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Summer 2017

Tax change 'could lead to more business failures'

The recent changes to corporation tax loss relief could lead to more business failures, according to the insolvency specialists, R3.

Following changes introduced in April, companies are only allowed to write off 50% of past losses from future corporation tax bills, rather than the previous 100%.

The changes are expected to raise £1.6bn over the next five years, but this could come at the cost of an increase in business failures.

Andrew Tate, the president of R3, said: "The loss relief reforms could damage business rescue in the UK. In some cases, business rescues will be hindered by hefty tax bills. More business failure and less business rescue will be the consequence.

"It's frustrating that while the government is considering reforms to boost business rescue, the failure to tweak the loss relief reforms could cancel out that work significantly.

"The impact on other creditors in situations where businesses have failed is problematic, too. The failure of one company can cause the failure of another if there is not enough money owed to it returned through an insolvency procedure.

By limiting loss relief so significantly, HMRC is essentially jumping the queue of creditors and will benefit from money

that could have been a lifeline for small businesses and other trade creditors."

The warning highlights the need for firms to keep a tight rein on credit control to ensure they are paid promptly. Invoices that are allowed to remain unpaid for long periods may prove impossible to recover if the debtor goes out of business.

A solicitor's letter is often enough to ensure payment. If not, the law provides several other ways to recover debts up to and including court action.

Please contact us if you would like help with debt collection and credit control.

Jaguar Land Rover must pay out £19,000 over 'racist slurs'

Jaguar Land Rover has been ordered to pay £19,000 compensation to a black employee who was subjected to racist slurs by staff and management.

Mr Paul Hoyte claimed he had regularly suffered abuse and harassment because of his race and disabilities.

The Employment Tribunal was told that Mr Hoyte suffered from depression, anxiety and irritable bowel syndrome. He had been off work for nearly two years before he was dismissed in March 2016 on the grounds of capability.

The tribunal rejected his claim that he was unfairly dismissed but accepted his claim of harassment and disability discrimination. It found that "racially offensive" terms were used by management and colleagues.

Judge Lloyd said: "One of those we think was the word 'Abo'. We think that word had probably been used sporadically of the claimant for some time during his employment by associate and management staff.

"Ironically, we do not think it was meant to be gratuitously offensive.

"But we cannot avoid the conclusion that it was bound to be very racially offensive to a black man like the claimant.

"We believe this was part of harassing conduct towards the claimant, which impugned his dignity significantly; even if it was not intended as a deliberate racial slur."

Mr Hoyte needed to take urgent toilet breaks due to his condition but was told that he needed to ask permission from his line manager before stopping work.

Judge Lloyd said: "Given the nature of his medical condition, that rule was both embarrassing and demeaning in a way that a non-disabled colleague would not be subjected to."

Mr Hoyte was awarded compensation of £19,152.

Please contact us for more information about the issues raised in this article or any aspect of employment law.

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Court upholds ruling on holiday pay

The Court of Appeal has upheld an employment tribunal finding that employees are entitled to have commission earnings added to their holiday pay.

The case involved British Gas and one of its salesmen, Mr Joe Lock. Mr Lock earned a basic wage plus commission. However, when he took holidays, he was only paid at the basic rate, with no element of commission.

He challenged this in 2012. The Employment Tribunal referred the case to the Court of Justice of the European Union. It ruled that his commission was “intrinsically linked” to his work and should be included in his holiday pay.

It returned the case to the tribunal to determine how the ruling could be incorporated into British law under the Working Time Regulations (WTR). Last year, the tribunal held that the European court’s ruling was compatible with the WTR and so commission should be included in holiday pay. The Court of Appeal has now upheld that decision. It means that companies have to include commission in holiday pay.

Employers should note that the ruling only relates to the four week holiday entitlement under European law; it doesn’t include the extra 1.6 weeks available under UK law.

Please contact us if you would like advice or information about employment law.

Mediation ‘saves money when settling disputes’

Several leading judges and lawyers say businesses could save millions of pounds if they used mediation as a way of settling disputes with employees and other companies.

Research by the Centre for Effective Dispute Resolution (CEDR) suggests that about 10,000 cases went through mediation last year - an increase of 5.2% on 2014.

Mediation allows disputing parties to settle their disagreements with the help of a trained mediator at a fraction of the cost of going to court.

It can also help both sides to maintain a good working relationship after the dispute is resolved. Lord Justice Briggs told the Solicitors Journal that mediation worked particularly well for small claims up to £10,000.

At a recent legal forum on mediation, Eileen Carrol QC said: “After all my years litigating, I can’t imagine that it could be worse than spending three, four, five hundred thousands of pounds and being out of control of the dispute.”

Please contact us for more information about mediation and how it can help your business.

Bank wins claim against property valuers

A bank has won a professional negligence claim against a property company that failed to carry out two valuations correctly.

The court heard that the valuations concerned two seaside arcades.

The corporate owner of one of the arcades wished to buy the other and run them as a joint business.

It had been a customer of the bank for years and had a significant borrowing history.

It applied for a loan of £1.8m to buy the second arcade and to perform building work so that the two could be operated together.

The valuers used a turnover multiplier basis of valuation. They valued the company’s existing arcade at £2.7m and the second one at £1.5m.

The borrower later went into administration and the arcades were sold for only £1.35m.

The bank's case was that the valuers had taken the wrong approach, which resulted in negligent over-valuations.

It argued that the valuers should have adopted an EBITDA-based approach (earnings before interest, tax, depreciation, and amortisation).

The court ruled in favour of the bank, saying the EBITDA approach would have resulted in more accurate and reliable valuations.

Please contact us if you would like more information about professional negligence claims.