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# Taking on an apprentice

Employment Law Update



## **The government claims to have doubled the number of apprenticeships since 2010 and recent figures reveal there are now 440,000 apprenticeships a year.**

Of those starting in the 2013/14 academic year, 53 per cent were female and 47 per cent were male. The majority of people chose apprenticeships in the service sectors and almost three quarters of new starts were in three sectors: business, healthcare and retail. There are currently 170 different apprenticeships available in 13 sectors.

Gill Wilkinson, employment law specialist at Ware & Kay Solicitors in York & Wetherby, explains the rules if you already employ apprentices or if you are thinking about recruiting one.

An apprenticeship is a work-based training programme that leads to a nationally recognised qualification. It can be for a fixed term or until a certain level of qualification is reached. An apprentice is someone aged 16 or over who is not in full-time education and who combines working with studying for a work-based qualification, from GCSEs or the equivalent up to degree level. Apprentices can be new or existing employees and can be school leavers or someone older who is starting a new career.

An apprentice must work with experienced staff, learn job-specific skills and study for a work-based qualification during their working week. Training is usually for one day a week and is provided by a college or training organisation. Apprenticeships normally last for one to four years.

Grants and funding are available to employers who take on apprentices in England and Wales; the amount available will depend on the business sector and the age of the apprentice, with higher levels of funding available for younger apprentices. The training element is usually fully or partly funded by the government.

## **Recruiting an apprentice**

The following steps provide a guideline to recruiting an apprentice:

- ✓ check the apprenticeships framework for an apprenticeship at a suitable level in your industry;

### Services for individuals:

- Buying & Selling your home
- Wills & Probate
- Will, Inheritance & Trust Disputes
- Tax & Estate Planning
- Family, Children & Mediation
- Employment Advice
- Accident & Personal Injury Claims
- Litigation & Dispute Resolution
- Farming & Agriculture
- Town & Country Planning
- Elderly Client Services

### Services for businesses:

- Corporate & Commercial Services
- Commercial Property
- Civil Litigation including Debt Collection
- Employment Advice
- Farming & Agriculture
- Town & Country Planning

### Financial Advice

- ✓ register your interest in employing an apprentice with the National Apprenticeship Service;
- ✓ find a training organisation that offers apprenticeships for your industry;
- ✓ check if you are eligible for a grant and apply;
- ✓ advertise your apprenticeship; and
- ✓ select your apprentice and enter into an apprenticeship agreement together.

### Apprenticeship agreements

Three legal forms of apprenticeship are now in existence:

- ✓ traditional contracts of apprenticeship, which give apprentices greater rights than normal employees, including enhanced rights on termination;
- ✓ apprenticeship agreements, governed by the Apprenticeships, Skills, Children and Learning Act 2009. Under these agreements, which have to satisfy certain conditions, apprentices are treated like normal employees and do not have additional rights when the agreement ends; and
- ✓ approved English apprenticeships. They must last for at least 12 months and the apprentice must receive training and achieve a set standard for the relevant type of work. Apprentices on these agreements are also treated in the same way as normal employees.

On 26 May 2015, approved English apprenticeships were introduced and only apply in England. From that date, apprenticeship agreements have only been available in Wales. (Before then, apprenticeship agreements were available in England and Wales.) Where the apprentice is employed in England in a sector where there is no approved apprenticeship standard, an apprenticeship agreement will apply. The aim is that, from 2017/18, all new apprenticeships will be based on the new standards.

Employers are more likely to want to enter into apprenticeship agreements or approved English apprenticeships, as they are less onerous, and to include clauses dealing with matters such as a probationary period, early termination of the agreement and repayment of training costs.

### Considerations when employing an apprentice

Apprentices are employees and there are a number of matters that you need to be aware of:

- ✓ apprentices must be paid at least the relevant level of the national minimum wage;
- ✓ they must be paid for their normal working hours and training that is part of their apprenticeship;

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### Financial Advice

Email [law@warekay.co.uk](mailto:law@warekay.co.uk)  
Web [www.warekay.co.uk](http://www.warekay.co.uk)

- ✓ they have the right to paid holidays;
- ✓ if they are under 18, they will benefit from special provisions that apply to protect young workers in relation to working hours and rest breaks;
- ✓ their terms of employment should be consistent with those offered to other employees in order to avoid age discrimination;
- ✓ in relation to health and safety, additional rules apply to those under 18, which means that you need to carry out special risk assessments; and
- ✓ the usual employment rights apply so apprentices have the right not to be unfairly dismissed and not to be discriminated against.

### Terminating an apprenticeship

Since the primary focus of a contract of apprenticeship is training, you cannot dismiss an apprentice working on one of these contracts on the same grounds as an ordinary employee. There is only a limited right of dismissal before the end of the contract, which includes misconduct that is so serious the apprentice is unteachable, the closure of the business and a fundamental change in the business. If you terminate the agreement early, the apprentice can potentially receive damages for loss of earnings and training for the rest of the agreement, plus loss of future career prospects if there is an impact on their future earnings.

An apprentice on an apprenticeship agreement or an approved English apprenticeship can be dismissed in the same way as an ordinary employee, which means that you will need to have a good reason and follow a fair procedure in order to avoid a claim for unfair dismissal.

A failure to take on an apprentice as a permanent employee on completion of their training may be treated as a dismissal, leading to a potential claim for unfair dismissal.

If you have any queries about employing apprentices or you would like us to provide you with a suitable agreement, please contact Gill Wilkinson.

### Ware & Kay

#### Contact us

For a free, no obligation discussion call Gill Wilkinson on York **01904 716000** or Wetherby **01937 583210**.