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## *What are the Alternatives?*

**There are many variations on the HR theme for companies without the means to develop a human resources department. With changes to legislation and an increasing number of cases being taken to tribunal, Gill King says companies must sit up and take notice of the options.**

### **What are the alternatives?**

Human resources consultants are used to getting phone calls and emails asking "Can you help?" Some requests for advice are quite colourful, such as one concerning an employee's sex change.

This was a particularly emotive subject both for the employee involved, who had made a difficult and far-reaching decision, and for the rest of the staff, some of whom found it hard to accept. In practical terms, however, there were only two problems: the company's pension scheme and use of the toilets.

The pension became an issue because sex changes are not recognised under English law. The male to female transsexual in question remained a man in law, meaning his national insurance records, state retirement age and pension remained unchanged. The company's pension scheme had better benefits for men than women at the time, meaning the newly-created woman stood to receive greater benefits than other female staff.

The transsexual also had to swap toilets, a sensitive issue that demanded staff were briefed well in advance. Having done this, the company agreed a changeover date, on which the employee came to work dressed as a woman and started using the ladies' toilets.

### **Approaches to HR**

Managing the situation carefully and sensitively ensured the sex change caused few problems for the company or its staff. The organisation ended up with a grateful and motivated employee who went on to become a long-serving member of staff, accepted by colleagues. The company also realised its pension benefits were unfair, equalising them long before legislation to that effect came in.

While an unusual case in itself, its success depended on fundamental HR approaches. As with most HR cases it came down to understanding the situation, communicating honestly with people, looking at the practical issues and offering appropriate support where needed.

Simple as it may sound, companies with doubts about how to handle a situation must seek advice - prevention is much better than cure. HR experts can script disciplinary interviews, warnings or dismissal letters and get actively involved in assignments. This can include everything from identifying the cause of high rates of absence to investigating alleged sexual harassment. The law is extremely exacting in these areas, and untrained company directors get involved at their peril.

Companies can also use HR to get more from their organisation. Many companies now use staff feedback forms, allowing the boss to see how they and the firm are perceived by staff. It is essential such exercises maintain staff confidentiality, and feedback to specific staff members must be undertaken tactfully - tongue-lashings ruin egos to no effect, whereas constructive and supportive advice encourages positive change.

During the past few years, employment legislation has increased both in volume and complexity and there is no sign this trend will diminish. Employees are becoming more aware of their rights through articles and tribunal cases in the press, as well as the wealth of information on the internet. For example, the government's interactive website [www.tiger.gov.uk/maternity](http://www.tiger.gov.uk/maternity) has sections for both employers and employees on the new maternity regulations that took effect from 6 April 2003. The Employment Tribunal Service website [www.ets.gov.uk](http://www.ets.gov.uk) also offers advice to all parties.

### **Tribunal cases**

The ETS' 2000-2001 annual report and accounts showed a 25% increase in the number of cases being taken to tribunal over the previous period. There is a general trend for employees to become more litigious, probably encouraged by the maximum compensatory award for unfair dismissal increasing to over £50 000.

In reality, however, the average awards made for unfair dismissal rarely reach £50 000. In cases of race, sex and disability discrimination there is no upper limit to the payments that can be awarded (though the maximum awarded for each category is £201 260, £139 896 and £71 063, respectively). There is no 'one year service' qualification if such cases lead to unfair dismissal. This means employers are most at risk if an employee tries to bring a claim under one of these headings.

It is even possible to bring a claim when the claimant has never even become an employee if the rejected candidate feels discrimination caused their non-selection. In this situation, employers need to prove a fair procedure has been followed - it is not sufficient to deny the charges or for employers to claim it is their prerogative to select whom they please.

A company accused of discrimination does not just face heavy fines. Defending cases is costly, in terms of management time and effort and deflects attention from the main business. Attending tribunals is both nerve-racking and time-consuming and anyone who needs to defend a case would be well advised to sit in on one before their case comes up, to familiarise themselves with the process.

Tribunals often want to see employment contracts, particularly important as they set out what has been agreed between the parties. In fact, under the *Employment Rights Act 1996* (previously the *Wages Act 1986*), employers are required to give employees certain information within eight weeks of joining. Contracts must also be regularly reviewed to ensure they comply with current legislation.

Employment contracts reserve rights on behalf of organisations, as well as explaining employees' rights. For example, they set out the right to make deductions from pay for specified reasons, such as overpaid holiday pay. Without a suitable deductions clause employers making deductions (including reductions in pay) are in breach of the Act.

### **Email monitoring**

The right to monitor email and use of the internet is a topical example of a clause that should be written into employees' contracts. Failure to do so could lead to employers becoming liable for messages sent by employees. It is not necessary, contrary to the custom in some organisations, to issue a complete contract every time an employee's salary, job title or hours change, however. Confirming amended terms in writing and asking employees to sign and return a second copy of the letter showing their acceptance is sufficient. The phrase 'All other terms and conditions of your employment remain unchanged from those previously notified to you' covers terms that have not changed.

Clearly, businesses need to keep up to date with legislation to avoid putting themselves on the wrong side of the law. Common ways to do this depend on the size of the company and its resources.

In employment law, different sizes of business (as defined by employee numbers) are subject to different legislative ceilings. For example, there is currently no requirement for a written disciplinary procedure for companies employing fewer than 20 employees but this will change when the *Employment Act 2002* is fully implemented.

Many online resources are available, some free and some on subscription through specialist organisations. The problem is knowing what to look for and where to start. Cobbling documents together from various websites and text 'borrowed' from another company is not advisable - what may be a suitable policy in one organisation could be totally unsuitable for another.

Companies with a slightly bigger budget and more employees could appoint a permanent HR director, ideally qualified by the Chartered Institute of Personnel and Development. This is often seen as a sign of professionalism, and is a desirable option for smaller companies expecting to grow.

### **Part-time solutions**

Alternatively, a CIPD-qualified person could be hired on a part-time basis. Portfolio careers, early retirement and the desire for a work/life balance mean many HR professionals are now keen to work part time. Flexibility is key for companies and prospective HR professionals who take this route, and the HR part-timer must be willing to work 'on call' if an emergency flares up on their non-working days.

HR professionals could also be employed as consultants, available to answer queries and give advice as required. Consultants can carry out long-term HR functions as necessary, such as looking into and costing suitable benefit programmes, doing training needs analyses, advising on appraisals, and ensuring documents, such as policies, procedures and contracts, are up to date.

An HR consultant can also be used as a reference point for staff with concerns about their work or personal situations, as a type of employee assistance programme. The consultant could mentor a budding HR person within the organisation and bring them up to speed, This approach can be cost-effective, meaning a company has the equivalent of an HR director at a fraction of the cost - it only has to pay for higher level support when needed and does not carry the overhead on its payroll all year.

There are many alternatives and it is up to each company to decide the route to follow. They must choose something, however, if they are to avoid the minefields now presented by the seemingly simple act of employing people.