probationary period or extend if you are not satisfied.
- 48) Ask your staff to join the DBS Update Service when they obtain an Enhanced DBS from the Disclosure and Barring Service. They only

have a short period to register with the DBS Update Service, which currently costs £13 per year.

- 49)** Consider the use of 'with reason' searches. Employees who bring alcohol into the workplace may not be caught with random searches of lockers and bags.
- 50)** Remember that it would not be considered gross misconduct to smell of alcohol but it would to be under the influence of alcohol at work.
- 51)** Are you going to use restrictive covenants to prevent your Manager's poaching their performing staff members when they leave you to work at a competitors setting?
- 52)** Do you need to use a post-employment Confidentiality Agreement to prevent your Manager using work they have produced for you in their new post? An intellectual property clause in your contracts would also be useful.
- 53)** Do you allow your staff discounted childcare? Do you understand the implications from a tax point of view and that if you deduct from pay it may be a breach of the National Minimum Wage. What would you do if they brought their children into your setting when they were on holiday or long term sick, would you want to cover for that eventuality in your policy?
- 54)** If your staff are driving for you at work, i.e. using your vehicle to collect/move the children, how often do you check their licence. Would you know if they had been convicted of a driving offence, or had points put on their licence? Can you get insurance for your vehicle for young drivers? Have you got a Driving at Work Policy in place?
- 55)** Who has access to your keys, do you have a register of key holders, are they aware who they can or cannot let into your setting and what to do if someone asks to 'borrow' their keys? Would you need to charge a staff member if they lost their keys, key/lock replacement can be expensive?

## SPECIAL READER OFFER

Thanks for reading our 55 Essentials Guide. For a free 20 minute telephone consultation (worth £60) about any aspect of HR or Employment Law call 01527 909436 and quote 55 Offer

T: 01527 909436

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