

Examples of legal articles you could use on your website

These are the articles we sent out in August to law firms that subscribe to our business client service. They contain news items that will be of interest to your commercial clients and can be placed on your website or used to create an email newsletter. This monthly newsfeed is free to law firms that subscribe to our quarterly 4-page newsletter for business clients. Alternatively, you can subscribe to them separately for just £95 per month plus VAT.

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August Business Client Website Articles

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Default Retirement Age to be scrapped from next year

The Government has announced that it plans to scrap the Default Retirement Age from October next year.

It means that employers will no longer be able to force employees to retire simply because they have reached the age of 65.

Ministers are now beginning a consultation process on the issue but have already outlined the timetable for a phased implementation. It means that from 6th April 2011, employers will no longer be able to issue any notifications for compulsory retirement using the DRA procedure.

For the period between 6th April and 1st October 2011, only people who were notified before 6th April 2011 and whose retirement date is before 1st October 2011 can be retired compulsorily using the DRA.

After 1st October next year, the DRA can no longer be used to oblige employees to retire. If employers wish to retire an employee after that date they will have to show that their reasons are objectively justified.

Valid reasons would need to relate to the nature of the work, such as the tasks carried out by police officers or air traffic controllers.

The Government also proposes to remove the statutory retirement procedures which it regards as an unnecessary burden on employers. This is the process which gives employees the "right to request" that they are allowed to continue working after the age of 65. It also obliges employers to give employees six months notice of retirement.

Employment Relations Minister Edward Davey said: "We are committed to ensuring employers are given help and support in adapting to the change in regulations, and this consultation asks what kinds of support are required."

The consultation runs until 21st October this year. It asks for views on what level of guidance or formal code of practice is needed by employers in dealing with future retirement issues. It also seeks views on whether removing the DRA could have unintended consequences for insured benefits and employee share plans.

Please contact us if you would like more information about the issues raised in this article.

Government confirms October start date for Equality Act

The Government has confirmed that the Equality Act will start to come into effect in October.

The Act, which brings together nine separate pieces of legislation under one umbrella, was introduced by the previous Labour administration.

There was some speculation that the new coalition was not committed to the Act but the Government Equalities Office says it will go ahead. It means there will be several changes affecting businesses and employers relating to discrimination in its various forms.

For example, businesses should be aware that people who access goods, facilities and services are protected from discrimination relating to a “protected characteristic”. These characteristics are:

- disability
- gender reassignment
- pregnancy and maternity
- race – including ethnic or national origins, colour and nationality
- religion or belief
- sex and sexual orientation.

With the exception of pregnancy and maternity, people do not have to have one of these characteristics themselves to be protected from discrimination. The protection also applies if a person is unfairly treated because they are wrongly perceived to have a particular characteristic.

This might apply, for example, if a person is discriminated against because they are perceived to be gay when in fact they are not.

The protection also extends to people who are treated unfairly because they associate with someone who has a protected characteristic.

The Act also introduces several changes relating to the workplace and employment law.

For example, the Act develops the concept of indirect discrimination, which can occur when there is a rule or policy that applies to everybody but creates a disadvantage for employees with a particular protected characteristic.

As with goods and services, there can be no discrimination relating to perception or association.

There are also changes relating to harassment and victimisation, and the Act also introduces the concept of harassment by a third party. This means that employers are potentially liable for harassment of their staff by people they don't employ.

The Home Secretary and Minister for Women and Equalities, Theresa May, said: “By making the law easier to understand, the Equality Act will help business treat staff fairly and meet the needs of a diverse customer base.

“A successful economy needs the full participation of all its citizens and we are committed to implementing the Act in the best way for business.”

Not all the changes will be implemented at the same time and the Government is still considering its position on some of the equal pay measures outlined in the Act. Ministers are expected to offer more guidance over the coming months.

Businesses and employers may want to review their policies if they have not already done so to ensure they meet the requirements of the Act.

Please contact us if you would like more information.

Father fails to prove he was in partnership with his son

A father has failed to prove that he was his son's partner in business and so entitled to a share in his company.

The son had set up a courier business from scratch and after six years of successful trading he decided to incorporate it. He was allocated two thirds of the shares and the remainder went to the operations manager.

The father then claimed that he and his son had set up the business in partnership and so he too should be allocated shares. The court then had to decide whether the business had been conducted by "two or more persons in common" to meet the definition of partnership required by the law.

The father claimed that setting up the business had been his idea. He said he had dealt with clients because his son was dyslexic, and he had provided the necessary commercial experience.

However, the son submitted that he had set up the business himself as a sole trader and that he had never treated his father as a partner.

The court held that the evidence of the son and his witnesses was more reliable than that of the father. The father's evidence was largely fictitious and based on very few documents. There was, however, a large body of documentation relating to the company, none of which showed any reference to the existence of a partnership between father and son.

The father therefore had failed to show that there was a partnership.

Please contact us if you would like more information about the issues raised in this article.

Technical error prevents business tenant from terminating lease

The need to always get the legal technicalities right was illustrated in a recent case in which a firm failed to terminate a lease on one of its premises.

The lease had begun when the firm was run as an independent business. The terms allowed for the lease to be terminated by giving six months notice in writing.

The firm later merged with a group of companies. The landlord was informed that it would be changing its name to that of the parent company. Rent invoices were then sent to the parent company which took over responsibility for payment.

As time went by, however, the change of name did not take place. The parent company then decided to terminate the lease. It gave the necessary six months' notice but used its own notepaper rather than that of the original firm.

The notice also used language expressing that it was written "for and behalf" of the parent company.

The landlord claimed that the notice was invalid because it had not been given by the original firm which was still the official tenant.

The court has now found in the landlord's favour saying that the notice had clearly been written by and on behalf of the parent company. There was no evidence that it had any authority to act as an agent for the original firm that held the tenancy and so therefore the notice to terminate the lease was invalid.

Please contact us if you would like more information about landlord and tenant issues.

More flexibility for developers over zero carbon homes

Developers and local authorities could be given more flexibility over the way they meet Government targets to ensure that all new homes are zero carbon rated from 2016.

The Housing Minister, Grant Shapps, says he will explore ways in which builders could help fund community energy projects such as wind farms and district heating schemes as a way of fulfilling their obligations to reduce carbon emissions from new homes.

The Government will also revise building regulations to set minimum standards for energy efficiency measures such as loft and cavity wall insulation. These standards will be based on revisions outlined in the recent consultation on the Code for Sustainable Homes.

Mr Shapps said: "This is about meeting tough environmental standards, but not dictating how every home should be built. Councils and developers together are in the best position to decide how best to meet these standards, so we are looking at giving them the flexibility and a range of options to do this.

"We are committed to all new homes being zero-carbon from 2016, and have the right mix of measures in place."

We shall keep clients informed of developments.

Government wants to change tax rules for holiday lettings

The Government wants to change the special tax rules for furnished holiday lettings to bring them into line with EU regulations.

The special rules allow businesses that meet certain conditions to be treated as trade for some tax purposes when letting holiday homes. These include loss relief, capital allowances, Landlords' Energy Saving Allowance (LESA) and certain capital gains reliefs.

To qualify for this tax treatment the property must be situated in the UK or in the European Economic Area (EEA) and the business must be carried on commercially with a view to making a profit.

The previous Government had intended to repeal the special rules but the new administration fears that doing so would have an adverse effect on UK businesses and the tourism industry. However, it accepts that some changes are necessary to ensure the rules comply with EU requirements.

It therefore proposes that:

- The minimum period over which a qualifying property must be available for letting to the public in the relevant period is increased from 140 days to 210 days in a year.
- The minimum period over which a qualifying property is actually let to the public in the relevant period is increased from 70 days to 105 days in a year.
- Losses made in a qualifying UK or EEA furnished holiday lettings business may only be set against income from the same furnished holiday lettings business.

The Treasury and HM Revenue and Customs are now conducting a public consultation on the issue. Views must be submitted by 22nd October this year.

We shall keep clients informed of developments.

Tougher approach to licensing as Home Office takes full control

The Home Office has taken over full control of alcohol licensing and is promising a much tougher approach to enforcement.

The minister responsible for crime prevention, James Brokenshire, said the Government is increasingly concerned about the alcohol related anti-social behaviour that continues to blight our towns and cities.

He said: "The Government believes that the power to make licensing decisions needs to be rebalanced in favour of local communities, so that they can decide on the night time economy they want.

"We have already committed to overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.

"We will toughen the sanctions for those premises found to be persistently selling alcohol to children and will allow local councils to charge more for late-night licences, which in turn will raise money for extra policing. We will also ban the below cost sale of alcohol."

The Home Office previously shared responsibility for alcohol licensing with the Department for Culture, Media and Sport. It's hoped that the new approach will reduce duplication and produce a more consistent approach to tackling the problem.

SMEs waiting even longer for invoices to be settled

There has been a huge increase in the time SMEs have to wait before their invoices are paid, according to research by BACs.

The average waiting time is now 41 days beyond agreed terms. That's an increase of 9.5 days since June last year, showing how much the problem has escalated in just 12 months.

Michael Chambers, managing director of BACs, said: "Small businesses rely on receiving payments on time so that they can maintain cash flow and ensure the business can run on a day-to-day basis.

"Our research highlights the continued widespread nature and real impact of the late payment problem, which was affecting 961,000 SMEs in December last year - that's a massive 57% of all British SMEs."

According to the BACs research, 37% of SMEs believe that large companies are the main offenders for late payments, 17% cited sole traders and 17% also blamed other SMEs.

Cash flow was the most common reason given for late payments, with 7% of late payers blaming the economic downturn and a further 7% saying they had to wait to be paid themselves before they could pay their suppliers.

The law provides several measures to help firms to protect their interests and ensure prompt settlement.

Please contact us if you would like more information about dealing with late payments.