

Cox Cooper Ltd

Solicitors

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Commercial Law UPDATE

The Right to Request Training

The Government has published guidance for employers on the new right of employees to request time off work for training, introduced on 6 April 2010.

The right to request time to train was included in the Apprenticeships, Skills, Children and Learning Act, which received Royal Assent in November 2009. The introduction of the right will be phased. Initially, it will be available only to employees in organisations with 250 or more employees, before being extended to all employees from April 2011. This will give smaller organisations and businesses more time to prepare for its introduction.

To make a request for time to train, an individual must be an employee and have worked

continuously for their employer for at least 26 weeks on the date on which the request is made.

Employees' requests can be to undertake accredited training programmes that will lead to a qualification or for unaccredited training that will assist them to develop specific skills relevant to their job, workplace or business. Whilst employee requests may involve agreeing time away from their workplace duties, the primary focus of the new right is on agreeing relevant training with your staff.

Employers are required to consider any requests and respond within a set timeframe. A request may be turned down if there is a good business reason for doing so, which includes

where the employer does not believe the training will help improve business performance.

The way in which the new right will operate closely follows the model used for handling requests for flexible working arrangements.



The guidance for employers is available through the Business Link website at <http://www.businesslink.gov.uk/timetotrain>.

Tax Dispersations for One-Person Companies

Paying expenses for employees is often a problem area and employee expenses are routinely one of the first items looked at by PAYE inspectors, since it is so easy to get the paperwork wrong. For that reason, as well as the saving of what is for many smaller firms a considerable administrative burden, HM Revenue and Customs (HMRC) will allow companies to claim a 'dispensation' from having to carry out the normal PAYE reporting of employees' expenses if they are satisfied that the business has sufficient procedures in place to ensure that only

legitimate business expenses are reimbursed to employees.

Recently, HMRC issued guidance on dispensations for one-person companies. The guidance states that you must have an independent system in place for checking and authorising expenses claims. At a minimum, this means having someone other than the employee claiming the expenses check that the amount claimed isn't excessive and the claim doesn't include disallowable items.

The Institute of Chartered Accountants in England and Wales recently reported that HMRC have confirmed that it is sufficient for a company to use its external accountant to compile or check the accounts and complete forms P35 and P11D, and to ensure that such expenses and other benefits in kind are shown correctly in the accounts and are returned correctly on the required forms, for this to be 'an independent system for checking'.

Hair Length and Dress Codes

If you are formulating a dress code for employees, it is important not to treat one sex less favourably, if you are to avoid leaving yourself open to claims under the Sex Discrimination Act 1975. However, this does not mean that the provisions for men and women have to be identical.

In a recent case, a police trainee who wore his shoulder-length hair in a bun and was told to get it cut or face disciplinary action lost his appeal against the decision of the Employment Tribunal (ET) that he had not been unlawfully discriminated against on the grounds of his sex (*Dansie v The Commissioner of Police for the Metropolis*).

The Police Force's Dress Code Policy stated that the standard of dress should be smart, fit for the purpose and give a favourable impression of the service. Guidance on the Policy stated that 'for safety reasons, ponytails are not permitted and long hair must be neatly and securely fastened up and worn relatively close to the head'.

It was common ground that a female recruit would not, in similar circumstances, have been told to have her hair cut.



The Employment Appeal Tribunal (EAT) upheld the decision of the ET, which found that the Dress Code Policy was gender neutral. Earlier case law allows that a dress code 'can be considered as a whole and can be gender specific as well as gender neutral provided it is fair-handed between the sexes and fits

with the conventions of society and the needs of the profession in question'.

The EAT judged that the ET was entitled to conclude that a female comparator who failed to comply with a dress code that was equally balanced between the sexes and necessary for a disciplined service like the Police Force would have been treated in the same way had she failed to comply with the Policy as it applied to women.

In this case, the dress code under scrutiny was found to take an even-handed approach to both sexes as a whole and the employer was able to establish a non-discriminatory reason for the difference in treatment. However, a code that applies different standards to men and women who do not work in public-facing roles may not be justifiable.

Contact us if you would like advice on this subject.

Service Providers – New Disclosure Rules

Providers of services in the EU are reminded that the Provision of Services Regulations 2009 came into effect on 28 December 2009. These require service providers to supply specified information to customers. In this context, a service provider is any organisation which normally supplies services for a consideration.

The required information includes the following (the list is not exhaustive):

- Name, contact details including address (postal, email or fax) and phone number – and contact details for rapid communication;
- The legal status and form of the business and its VAT number;

- The place where the service provider is established;
- Details of any authorisation scheme to which the service is subject;
- If the service provider carries on a regulated profession, details of its professional title;
- The contractual terms which apply, including any general terms and conditions and applicable law;
- The price of the service plus details of any after-sale guarantees provided which are not required by law; and
- Any professional liability insurance the service provider is required to hold.

Some services, such as health care, financial services and transport services are excluded. For further details see http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1.

Further specified information must be provided on request and there are requirements to have a complaints handling procedure. Also, there must be no discrimination in the provision of the service because of the place of residence of the customer.

We can assist you in making sure your business operates in compliance with the current Regulations.

Landlord's Intention Must Be Long Term

When a tenant's lease is governed by the Landlord and Tenant Act 1954, the landlord has limited grounds for refusing to renew the lease. One possible ground is that the landlord wishes to make use of the premises for its own business purposes.

In a recent case, a tenant who had applied for a new lease had his application opposed. The landlord argued that he wished to use the premises in order to run a retail news agency. He offered to give an undertaking that he would not use the premises for any other business purpose for a period of two years.

The tenant believed that the landlord wished to have possession of the premises so that he could sell them, even though the property was not on the market and no prospective buyer was in place.

The legislation does not specify for how long a landlord must intend to occupy premises for the purposes of his business in order to be able to oppose the renewal of a lease. However, the Court of Appeal considered that if the landlord's intention was to sell the property within five years, he did not intend to occupy it for a long enough period to satisfy the 'for the purposes of his own business' condition.

The undertaking offered by the landlord merely prevented him from running any other type of business and was limited to two years. It did not require the landlord to trade and the landlord had closed an adjacent business he owned.

On the balance of the facts before it, the Court ruled that there was sufficient ground for doubting the landlord's intention to use the property for his own business purposes and the application to refuse a new lease to the tenant therefore failed.



Landlords who wish to obtain possession of leases covered by the Act can expect the courts to adopt the five-year time period referred to above as a rule of thumb for determining whether or not they have successfully made out the case that they require the premises for the purposes of their own business.

Landlords and Tenants – VAT on Cleaning

HM Revenue and Customs (HMRC) have now published their interpretation of an ambiguous decision of the European Court of Justice (ECJ), made last summer, which is relevant for landlords that supply ancillary services to tenants.

It involved the common case in which the cleaning of a building that has not been opted to tax for VAT is supplied

by the landlord to the tenants, but a tenant is free to obtain cleaning services from a third party instead if they prefer. The ECJ ruled that in such a case there are two separate supplies for VAT purposes – an exempt supply of leasing and a standard-rated supply of cleaning services.

HMRC have decided that this means that where cleaning services are supplied by

the landlord (or the landlord's agent) as a condition of the lease, there is a single supply. However, where the tenant has the choice of suppliers, there will be two separate supplies.

For tenants who have paid their landlord for cleaning but were not obliged to use the service under the terms of their lease, a claim to recover unclaimed input VAT may be available.

VAT on Business Assets With Private Use

HM Revenue and Customs have issued a new brief covering the common situation in which assets are bought which are used for both business and private purposes.

Traditionally, this could be dealt with either by claiming only the percentage of the input VAT which corresponded

to the percentage of business use or by claiming all the input VAT and then making a VAT charge (i.e. adding to the output VAT payable) for the private use on an 'as you go' basis. This latter method is called 'Lennartz accounting', after the VAT case that established the principle.

Following a Dutch VAT case, however, the use of Lennartz accounting has been considerably restricted. If this affects your business, see <http://www.hmrc.gov.uk/briefs/vat/brief0210.htm>.

Ex-Partner Bound by Partnership Accounts

In a partnership, the investment capital on which the business is founded is normally supplied (at least in part) by the partners. Their earnings are credited to their individual accounts in the business and the money withdrawn by each is deducted from their individual account.

When a partner retires, there will almost always be an amount due from the partnership to the partner or vice versa. A partnership agreement therefore normally contains a provision that the final partnership accounts for any period will bind the partners, so that there is agreement over the amount due to or from the retiring partner.

It is not unusual for figures in the firm's accounts to be disputed. What is less common, however, is the situation in which partners claim that the accounts do not

bind them. A recent case dealt with precisely such a claim. An ex-partner contended that he was not bound by partnership accounts that covered the year during which he left the partnership because he was not a partner at the end of the year for which the accounts were prepared.



The argument was that the relevant clause of the partnership agreement, which contained a procedure for contesting accounts and which bound 'all partners', did not apply to the retired partner because he was no longer a partner.

The Court of Appeal made short shrift of the claim, deciding that the point of such a clause was to bind anyone who had been a partner in the business for any part of the year in question. It was clearly not intended to create a situation in which some of the partners during the year would be bound by the accounts and others not.

In this case, it needed the Court of Appeal to give the clarity to the legal relations which the partnership agreement did not. A well-drafted partnership agreement is a very sensible precaution, no matter how well you think you know your partners, or your prospective partners, and no matter how well you get along.

Contact us for advice on partnership and shareholders' agreements.

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