

Metcalfes
Solicitors

RightFocus

Focussing on Legal Issues important to You

Clear Advice: Plain English

The **Employment team** advise on all aspects of the employment relationship, including the rights, obligations and remedies available to both employers and employees. The range of matters the team can offer advice on include the employment contract and associated policies/procedures, discrimination, maternity and other family friendly rights, dismissals and transfer of undertakings.

The **Company Commercial team** concentrate on giving pragmatic, practical and competitively priced legal advice to medium sized businesses and institutional clients. The team advises on all legal aspects of business and company acquisitions and disposals including raising of corporate finance, shareholder's agreements, share issues, takeovers and mergers.

The **Commercial Landlord and Tenant team** advise in relation to both contentious or non-contentious areas. The team has a heavy emphasis on industrial, office, retail and leisure premises. The range of services the team can advise on include taking, granting and renewals of leases, Landlords Consent Licenses and recovery of rent arrears and repossession of premises.

The **Commercial Property team** offers a full range of legal services to buyers, developers and lenders. The team offers a complete range of expertise reacting quickly to clients' requirements with practical and cost-effective advice. The team can advise on acquisitions, disposals and leasing of commercial, industrial and retail properties, planning applications, appeals and enquiries.

The **Commercial Litigation team** advise on commercial contractual problems, disputes, commercial debt recovery, employers liability including Health and Safety at Work disputes.



Steps you can take to protect your cashflow

In a tough economic climate like now, every business faces a growing risk of not being paid for their goods or services – and each one will have its own ways of reducing it.

Here, we list some of the most effective techniques businesses are using to keep cash flowing in:

Publish your terms and conditions: include your payment terms on your invoices, specifying the number of days within which you require payment. This ensures that customers cannot claim to have misunderstood your terms if they exceed the payment period.

Challenge reasons not to pay: if you believe that a customer is questioning service levels or alleging contractual breaches simply to slow down payment, don't be shy of asking for proof of their assertions. Unless this customer's business is too important to risk losing, don't hold back from bringing things to a head to accelerate payment. Consider enforcing tougher payment terms on other business with them while the situation is unresolved.

Look out for late payers: it is inevitable that some customers will delay payment to improve their own cashflow; monitor such delays, and be prepared to pursue late payers promptly in line with your stated terms and conditions.

Assert your rights of ownership: remember, until you have been paid, any products you sell are still legally yours. This means two things: you can demand their return and seek to sell them elsewhere; and, should your customer go out of business, you can claim the goods as yours.

Use credit reports: it is easy and comparatively inexpensive to commission regular reports on your most important customers, to check how they are performing across a range of measurements. If their credit-worthiness alters negatively, be quick to review the credit terms you offer them.

Monitor customer behaviour: the sudden disappearance of staff, the introduction of schemes like factoring, invoice discounting and slower payment can be signs that a customer is experiencing financial difficulty. Be prepared to take action to help you avoid being left unpaid should the business fail.

These are all steps that businesses have found helpful in ensuring a stable cashflow. Above all, though, consider taking legal advice at a very early stage in proceedings – timely, effective advice can pay dividends in the future by saving time, expense and stress further in the process if your customer is in difficulties.



Getting ready for a low-carbon future

The Government has formally announced its Low-Carbon Industrial Strategy, which targets four key areas of change.

These are to:

- save money through better energy efficiency;
- create the infrastructure for a low-carbon future;
- make the UK a world leader in the development and production of low-carbon vehicles;
- make the UK the best place in the world to locate and develop a low-carbon business.

To achieve these changes, the Government has also launched its Carbon Reduction Commitment (CRC) consultation, to outline the steps that businesses will need to take to reduce carbon emissions and improve energy efficiency.

Dr Neil Bentley, CBI Director of Business Environment, has urged businesses to become familiar with what forthcoming changes will mean for them. As he says, "Many companies remain unaware and unprepared for what the Government's Carbon Reduction Commitment will involve, and are in for a real shock when these changes become law."

To help business prepare itself, the Department of Energy and Climate Change has published a user guide that outlines who is covered by the scheme and guides the reader step-by-step through what will be involved. You can find the guide at www.defra.gov.uk/carbonreduction.

ACAS code replaces grievance and disciplinary procedures

In what some people are calling the biggest shake-up to employment law in decades, the statutory three-step grievance and disciplinary procedures were repealed on 6th April and replaced by a new Code of Practice from ACAS (the independent Advisory, Conciliation and Arbitration Service).

Designed to provide a clearer, more straightforward process for anyone dealing with disciplinary or grievance matters, the biggest change that the new code introduces is that a failure by an employer to follow its requirements will no longer result in a finding of 'automatic' unfair dismissal.

However, failure to do so may still result in a business facing greater costs, because Tribunals have the discretion to increase an award by up to 25% if they believe that either party has acted unreasonably. This means that employers who are not familiar with its demands are likely to face expensive tribunal claims, so it is strongly recommended that you read them in detail on www.acas.org.uk/drr

If there are any elements that you would like to know more about, do not hesitate to ring one of our specialist employment solicitors.

Millions more gain the right to request flexible working

Millions more UK workers than ever before now have the right to ask for flexible working. This follows early April's change in the law that means parents and carers of children aged 16 and under, who have worked for their employers for more than six months can now make the request.

This builds on existing legislation introduced in 2003 that granted those with children aged up to six (or 18 if the child is disabled) the right to request flexible working and from 2007 carers of adults were also given the right. It means that a further 4.5 million people are now eligible, in addition to the 6 million already covered by previous legislation.

While there is no guarantee that employees making a request for flexible working will be granted more child-friendly working arrangements, employers may only reject an application on certain specified grounds.

According to Harriet Harman, Minister for Women and Equality, "Mothers often tear their hair out trying to balance earning a living with bringing up their children and need more flexibility at work. And fathers want to be able to play a bigger part in bringing up their children."

The term 'flexible working' covers many arrangements, including shorter hours, working from home and during term-time, job-sharing and working agreed hours over fewer days.



Stronger expenses management delivers important savings

Businesses that apply rigorous management controls to expenses claims made by their employees are well positioned to control costs and prevent profits from being eroded. In addition, having an effective and enforceable company policy in place that everybody understands and adheres to is fundamental to ensuring that only correct claims are authorised.

These are the conclusions of a report by expense management company GlobalExpense, which highlighted that 11% of all expenses claims approved by managers in the UK during 2008 contravened company policy and should not have been authorised.

The research, which examined 4.8 million claims from over 150,000 employees, also showed that some £2 billion was wrongly approved – including £1.08 billion in fraudulent claims and some £923 million spent on items not covered by policies.

According to GlobalExpense MD David Vine, “The single most important thing companies can do to stop wasting money on employee expenses is to make sure that company policy is consistently adhered to.”

Create your own checklist of licenses and permits

For even the smallest business, the need to keep abreast of the software and other licenses, permits and registrations required to comply with market rules and suppliers' terms and conditions is an important one.

The penalties of not doing so – abusing a software licence, for example, or breaking copyright by inadvertently using protected material without the appropriate permission of the owner – can include heavy fines. But keeping au fait with what you should have in place can also be time-consuming and confusing.

One answer, which gives you at least a strong starting point, is an interactive tool on the Business Link website, which quickly and easily gives you a personalised list of the licences, permits and registrations a business of your type is most likely to need, and details of where you can find further information.

Just visit www.businesslink.gov.uk and follow the 'regulations and compliance' link to 'licenses and permits'. You will then be asked to select which category your business falls into, going through a number of levels that enable you to be increasingly specific about your organisation before you finally receive a suggested list of the authorisations you are most likely to need.

Ensure you have a workable sick leave policy

Potential changes to sick leave legislation may be on the way and they could end up costing employers more than under the current arrangement. This follows a ruling made by the European Court of Justice (ECJ) earlier this year, that workers on long-term sick leave should not lose their right to holiday pay.

Currently, workers can take their paid annual statutory holiday entitlement – which, from 1 April this year stands at 28 days, including bank and public holidays – during any long term sickness absence. Following the ECJ ruling staff will be entitled to carry over any unused statutory holiday to the next leave year.

This will then continue to accrue until they either return to work or are paid for it on termination of employment.

This change makes it more important than ever that employers have a workable sickness policy in place, and ensure that employment contracts allow that only statutory (not discretionary) entitlements accrue during a lengthy period of absence.

At the time of writing, the House of Lords has yet to clarify the precise implications of the ECJ ruling on UK employment law, although BERR says that “employers should have regard to the judgment” – we will return to this issue in the future once the position has been fully clarified.



RightFocus News

Metcalfes Solicitors

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thinkers are rare

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Driving offences are no laughing matter

Worldwide media reports recently told the story of Liverpool-based company director Gary Saunders, who was stopped by the Police for laughing while driving.

Although Mr Saunders was eventually not charged with an offence, it appears there is still confusion over the activities that drivers can be prosecuted for. According to the most recent edition of the Highway Code (2007), drivers should "avoid distractions when driving or riding such as: loud music (this may mask other sounds), trying to read maps, inserting a cassette or CD or tuning a radio, eating and drinking (and) smoking."

While there is no mention of laughing, the use of the phrase 'such as' does open up the possibility of prosecution if it leads to careless or dangerous driving.

According to the AA website, "The Highway Code does not make it a specific offence to smoke while driving, any more than it is currently an offence to change a cassette, read a map or eat. However, if any of these behaviours are coupled with bad driving, or lead to an accident, a charge of careless driving, or not being in a position to control the vehicle becomes a distinct possibility. They can also be used to show dangerous driving, an offence which could lead to imprisonment, particularly if the dangerous driving causes a death."

Using a hand-held mobile is, of course, a specific offence, as the AA site confirms, while "using a hands-free phone is not a specific offence, but provides grounds for a careless or dangerous driving prosecution in the event of erratic driving or an accident."



Changes at HMRC

Big changes took place at HM Revenue & Customs in early April, designed to streamline how it works with business, agents (such as accountants) and other customers.

Among a raft of other new developments was the introduction of a single, unified set of powers and safeguards covering PAYE, VAT, Income Tax, Capital Gains Tax and Corporation Tax. According to HMRC, the changes are designed to reduce confusion among customers by applying the same rules no matter which sort of tax it is checking.

Comments Dave Hartnett, HMRC Permanent Secretary for Tax: "These are important measures which will make it easier for businesses and their advisers to meet their obligations, while making it easier to work with us and to get decisions on points of law. These initiatives will provide them with more consistency, certainty and faster online processing of key documents."

