

Aspire

Helping owner and family managed businesses

Welcome to the May edition of the Aspire newsletter



Over the last few months, we have been working hard to improve the level of support and resources available to owner and family managed businesses across the region. This has resulted in us enhancing our Aspire programme and I am delighted to share more details on this exciting development with you below.

This edition also includes a range of articles that we hope you will find of interest. We discuss handling employment issues with confidence, things to keep in mind when customers will not pay for your goods or services and top tips for businesses looking to relocate.

I very much hope you enjoy this edition of Aspire. If you have any questions or feedback regarding this newsletter, or indeed any of our services, please do not hesitate to contact us.

Dermot Carey, Managing Partner of Taylor Walton

Enhanced support for owner managed businesses

This month sees the official launch of our enhanced Aspire programme for owner managed businesses.

Membership of Aspire is free of charge, and will automatically be provided for existing relevant Taylor Walton clients. The programme provides a range of added-value benefits as well as access to our full range of both business and personal legal services.

Benefits include a one stop shop for all your legal needs, regular updates on topics we believe will be of interest to you, priority booking on Aspire events and workshops, and the opportunity to meet and share experiences with your peers.

Our first event for 2016 is "The secrets of the sale: how to successfully sell your business" which is being held at Sopwell House on 22 June from 3.30pm to 6pm.

If you are new to both the Aspire programme and Taylor Walton, our expert team will come to meet with you to learn about you and your business. This will help ensure we are ready to assist whenever you need us.

To find out more, register as an Aspire member business or to register for our popular Aspire events and workshops, please visit: www.taylorwalton.co.uk now.

Offices at: Luton, Harpenden & St Albans.
visit us at taylorwalton.co.uk or call 01582 731161

Handling Performance Issues with Confidence

Assessing poor performance can be difficult and although employees cannot normally claim unfair dismissal until they have at least two years' continuous employment, they are still in a position to bring discrimination claims. Managing a poorly performing employee is a challenge for businesses. This article sets out the key steps that if followed, will allow you to handle performance issues with confidence.

The Importance of Evidence

In order to address poor performance the employer requires evidence/examples of the poor performance to discuss with the employee. Employers often find it difficult to obtain sufficient evidence as poor performance is often difficult to quantify. An effective performance appraisal system will assist as it should provide a written record of concerns about an employee's performance and should set objectives for improved performance. However, in order to be effective, managers need to be honest with their employee about their performance. It is not credible for an employer to raise performance issues with an employee if the employee has recently received a positive appraisal.

Whilst it is important to address performance issues, at the same time employers should not "jump in with both feet" and take a heavy handed approach leaving the employee feeling humiliated and devalued.

The purpose of managing poor performance is:

1. to enable the employee to improve their performance within a sensible period of time; and

2. to enable the employer to take appropriate disciplinary action where there is no improvement in the employee's performance.

The ACAS Code

If the employee's performance does not improve, it will be necessary to follow a fair disciplinary procedure in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the ACAS Code).

The ACAS Code recommends at least two written warnings (a first written warning and a final written warning) prior to dismissal for poor performance with a right of appeal against each warning and dismissal. Employees should be given a reasonable timescale between each warning to improve their performance.

The length of time will depend on the circumstances of the case but it is usually between three to six months. The employer should also provide additional support and training to help the employee improve their performance. The employee's performance should be reviewed on a regular basis.

If after receiving a final written warning and additional support, the employee's performance has failed to reach the required standard the employer may be in a position to dismiss the employee fairly.

Seeking Legal Advice

Businesses often seek advice when it is too late. It is far better for employers to take legal advice at the beginning of the disciplinary procedure rather than after dismissal as it is not possible in most cases to rectify mistakes. In those circumstances legal advice is limited to a damage limitation exercise. Prevention is better than cure and we recommend that employers take advice from the outset to ensure they are on the right track.

Our expert employment team are always on hand to advise on this, and other employment matters affecting your business. Please feel free to contact us at any time to discuss your requirements.



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Our employment team regularly run employment law workshops, for more information please visit taylorwalton.co.uk/events-insights



Six things to keep in mind when customers will not pay for your machinery, goods or materials

Have you supplied goods, machinery or materials and not been paid in full? Sadly, it happens too often. These tips can be used by any supplier but are particularly relevant to companies that import goods as well as those in the construction industry.

Here are six key points for when a customer has not paid in full for your goods:

1. **Do you have a written contract?** It is not a given that your contract terms apply between the parties. Did you get the customer to sign or directly confirm the contract by email or via your website? Without a written contract, and preferably one drawn up for the transaction, the customer will likely have an easier time blocking any recovery claim.
2. **Check the terms.** Does your contract include a term that allows you to get your goods back when the customer has not paid in full. These are also known as "Retention of Title", "ROT" or "Romalpa" clauses and are vital in helping to get your goods back.
3. **If there is an "ROT" clause, what type is it and what procedures does it set out?** Make sure you check out the enforcement clause before chasing to ensure you follow the steps set out in that clause. Any other approach could lead to refusal or failure.
4. **Is the "recovery" worth it?** Do you want the goods back and/or is it practical to get them back? Admittedly, sometimes the goods will not be recoverable where they have been mixed in with, built into something else, or simply spoilt. Other times they just may not be worth recovering. Unless the scrap value is not worth the cost of recovery, you should always take advice before



deciding either way.

5. **Have they gone bust?** Many suppliers give up too soon when an insolvency practitioner is appointed. Don't! Talk it through with an independent advisor first. We can help guide you through such claims.
6. **Did anyone personally guarantee the contract?** Is the director liable as well as the company? Even if the customer has gone bust, others (such as directors) may still be on the hook if they signed a guarantee when they made the order or opened a credit account with you.

So what now?

If you are a supplier and you have previously lost money as a result of one of these points, or if you are worried that one of them might apply to a current project then you should consider reviewing your contract and your accounts policies.

Finally, please remember that for all the carefully drafted terms or well-intended policies, any claim to recover goods will be less effective or impossible if those terms and policies are not applied to the customer. For further advice on this complex area, please contact us now.



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Some tips for businesses looking to relocate

Most seasoned commentators would agree that the growing property market is a good indicator that the UK economy is heading in the right direction. Whilst this may be good news for investors, it may not be ideal for owner managed businesses.

Here are some tips to consider when considering relocation:

1. Flexibility v established presence

Many businesses value the flexibility of a "Licence Agreement" where they can hire premises for a short term without major commitment to a Landlord. The downside to this flexibility is that the arrangement can be terminated at short notice by the Landlord.

Leases give a greater degree of permanence and, if well negotiated, can also give a good degree of flexibility such as introducing break clauses which entitle the Tenant to vacate the property if business plans do not turn out as rosy as expected.

2. Affordability

It can be easy to get a false picture of the cost of business premises. It is essential that the Tenant builds up a global picture of the cost of the premises and this will include not only the rent but also insurance, service charges, utilities and maintenance.

3. Beware hidden dangers

Due diligence on new business premises is a necessity not a luxury. Knowing the legal position on issues such as the Tenant's repairing obligation can potentially save tens of thousands of pounds. A well instructed lawyer can tailor the lease to get the best deal possible from the Landlord. A building survey is also well advised in order to flag any potential problems in the future.

4. When considering new premises keep focused on your desired outcome.

It is easy to lose sight of the reasons why a business is



moving. Maybe the business needs bigger premises or the current lease is coming to an end.

Choosing a property and doing the due diligence should not be a last minute option. Many factors will feed into the equation. Such as when looking at the potential growth needs for the business in the future, are the logistics of the building suitable for your purposes? (for example can the building be sub-divided). Is "foot fall" important to your business? Taking premises in a glamorous (and expensive) location can be a completely wasted expense if foot fall is not important particularly in an "online" world where more and more business takes place electronically.

We have commercial property teams based at our St Albans and Luton Offices who act for a wide variety of businesses ranging from owner managed businesses to FTSE listed companies. Our large team of practitioners specialise in all aspects of commercial property and Landlord & Tenant law.

For more information please contact us now.



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Because Experience Counts



The information given in this update was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.
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