

## **An end to the recession?**

Recent figures provided by the National Institute of Economic and Social Research show that Britain's economy grew for the first time over a three month period since May last year. The rise was small at 0.2 per cent but this was an improvement on the continued contraction over previous months. A survey of business confidence by the Institute of Chartered Accountants also gave some good news recording a significant increase in business confidence among senior professionals. It may be too early to assume that business will return to normal in the near future but there are practical steps that employers can take now to prepare for the upturn and protect their position in the event of a future downturn.

### **Statement of Terms**

All employers are required to provide employees with a written 'Statement of Particulars of Employment' under Section 1 of the Employment Rights Act 1996. This must be provided within the first 2 months of employment. The Act sets out the various provisions that must be contained in the statement. These include, among others, details of the employer and employee, the date the employment started, the rate and frequency of pay and details of holiday. Failing to provide an employee with this information can lead to an award of 2 to 4 weeks' pay being made to the employee by an Employment Tribunal. The employee cannot bring a free-standing claim for this but it can be claimed alongside other claims in the Employment Tribunal.

In addition to the above, a suitably drafted contract of employment will give certainty to what the agreed terms are and allow the employer to have additional clauses in place to assist with the business.

### **Short time working and lay-off**

The difficult trading times that many employers have experienced have led to them to consider redundancies, or in some cases, an alternative of short time working or temporary lay-offs. Where there is no express contractual right to put employees on short time working or lay them off, this can only be done if the employees agree to the change. An employer who tries to unilaterally impose either could be looking at employees resigning and claiming constructive dismissal. Some employers have had the benefit of clauses dealing with short time working or lay-off and have been able to rely on these to reduce employees' hours and their own liability to pay full wages as a result. This may also have reduced the need to make redundancies with the associated costs and issues of losing skilled and valued workers.

### **Review**

It is a good idea for employers to review contracts of employment regularly to make sure that they keep abreast of changes in legislation, such as increases in holiday entitlement. A review can also allow employers to consider if the contracts that they have in place are suitable for the business's current needs. Changes to existing contracts of employment can only generally be made with employee's consent but this consent is likely to be easier to obtain during a period of stability and after suitable consultation. Consideration can also be given to making changes only to new contracts of employment to give limited benefit under new terms.

Thursfields offer a Free Legal Health Check for your business which includes a review of your contracts of employment, associated handbooks and policies, and Memorandum and Articles of Association. If you would like further information on this please contact Thursfields Employment or Commercial Department.

## Employment Law Update

Thursfields Employment Law Department will be running a free Employment Law Update Seminar. The event will be held at The Training Suite at The Thomas Vale Group, Lombard House, Worcester Road, Stourport-on-Severn, Worcestershire DY13 9BZ on the morning of Wednesday 21<sup>st</sup> October 2009. The course is aimed at those dealing with HR issues in the workplace and will update attendees on recent case law and legislation changes in a number of key areas – changes to maternity/paternity rights, TUPE update, termination payments and their taxation, and planned legislation changes affecting agency workers. Places are free but limited. If you would like to book a place please contact [njones@thursfields.co.uk](mailto:njones@thursfields.co.uk).

## Case Study

### **Stuart Peters Limited v Bell , Court of Appeal**

In this recent case the Court of Appeal has looked at the amount of notice pay that a dismissed employee should be awarded where the employee has found new employment within their period of notice.

#### **Facts**

The employee, Ms Bell, was found to have been unfairly constructively dismissed by her employer – she had resigned in response to her employer's conduct. She was entitled to six months' notice pay under the terms of her contract and was awarded this by the Employment Tribunal without any offset being allowed for earnings she had received from new employment during this time. The employer appealed the decision.

#### **Decision**

The Court of Appeal overturned the decision of the Employment Tribunal, which had been approved by the Employment Appeal Tribunal, and concluded that her earnings during the notice period could be offset against her notice pay. The decision did confirm though that where an employee is dismissed by the employer, rather than resigning, it remains 'good industrial relations' to award notice pay without deductions where an employee has been unfairly dismissed without notice.

#### **Comment**

This decision will be a relief to employers who find themselves with a tribunal claim for unfair constructive dismissal. It will lead to different levels of compensation depending on who terminates the contract but will prevent an employee who resigns from their employment receiving a windfall if they have found alternative work during their notice period.

## Thursfields Debt Recovery Services

In the current economic climate, all late payers are proving to be a headache with bad debts seriously affecting cash flow! With our professional expertise, we can help to recover your money and ease your problems. We offer a cost effective service with fixed rates (not charges by the hour) available upon application. For details, contact Gordon Smith on 01562 512447 or email: [GSmith@Thursfields.co.uk](mailto:GSmith@Thursfields.co.uk)

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