BrienHoldenVisionInstitute

PERSONNEL MANAGEMENT

AURTHOR (S)

David Wilson: International Centre for Eyecare Education (ICEE), Sydney, Australia

PEER REVIEWER (S)

Tony Simon: University of New South Wales, School of Optometry, Australia

THIS CHAPTER WILL INCLUDE A REVIEW OF:

- Types of workers
- Contracts of employment
- Employing staff
- Equity
- Job description

INTRODUCTION

Most optometry practices, even new practices, will have staff, in addition to the optometrist/owner, even if it is a part-time receptionist. As practices grow, more employees will be needed and therefore the optometrist/owner must be aware of the legal and administrative requirements of personnel management. While these requirements, particularly legal, will vary across countries there are some basic principles that will apply to most countries. Chapter 8 examines some of these important concepts, including the process involved in employing a new staff member.

TYPES OF WORKERS

There are two basic types of people working in any business, including an optometry practice, employees and contractors. Most personnel in an optometry practice are employees, although it is also possible to use contract labour, particularly locum optometrists or temporary receptionists supplied by agencies.

The distinction between an employee and a contractor is not always clear and courts are sometimes required to decide what kind of relationship existed in claims for compensation or in law suits for negligence. These tests will vary from country to country but the following ones are some examples of the criteria used to make the decision:

WHO IS RESPONSIBLE FOR THE HEALTH AND WELFARE OF THE PERSON?

In most countries businesses do have some responsibility for such things as sick leave and holiday pay. They may also be required to take out workers' compensation insurance. Contractors, on the other hand, are responsible for their own arrangements and do not receive sick leave benefits. They are also responsible for their own insurance.

TYPES OF WORKERS(CONT.)

IS THE BUSINESS RESPONSIBLE FOR TAXATION DEDUCTIONS?

In some countries businesses are usually responsible for taking tax from employees' wages and forwarding the money to the taxation department. This is pay-as-you-earn or pay-as-you-go taxation. Contractors are normally responsible for their own taxation payments. They merely invoice the business and are paid the full amount of the invoice.

DOES THE BUSINESS ASSUME VICARIOUS LIABILITY FOR WRONGFUL ACTS COMMITTED BY THE PERSON?

Vicarious liability is the responsibility a business takes for the actions of its employees. For example, an optometrist is bound by any price for spectacles quoted by an employee. Employees are considered to be agents and therefore their acts, as long as they are reasonable, are considered to be the acts of the business. It will, however, be possible that a practice may be legally required to assume vicarious liability for a contractor such as a locum optometrist. Therefore, this test may not be reliable for an optometry practice.

Some countries may have other criteria. For example, New Zealand considers a contractor who habitually has only one client to be an employee of that client. Therefore, in New Zealand, one of the criteria for determining whether a person is a contractor is the number of clients.

The distinction between employee and contractor is an important one for the business owner and the person carrying out the work. There are several benefits to the optometrist/business owner of engaging a contractor. There is more flexibility; there is no need to pay wages to people who would be idle in quiet periods. There is usually no responsibility for taxation or medical insurance.

There are also some benefits for the contractor. They have more variety; they can work in different areas or for different people. In some countries they may also have taxation benefits since they are effectively business owners. It is a perceived abuse of this benefit that the New Zealand government is trying to prevent by not considering a contractor with one client as an employee. The New Zealand government is also concerned that some companies may force workers who should be employees to be contractors to avoid taking responsibility for such things as superannuation, sick leave and holiday pay.

There are some disadvantages of being a contractor. There is a lack of certainty – there is no guarantee of future employment. Contactors also need to allow for quiet periods when there is little or no work.

CONTRACTS OF EMPLOYMENT

As with other contracts, contracts of employment can be written or verbal. For small businesses such as optometry practices verbal contracts are common. However, while in most countries a verbal contract carries the same weight as a written contract, optometrists would be advised, for greater certainty, to have a written contract for employees. A written contract makes all the rights and responsibilities of both parties very clear.

Contracts of employment will vary, with some having more detail than others, but the following points are normally included:

- Remuneration (salary and other benefits)
- Period of salary review
- Annual leave entitlements
- Sick leave entitlements
- Hours of work
- Termination or resignation notice required
- Responsibilities of the employee

PROMISES AND IMPLIED PROMISES OF EMPLOYERS

The above bullet points represent some of the explicit promises that may be made by employers.

CONTRACTS OF EMPLOYMENT(CONT.)

However, there are also a number of promises which, while not stated in the contract, would be understood by an independent observer as expected. These are promises deemed to have been made by the employer and employee; they are similar to the implied promises in consumer law discussed earlier.

The employer's implied promises are:

- To provide a safe workplace for all employees
- To provide appropriate health and safety equipment and processes where required (for example eye protectors in an optical workshop)
- To employ competent staff. That is, employee safety should not be compromised by working with incompetent co-workers
- To provide adequate supervision. That is, employees will not be left to make decisions that they should not have to make
- To provide safe equipment

Employees also made implied promises. These include:

- To be loyal to the employer
- Not disclose confidential information to any other party
- To work with reasonable skill and care
- To obey reasonable and lawful instructions

EMPLOYING STAFF

There are several steps involved in employing new staff once the need for a new employee has been established:

Step 1: Advertising

The venue for advertising will depend on the type of person required. For example, an advertisement for an optometrist would be best placed in a professional optometry journal. An advertisement for a receptionist would be best placed in the employment section of a newspaper.

The advertisement should include any essential qualifications you require, such as academic qualifications and experience, and any desirable criteria, which are characteristics or qualifications that would be useful but are not necessary.

Step 2: Culling

Culling is eliminating those applicants who are not considered to have met the essential requirements. If the number of applicants is significantly large it may also involve culling some who do meet the requirements, based on other criteria, such as the presentation of their application or lack of the desirable qualifications which may be held by others.

Step 3: Interviewing

Those that survive the initial cull are considered suitable for interview. To ensure that the interview is effective it is best to have prepared questions. This will also allow comparison between interviewees on the same questions. While discrimination on the basis of appearance, race or religion is unethical, and in most places illegal, some judgements can be made on their approach to the interview and the care they may have taken in preparing for the interview.

Step 4: Selecting

Selection will be based largely on performance at the interview, given that all of the interviewees were considered suitable on the basis of their applications. A decision should not be made until all interviewees have been seen.

Step 5: Making the offer

It is important to contact referees to get an opinion of the applicants before deciding to employ someone. More information can generally be gleaned from a conversation than from a written reference. Referees are more likely to be frank on the phone than in print. Moreover, no applicant will supply a reference that they consider unfavourable in any way.

EMPLOYING STAFF(CONT.)

The successful applicant should be contacted and offered the position. Most would also like an offer in writing. The written offer may also contain some information on starting times, and some of the details of the employment contract. Unsuccessful applicants should be informed of the decision in writing and thanked for their interest.

EQUITY

For ethical, if not legal, reasons, equity principles must be applied when employing personnel. It is illegal in many countries to discriminate on the basis of gender, religion, race, colour, language, disability (unless the disability would affect the ability to do the work) or other differences. There will be differences in how countries view equity. For example, some countries do have preferential employment for members of certain religions. Nevertheless, as a general guide, applicants should be judged entirely on their abilities.

JOB DESCRIPTION

A job description is a useful addition to a contract of employment. It states the duties expected of an employee and helps to eliminate claims by an employee that a task is “not my job”.

While a written job description doesn’t prevent the employer asking the employee to do something beyond the original job description it does provide the employee reason to ask not to be required to complete the task if they feel uncomfortable.

The job description should also describe the system of performance review. Staff should be made aware of what the key indicators of their performance are and when the achievement of these indicators will be reviewed.

SUMMARY

Chapter 8 covered the main principles of employing personnel. All optometry practices are likely to employ staff, for most practices there will be several people involved. Even a single optometrist intent on doing his/her own dispensing should consider employing a receptionist since he/she will be regularly involved in eye tests, leaving the front of the practice unattended.

Personnel policies, employment contracts and clear expectations will help to ensure that there are few difficulties as a result of differing interpretations of what is expected. An employment contract and a detailed job description will add certainty to the management of the practice.

SELF ASSESSMENT 8

1. **What are the two main types of workers?**
   a. _____
   b. _____

2. **What are the implied promises of employers?**

3. **What are the steps in employing new staff?**

4. **What is meant by vicarious liability?**

ANSWERS – SELF ASSESSMENT 8

1. What are the two main types of workers?

a. Employees
b. Contactors

2. What are the implied promises of employers?

- To provide a safe workplace for all employees
- To provide appropriate health and safety equipment and processes where required (for example eye protectors in an optical workshop)
- To employ competent staff. That is, employee safety should not be compromised by working with incompetent co-workers
- To provide adequate supervision. That is, employees will not be left to make decisions that they should not have to make
- To provide safe equipment

3. What are the steps in employing new staff?

- Advertising
- Culling
- Interviewing
- Selecting
- Making the offer

4. What is meant by vicarious liability?

The employer takes responsibility for the actions of his/her employee.