

employment law

The charitable sector has been transformed in the last 15 years. Funding requirements and the desire to improve accountability and transparency are some of the factors that have contributed to the increasing professionalisation of the sector. Practice in the area of Human Resources has sometimes struggled to keep pace with these changes, but it's clear that many charities are now investing in this area, some significantly, as they realise that increasing organisational performance will only come about through using modern people management approaches.

There is a belief in the not-for-profit sector that voluntary organisations have more than their fair share of Employment Tribunal claims. The reasons for this are numerous. Small employers generally are vulnerable to claims due to the absence of dedicated HR support and lack of training for managers. There may in the past have been reluctance to tackle staffing problems head-on, allowing grievances to fester, and it may be that those advocating other people's "rights" may be more conscious of their own and the legal protections available.

Unfortunately, figures are thin on the ground to support any of these contentions. The Employment Tribunal Service statistics are based on the type of claim lodged and do not distinguish between sectors.

In 2003, Agenda Consulting conducted a survey, *People Count*, which looked at the HR issues concerning voluntary organisations employing over 100 staff. The data derived from the survey doesn't appear to support the notion that voluntary organisations have more staff disputes or are more susceptible to staff claims. Formal warnings in the sector were ten per 1000 employees compared to figures produced in the same year by the law firm DLA, which showed an average of 19.7 in the private sector and 7.6 in the public sector.

Comparing *People Count* figures to DLA's survey, there were four grievances raised per 1000 compared to an average across sectors of 5.5. The *People Count* survey also found one Employment Tribunal per 1000 compared with nearly five per 1000 employees for the private and public sector. And on sickness, the average number of sick days taken per employee in the

Meeting in the middle

There's long been the impression that the charity sector suffers from more employment disputes than any other, but how accurate is this belief? Roger Parry and Jane Klauber look at the statistics and ask if recent amendments to the law could act as a catalyst for further claims

voluntary sector was eight days – very similar to the other sectors' average of 7.5.

Bald figures from limited samples are, of course, amenable to a number of interpretations. For example, the relatively low level of formal warnings could mask a reluctance to confront and address staffing problems in an effective manner and should not foster complacency.

Prevention is better than cure

But what impact will changes to regulation have on the number of claims being filed?

In order to try and stem rising numbers of Employment Tribunal claims and to encourage the internal resolution of disputes, the government introduced the Employment Act 2002 (Dispute Resolution) Regulations 2004. Under this law, employer and employees are required to follow an internal grievance procedure before a claim can be admitted to an Employment Tribunal. In addition to the measures already required to be completed under law, such as giving a number of warnings, the employer must also prove that a dismissal was for a fair reason, had followed a fair procedure and had allowed a number of reasonable responses from the employee. This means, therefore, that even if the statutory dismissal procedure is followed, a dismissal may still be unfair on its merits. If either the statutory grievance or statutory dismissal procedures are not complied with, the employer can face tough sanctions, including the risk of increased compensatory awards.

Meanwhile, however, there are further laws that have been introduced or expanded, and if not followed, could give rise to problems. Equality legislation has been given new protections outlawing discrimination on the grounds of sexual

orientation, religion and belief. Since October last year, small organisations are no longer exempt from the Disability Discrimination Act, and perhaps most challenging to all will be the outlawing of age discrimination from October 2006.

How prepared is the sector to meet these challenges? Of course, charities attach importance to values of fairness and justice, and generally strive to be reasonable employers. It is then disappointing if principles of fairness are not always met, or are perceived not to be met.

A solution to this is training. Managers must have effective support to identify HR risks and must be shown how to implement internal procedures. Staff must also be shown that procedures are workable.

Trustees must also be made more aware of their role. The Charity Commission document *Hallmarks of Effective Charities* emphasises trustee involvement and shows HR isn't an issue to ignore. It says "the relationship between trustees and senior staff is crucial, and trustees must ensure a proper balance is achieved between the needs of operational staff to manage on a day-to-day basis and the needs of trustees to determine overall direction and control of the charity".

Charities have known for many years they can't rely on goodwill alone and there is a continuing drive for professionalism. The relentless pace of change ensures trustees and managers alike will be required to respond to the challenges this brings.

Roger Parry is director of Agenda Consulting and Jane Klauber is a partner at Russell-Cooke Solicitors. She is speaking at the DSC Employment Law Conference on 1 July.