

Newsletter Spring 2016

Sustainability in the workplace

The word 'sustainable' seems to be thrown around on a regular basis these days, not just in relation to the food we eat, but also to business and the wider economy.

Sustainability in a work environment relates to an awareness of resources: how they are used and how we can conserve these resources to the benefit both of our environment and our pocket.

The impact this thinking can have in our workplace is significant. It can alter staff attitudes and behaviours positively, with a common goal, a shift in motivation and a more positive approach. Through sustainable practices, employees may be moved to reconsider other aspects of their approach, from how they exercise to how business is conducted. Sustainability is about respect: for the environment, other team members and the business itself. And it helps highlight to employees just how and where company resources are used.



Develop a strategy with your team. Here are some simple starters:

- Recycle whenever possible, including paper, plastics, aluminium, and glass
- Set your printers to double sided by default, and recycle paper
- Include a snippet on green practices in your induction manual
- Use environmentally friendly cleaning products
- Think about not using the in-sink waste disposal - recycle and compost as much waste as practicable
- Establish a carbon free travelling initiative with employees
- Dedicate five minutes of the weekly team meeting to generate new ideas

Sustainability ties in with sound business practices - building efficiency, minimising waste and maximising resources. A more efficient operation cuts costs. And sustainable businesses are in tune with today's market as customers and investors are more and more interested in the impact of business on society and the environment. By refocusing how you operate, you can make your business more sustainable.

Tax changes for LTCs: watch this space

Proposals to change the rules governing look-through companies (LTCs) and closely held companies are currently going through parliamentary hearings and consultations. If passed, the Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Bill is expected to take start taking effect from the 2017 tax year.

The proposed changes are part of the moves to simplify tax, however there are some proposals which have a significant favourable effect. One such proposal is the removal of the loss limitation deduction in most cases (that is, where LTC losses are effectively limited to the amount the owner has at risk economically).

Another proposal affects situations where companies are liquidated and distributions of capital gains are made to shareholders. Currently, distributions of tainted capital gains (arising through a transaction with an associated party) involved in the transaction giving rise to the capital gain, are taxable. The new proposal is to exclude genuine capital gains from this by only taxing those distributed capital gains where the purchaser is a company and the shareholders of the company disposing of the asset retain an interest in the asset of at least 85% after the disposal.

If you would like more detail on how the proposals would affect your business, please contact us.

Enforcing employment standards

It is taking time for the impact of this year's employment law changes to sink in. Parental leave and the demise of zero hours contracts received a lot of press. Enforcing employment standards has had some coverage but always sounds a bit abstract in comparison. Yet this is an area that seems to bite employers.

The basic idea is to make sure employers pay at least minimum wage and give employees their proper holiday entitlements. Simple, right? However, it's exposed a dramatic number of cases where employers aren't doing this. The consequences can be grim.

Penalties for serious breaches

Where an employer has committed serious breaches of employment standards, the Employment Court can now order some very heavyweight penalties as well as compensation for affected employees.

'Pecuniary' penalties may be up to \$50,000 for individuals or, for a company, whichever is the greater of an amount up to \$100,000 or three times whatever gain the company made from the breach. Compensation to affected employees is tied to the amount the employee lost or was likely to lose because of the breach.

The employer may also face being banned from being an employer, an 'officer of an employer', or even involved in employing people. An 'officer of an employer' can be a director of a company, a partner in a partnership, or anyone in an influential senior role in a business. A banning order can be in place for up to ten years: a bit limiting, if you're in business.

The law explicitly prohibits insuring against penalties for breaching employment standards. It doesn't say anything about insuring for the legal costs or compensating affected employees but it would be better not to be in the situation where you have to do this kind of breakdown.

These more draconian sanctions are in addition to those already in the armoury of Labour Inspectors.

Liability for a breach

It's in senior management's interests to make sure the business' practices are in line with employment standards because the liability doesn't stop at the business entity. Where an employer is ordered to pay money to compensate an employee and can't or won't pay, the above-mentioned 'officers of an employer' may be liable if they are involved. A person is 'involved in a breach' whether they have actively brought it about or been a party to it in any way — directly or indirectly.

In June this year, in a case preceding the latest changes, an employer was ordered to pay \$161,343.67 in wage arrears, and interest at the rate of 5% per year, for breaches of minimum entitlement requirements involving 121 different employees. The employer was also ordered to pay \$65,000 in penalties for failing to provide written employment agreements; failing to keep holiday records; and failing to pay holiday pay, public holiday pay and minimum wages. The sole director and major shareholder of the employer company was found liable with the company for the wage arrears.

Vulnerable employees

The Labour Inspectorate is upfront about targeting employers who exploit vulnerable employees — for instance, those new to New Zealand, without long term visas or people to advise them.

In August, the Employment Relations Authority (ERA) ordered a Wellington grocery store to pay \$53,000 in penalties and arrears for employment law breaches. The employer had failed to pay the employee minimum wage, holiday pay or additional pay for working on public holidays; had not paid the employee for all hours worked; and had charged the employee more than \$10,000 in premiums by way of a payment of \$5,000 upfront, \$3,240 in regular small cash payments, and \$2,167 funding company expenses on the employee's personal credit card.

The penalty for breaches of the legislation was \$25,000, in addition to \$28,781.23 to be paid to the employee for minimum wage arrears, reimbursement of premiums and holiday pay arrears. 'This ruling sends a clear message to employers that failure to comply with minimum employment labour standards will not be tolerated,' said Loua Ward, Labour Inspectorate Regional Manager.

All employers need to know what the employment standards are and have good systems in place to meet them. It's not enough to simply say 'It doesn't affect us. We're not defrauding our employees.' There are enough employers out there getting it wrong on holiday pay and minimum wage entitlements to make another look at your systems worth your while. Ask us if you'd like more detail.