

Business Update>

July to September 2007

ARE YOUR FREELANCERS REALLY SELF EMPLOYED OR ARE YOU FACING A TAX TIME BOMB?

A number of situations have attracted my attention in the last few months to raise this question again.

The first was a client who runs an agency for service providers to the fashion trade – a client of the agency retains assistants for their individual assignments – a common feature – these assistants are normally paid on a day by day or job by job basis and may work occasionally for the contractor and may be semi or permanently retained. Traditionally these assistants are treated as self employed. The Revenue has picked up on this and is maintaining that the assistants are employed and should be paid under PAYE.

The second was an article in the newspaper about a mini cab firm being pursued for £156,477 in PAYE and NI as the Revenue was contending that the drivers were employed and not self employed.

Apart from the tax aspects of the argument there are also the employment law implications – maternity and sickness pay, notice and unfair dismissal etc regulation.

I would urge you to consider all “self-employed” retained by your business and reflect as to whether they are really self employed or not – they could be self employed book keepers, secretaries, technical assistants, designers, operatives etc. I am aware that there is a cost to try to get those traditionally paid gross to go onto PAYE – but in the context of the increasing aggression of the Revenue; the fact that the employer cannot reclaim any tax back from the individual or claim credit for any tax paid by the individual – the “head in the sand” approach is really not realistic.

(For further details please see www.hiltonconsulting.co.uk – go to Business Update – July / August 2006)

CHANGES IN COMPANY LAW – THE COMPANIES ACT 2006

This new Act is coming into force in stages – some of the practical changes which will affect the day to day aspects of a company are as follows:

- There will be no requirement to have a company secretary.
- All companies will have to have at least 1 natural person as director.
- The minimum age for a director will be 16 and no maximum age.
- Private companies will be able to reduce their capital without court approval – as long as they are solvent.
- Private companies will be able to give financial assistance for the purchase of their own shares.
- Accounts will have to be filed within 9 months of the year end.

If you have any questions as to the implications of the new Act and how it may affect you please contact me.

NEW REGULATIONS RELATING TO HOLIDAY ENTITLEMENT FOR EMPLOYEES

On October 1st, 2007 new regulations come into force whereby statutory annual leave increases to 24 days per year. On April 1st 2009, this goes up to 28 days. There are also possibilities for paying in lieu of the extra holiday.

However, this entitlement also includes bank holidays, therefore if you are currently offering 20 days and 8 bank holidays you are meeting the new criteria.

Other regulations include the ability to carry over holidays from one year to another by mutual agreement and that additional leave is pro rata for part time workers.

Business Update >

Clients of Hilton who are covered by our professional fees insurance scheme have access to a free employment law helpline – the consultants are able to fully advise on these new regulations.

UNFAIR DISMISSAL

In recent newsletters the following advice was given by our Employment Consultants:

“In summary, it is important to consider the whole employment history before deciding to dismiss an employee. If dismissing with under a year service it is advisable to follow the statutory dismissal and disciplinary procedure and ensure that there is paperwork in place to demonstrate the true reason for dismissal. If there has been an incident concerning health and safety or whistle blowing, it is advisable to take legal advice before dismissal to make sure the correct procedures are followed and to minimise the risk of an expensive claim.”

This was in relation to a report that an unfair dismissal claim has been awarded for £477,603 and it should be noted that some claims can be brought against the directors personally. Likewise some claims can be brought even where the claimant has been paid as self employed.

AND FOR THE GOOD NEWS

There is no doubt that the compliance issues relating to employing staff are onerous – especially for smaller firms and it is about time the Government recognised that the business with up to 20 employees for example, is not the same as one with 100 employees and some obligation should be put onto employees in deciding whether they want to work for a large firm with protection or not. But there is also the problem of selecting staff. I have now subscribed to Thomas International who provide staffing profiling services. The process not only helps the employer to define the type of person required but to match the applicants' aptitude with that profile. I have now used it for several employment situations and would vouch for its benefit. I am now offering this service and if you would like further details please contact the office.

OFFICE MOVE

I have now moved offices and the new address is:

119 The Hub, 300 Kensal Road, London W10 5BE. The move was necessitated because of the development of the business and I have chosen to stay in the area because of the increasing number of clients in the vicinity retaining the practice.

Ben Warren