

BUSINESS MATTERS UPDATE

Dealing with redundancy

As businesses look to become more efficient in the current economic climate, many firms are considering redundancies. However, employers need to ensure they understand how the redundancy process works so they are not vulnerable to fines and tribunals.

Collective consultation requirements can easily catch an employer out in redundancy situations, and if it does, it'll be an expensive mistake.

The duty to consult collectively arises where an employer proposes to make 20 or more employees redundant at one establishment within a period of 90 days or less.

It is important to remember that volunteers for redundancy will normally be included in the calculation. A dismissal which occurs as a result of the expiry and non-renewal of a fixed-term contract may also be classed as a redundancy.

In such circumstances an employer is required to inform and consult appropriate employee representatives. If a business is proposing 100 or more redundancies, consultation must begin at least 90 days before the first notice of dismissal is given and in the case of 20 to 99 redundancies at least 30 days consultation is required.

The collective consultation process begins with the election/appointment of appropriate employee representatives and the provision of information to these representatives. There are minimum requirements for the consultation itself, which must include a meaningful dialogue, and it is not sufficient only to explain proposals and listen to any counter proposals without actually considering and discussing those proposals further.

Unfortunately, collective consultation does not replace individual consultation. It will therefore still be necessary to meet and consult with individual

employees who are potentially redundant in order for any subsequent dismissal to be fair.

Crucially, where the collective consultation obligations are triggered, the employer must notify the Secretary of State of the proposed redundancies. Failure to do so is a criminal offence punishable by a fine of up to £5,000.

The penalties for breach of the collective consultation regulations doesn't end there. Failure to comply with any of the rules on information and consultation, or the election of representatives, can lead to a protective award being made by an Employment Tribunal. The standard protective award is a penalty of 90 days' pay per affected employee. So for example, if a business makes 100 employees redundant, each of whom are on an average annual salary of approximately £20,000, its liability is roughly £700,000: a high price to pay for failing to follow a few simple steps.

For more information or advice please contact Matthew Huddleson, solicitor in our employment team on 01392 685338 or email matthew.huddleson@foot-ansteys.co.uk

Tinkering with the rules - changes to Entrepreneurs' Relief

Entrepreneurs' Relief (ER) took effect from 6 April 2008 to replace the void left by "business asset taper relief". The aim is to offer individuals and trustees an effective 10% tax rate on the sale of certain business assets. Only the first £1m of qualifying gains realised by an individual or a trust will qualify for the relief.

What does ER apply to

ER applies to 'qualifying business disposals' which are broadly:

- A disposal of the whole or part of the business
- A disposal of assets used in the business where the business ceases to be carried on
- A disposal of shares in a company (where the company is a trading company and the individual owns at least 5% of the ordinary share capital and voting rights). In addition the individual must be an officer or an employee (full or part-time) of the company

What has been the problem with the rules?

Unfortunately, the legislation governing the relief has still not become law. This is expected to happen within the next two months. Part of the delay is because the government is still tinkering with the rules.

In the past, business owners have let their businesses trade from premises which they own personally. The original rules provided that ER would be available on any gain from the sale of the premises if the sale took place at the same time as the business was sold. However, there was a catch. If the business owner charged rent, the gain arising on the sale of the property did not qualify for full ER. In situations where a full market rent was charged throughout the period of ownership, no relief was due.

As a consequence, many individuals considered the legislation had a retrospective feel particularly as business owners had been encouraged to rent premises to their businesses under the 'taper relief regime'.

The government accepted that this treatment would be unfair and has now proposed changes to the rules. Under the reforms only rental payments made after 6 April 2008 will be taken into account in determining any restriction on the relief due on the property sale. Of course, the qualifying conditions have to be met for ER to be available.

What do the proposed changes mean to you?

If you currently charge your business/company rent for premises you own, consider whether your capital gains tax position may be improved by not charging a rent. Firstly, consider whether your business/company would qualify for ER on a future sale. There is little point in foregoing income if the relief is not available on a possible sale. Secondly, consider whether you intend to sell your business going forward and, if so, whether you would also sell the property from which the business trades. If not, then there is little merit in changing the existing arrangements. Thirdly, if you were to sell your business would any resulting capital gain exceed £1m? If so, then no relief would be available on the sale of the property – the maximum having been set against the sale of your business.

If you would like advice on ER or any other taxation matter relating to your personal or business affairs, please contact Malcolm Emery, associate in our tax team on 01392 685233 or email malcolm.emery@foot-ansteys.co.uk

Networking with Business Link

Foot Anstey is working with Business Link to give clients access to a wide range of resources focused on helping them meet their growth objectives.

As well as access to Foot Anstey's legal services, clients have a straightforward route to Business Link's network of expertise throughout the south west, covering subjects like HR, marketing, people development and far more.

This will also provide clients access to Business Link's team of Advisers, experienced business people who can work impartially along side Foot Anstey to help owners and managers devise practical solutions to their growth challenges.

Business Link CEO Adam Chambers commented: "We're delighted to be building this relationship with Foot Anstey and provide a complementary set of resources. I very much hope that clients take full advantage."

To contact Business Link and find out more about their services, call 0845 600 9966 or visit www.businesslinksw.co.uk

Companies Act 2006 - are you up to date?

The Companies Act 2006 is the most significant piece of company legislation to be enacted in the last 20 years and requires action to be taken by each and every company and company director.

How many of the following have you actioned?

- Identifying and recording any directors' conflicts of interests
- Replacing corporate directors with individuals
- Updating articles of association to reduce red tape
- Considering the merits of directors receiving training on the new areas of directors' duties and shareholder derivative actions
- Reviewing/updating policies on take up of corporate hospitality
- Reviewing the company's D&O policy to ensure adequate cover for new regimes

To find out more about the importance of these actions, please contact Chris Worrell, partner in our corporate commercial team on 01752 675016 or email chris.worrell@foot-ansteys.co.uk

Pension Protection Fund levy stays unchanged and unfair

The Pension Protection Fund (PPF) has announced that the target PPF levy for the 2009/2010 PPF levy year will only increase in line with wage increases. This means that the PPF hopes to collect a total of £700 million from UK pension schemes (compared to £675 million for the 2008/2009 PPF levy year).

This is **good news** for employers with pension schemes as there was a risk that the PPF would increase the target PPF levy for 2009/2010 because of the effect of the credit crunch.

Further **good news** is that the PPF has also published the expected "scaling factor" (which affects the way in which the PPF levy is divided between employers) for the 2009/2010 PPF levy year and stated that it does not expect this to change before the PPF levy is finalised in November. Last year many employers found that their PPF levy increased unexpectedly when the PPF increased the expected scaling factor when it finalised the PPF levy for the year.

Managing your exposure

Businesses can limit the impact of the credit squeeze by considering the following questions. Do you:

- Know your customers and their current credit position?
- Trade on your own standard form terms?
- Enforce your contractual payment terms?
- Retain ownership of goods until you have been paid in full?
- Have the right to easily pursue bad debtors?

If you are concerned that the drafting of your standard terms of business may be exposing your business to unnecessary risks, contact Rachel Robinson, solicitor in our corporate commercial team on 01392 685214 or email rachel.robinson@foot-ansteys.co.uk for a contract review.

The **bad news** is that in a recent pensions industry survey almost all of those who replied believed the existing structure of the PPF levy is unfair (although the majority agreed with its existence).

We can help your business look into ways to reduce its PPF levy. Contact Comron Rowe, associate in our corporate commercial team on 01752 675156 or email comron.rowe@foot-ansteys.co.uk for more details.



The latest company law changes

A whole raft of legal changes for companies came into force on 1 October 2008. Below is an overview of the most important.

Conflicts of interest

The Companies Act has now placed on a statutory footing directors' duties to avoid direct or indirect interests that conflict with those of the company, to avoid accepting benefits from third parties and to declare interests in proposed transactions or arrangements.

Unlike previously, directors must now declare the nature and extent of their interest in transactions or arrangements with the company, and further declarations need to be made should any previous declaration become untrue or inaccurate.

Directors can authorise conflicts (and possible conflicts) of interest, provided they are permitted to do so by the company's articles of association and, in the case of private companies, a resolution has been passed by the shareholders. Companies should be obtaining such permission and checking their articles of association accordingly.

Financial assistance

Previously private and public companies were prohibited from giving financial assistance to purchase their own shares. This meant, for example, that a bank-funded buyer of a company intending to use the target company or its assets as security would first need the target company to go through a special 'whitewash' procedure involving significant additional professional costs.

From 1 October, this prohibition has been lifted for private companies. This change promises to remove the need on many deals for the formal 'whitewash' procedure and the associated transaction costs, but buyers and sellers will still need their lawyers to check whether, in practice, the bank requires a similar procedure to be followed as part of the funding process.

Directors

Most companies are now required to have at least one director who is a natural person, as opposed to a company or an organisation. Directors, especially those of group companies, should be reviewing company appointments and ensuring compliance with the new legal position. Some companies are exempt from this requirement until 1 October 2010.

The minimum age for company directors is now 16.

Trading disclosures

Previously, a company had to display its company name at its registered office and at any place where it carried on business. These rules have now been relaxed for dormant companies and for companies which operate from residential addresses. There are also provisions for companies which share offices.

For more information please contact James Evans, partner and company law specialist on 01392 685243 or email james.evans@foot-ansteys.co.uk

Your business update

Business Matters covers aspects of commercial law, intellectual property and technology, company law, tax issues, employment, pensions, property and more and from the new year will be available electronically. If you would prefer to receive your update via email please register your interest by sending details of your name, company, role and email address to businessmatters@foot-ansteys.co.uk

If you have any comments or would like any other aspect to be included in the update, please email businessmatters@foot-ansteys.co.uk

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