



NOVEMBER 2016

SNIPPETS

EMPLOYMENT AGREEMENTS MUST BE COMPLETE AND UP TO DATE

A recent case brought before the Employment Relations Authority (ERA), as a personal grievance claim for unjustified dismissal, serves as a warning to employers that their employment documentation must be up to date before they take on new employees.

An employee was dismissed for poor performance under a 90 day trial period policy – the employee was often late. The ERA found the employee was completely unaware that his employment was at risk because the employment agreement provided did not include the provision for a trial period and the employment contract was a blank template without his name or rate of pay. Therefore, the employer could not dismiss the employee without following a fair and reasonable process. Moreover, due to the employer's false reliance on the 90 day trial provisions, no formal performance management was undertaken. Therefore the employee's personal grievance claim was upheld, awarding the employee \$5,000 for lost wages and unpaid holiday leave, plus \$3,000 in compensation.

Many employers may be unclear as to whether they need to amend their existing Employment Agreements. Clauses such as "the employee is required to work all additional hours" or "the hours of work will depend on the availability of work and our business demands" do not adhere to current legislative requirements following amendments made to several key pieces of employment law on 1 April 2016 and will require updating, possibly by way of a mutually agreed signed document variation.

Minimum employment obligations? Workers must be provided with their minimum entitlements, including being paid at least the minimum hourly rate, having a written employment agreement and ensuring all time, wage, holiday and leave entitlements are accurately recorded and available.

SMOKE ALARMS IN RESIDENTIAL TENANCIES

From 1 July 2016 all tenancies must have smoke alarms in each sleeping space or within 3 metres of the main entrance of any sleeping space. Also, there must be at least one smoke alarm on each storey of the building.

The alarms must be in full working order, installed in accordance with the manufacturer's instructions and not past their replacement date. Unless the alarms are hard-wired, they must state their replacement date.

Alarms must be the photo-electric type, meet specified standards and must contain compliant batteries. When a new tenant comes in to a property, the landlord must ensure the battery is current at the start of the tenancy. From this point, tenants are responsible for replacing the alarm's batteries. Some alarms now available have a 10 year life with no requirement to change the batteries – rather the whole alarm is replaced at the end of its life.

PAYING THE POLICE!

The Government is pushing ahead with legislation to allow the police to charge for the recovery of "certain costs" that "predominantly deliver direct benefits to private individuals". The bill had been stalled after concerns about charging organisations for vetting services. Ministers have now agreed to a waiver regime for registered charities, though there has been no mention of schools and others who must vet staff and will now probably be charged for it. Currently, charging is only envisaged for vetting services, but there has been talk about charging for keeping the peace at repossessions, responding to insurance company inquiries and supervising lottery draws!

IRD TAX COMPLIANCE OBLIGATIONS

The Inland Revenue is currently focussing on tax obligations and in particular employers' compliance as to their obligation to deduct withholding tax from payments to contractors' schedular income. Unless a valid certificate of exemption or a special tax code is declared this tax must

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FURTHER RESTRICTIONS ON HIGH LOAN TO VALUE RATIO LENDING

The Reserve Bank believes that although low interest rates are currently supporting loan servicing ability, elevated debt ratios leave the household sector vulnerable when lending rates increase or economic conditions deteriorate. Consequently, the Bank has introduced new restrictions on high loan to value ratio (LVR) lending from 1 October 2016. As a result:

- Residential property investors will generally need a 40% deposit for a mortgage loan, and
- Owner-occupiers will generally need a 20% deposit.
- In both cases, banks are still allowed to make a small number of loans to borrowers with smaller deposits.

Exemptions from the LVR restrictions include:

- Loans to people building a new residence. The exemption applies to owner-occupiers and to residential property investors - the LVR rules do not prescribe the size of a deposit for new residences. The loan must be for a residence that has been completed within the previous six months and it must be bought from the developer.
- Loans are exempt if used for remedial work after a fire or earthquake, to bring a residence up to new building codes, or to comply with new rental property standards (for example, insulation). The exemption applies to owner-occupiers and to residential property investors.
- Low deposit borrowers using the Housing New Zealand Welcome Home Loan scheme to buy their first home are exempt from the LVR rules.

PROFIT - THE NUTS AND BOLTS

When you view your Financial Statements, can you look at the numbers and access your business' true profitability? Here are some things to look for:

Gross Profit = Net Sales – Cost of Goods Sold

On your Profit or Loss Statement or Trading Account, gross profit is the difference between revenue and the cost of goods sold (or services provided). It generally appears before administrative expenses and general overheads are accounted for. Ideally, gross profit covers your overheads as well as generating your targeted profit – i.e. net profit.

Net Profit Before Tax = Total Revenue – Total Expenses

Net Profit is what you are going for – it is the actual bottom line after all expenses, including any interest paid on money you owe, and overheads have been paid.

There are other indicators worth analysing to read your profitability and gross profit percentage is one:

Gross Profit %	Gross Profit	100
	Sales	1
		x

Gross profit percentage is a valuable metric, being the amount your business earns per dollar of sales after you deduct how much it cost to make the sale. It is a useful broad brush indicator of profitability and useful in working out your business' breakeven point.



Ideally, your gross profit percentage is fairly stable, barring drastic upheavals in your business or industry. A drop might mean one of a number of factors which could be reviewed to correct – such as a rise in costs, waste or bad debts. In a competitive market where benchmarking data is available, you might compare your business' gross profit percentage to that of your competitors.

Comment:

Gross profit percentages can vary widely across different industries. For food and beverage businesses, for example, gross profit percentage is a very thin margin while for software businesses it tends towards the high end.

RELYING ON A LIM REPORT PROVIDED BY THE VENDOR? CHECK THESE TIPS



It is becoming more common for a vendor (or seller) to supply a LIM report and a building inspection report to potential purchasers. While this can help potential purchasers make an unconditional offer (or an offer with less conditions) the property purchaser does need to be careful when relying on these reports.

Land Information Memorandum (LIM)

As this is a government-issued report, the relevant Council is required to include all the information they have in respect of a property in the LIM report. However, the following should be noted:

- Check the date of the LIM report to ensure that it is current and up to date
- Check with the Vendor (via the Agent) to see if there have been any works or any new information come to light about the property since the LIM report was issued
- If the property is a unit title, check that the report is for the particular unit you are looking to purchase.

Building Inspection Report

As the building inspection report is prepared by a building inspector for the Vendor, extreme care is needed when relying on this report. Potential issues that could arise include:

The contract is between the building inspector and the Vendor. This means that if the building inspector has made an error in this report, the building inspector is not liable to the potential purchaser for any such error.

- The potential purchaser needs to ensure that they know exactly what the building inspection report includes and excludes – usually there will be a summary of what is covered by the report: e.g. the report may exclude checking the weather tightness of the property. If the summary is not with the document, it is recommended that a summary is requested directly from the building inspector.
- Check the date of the building inspection report to ensure that it is current and up to date.
- Check with the Vendor (via the Agent) to see if there have been any works undertaken on the property since the date of the building inspection report (including any remedial work that may have been completed).
- Check that the building inspection report was undertaken by a building inspector who has professional indemnity insurance and who carries out work in accordance with NZ Property Inspection Standards.

Comment:

After taking into account the points above, a potential purchaser may consider they are satisfied with the risks involved in relying on a building inspection report supplied by the Vendor, or that it is preferable to obtain an independent building inspection report.

ENTERTAINMENT EXPENSES – GIFTS OF FOOD AND DRINK

The Entertainment Expense rules limit tax deductions for businesses for certain types of expenses to 50% of the cost. The expense of providing food and drink off business premises and spending on things like chocolate or a bottle or two of wine to give as gifts to customers, clients or suppliers, for example, is only 50% deductible, as made clear in a recent Inland Revenue Commissioner's "position".

If the items are purchased as a gift basket or together with other items that are not food and drink, the expenses must be apportioned between fully deductible and not fully deductible.



INSOLVENT DEBTORS

One of the challenges of being in business is ensuring that debtors pay you in accordance with your business' terms and conditions of trade and it is especially galling

to be caught unaware by the bankruptcy of a sole trader for whom you have provided goods or services. or a company that has had a liquidator appointed.

In the above cases your only option (in the absence of holding a security interest over the debtor's assets) is to lodge an unsecured creditor's claim with the Official Assignee in a bankruptcy, or with the appointed liquidator which on some occasions may also be the Official Assignee.

It is one of the functions of the Official Assignee in a bankruptcy – and of a company's liquidator – to consider whether any creditors have received payment of their debt in priority to other unsecured creditors at a time when the debtor was insolvent. Where the payment occurs within two years prior to the commencement of bankruptcy or liquidation, and at a time where the bankrupt or company was insolvent, there is a risk that the payment made in priority will be challenged by the Official Assignee or liquidator.

This is because the simple reality is that insolvency does not occur overnight and the philosophy behind provisions in the Insolvency Act 2006, which may allow the Official Assignee or liquidator to recover the amount of the payment, is to prevent an alert creditor getting paid, jumping ahead of the queue of the unsecured creditors.

Of course, most creditors will have received a payment from a debtor in good faith. However, if a significant payment is accepted in circumstances where you clearly have knowledge of the debtor's insolvency and the debtor is subsequently bankrupted or liquidated, you should be aware of the possibility of a challenge from the Official Assignee or liquidator.

FILE YOUR TWO EMPLOYER FORMS EACH AND EVERY MONTH

As an employer, you must file, whether by post or electronically, both an Employer Monthly Schedule (IR348) and an Employer Deduction form (IR345) every month.

The IR348 lets the Inland Revenue know how much your employees earn and what their tax and other deductions are.

The IR345 is your employer 'payment slip' and lets the IRD know how to split your payment to them for the month. Without it your payment will not go to each tax type correctly, causing incorrect debt letters to be issued with possible penalties and interest, not to mention the time it may take you to sort it all out.

If you would like assistance with registering to IRfile your Employer returns each month, please contact our payroll administrator, Rachel.

Newsletters are available by e-mail - please go to our website www.grahamdobson.co.nz click on the "Our latest newsletter: view or subscribe" icon and complete the registration screen.

You can't argue with kids!

The Sunday School lesson set for primary school age group was on 'planning for your salvation'.

To simplify the message, the teacher asked the class:
"If I sold my house and my car, had a big garage sale and gave all my money to the church, would I get into heaven?"

"No!", all the children answered.

"If I cleaned the church every day, mowed the lawn and kept everything neat and tidy, would I get into heaven?"

Again, the answer was, "No!"

"Well, she continued, "then how can I get to heaven?"

One boy confidently answered, "You've gotta be dead".

