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General

**Acas Launches New Stress Management Guidance for Employers**

The Advisory, Conciliation and Arbitration Service (Acas) has issued new advice for employers on managing stress, which includes tips on how to spot the signs of stress and how to create a working environment where staff can openly talk about it.

The new guidance comes after a YouGov survey commissioned by Acas revealed that a third of British workers (33 per cent) believe their organisation is not effective at managing work-related stress.

Acas advice for employers on managing stress at work includes:

* Look out for any signs of stress among staff;
* Be approachable and available, and have informal chats with staff who are feeling stressed;
* Respect confidentiality and be sensitive and supportive when talking to staff about work-related stress; and
* Communicate any internal and external help available to staff, such as financial advice if the cost of living is a cause of stress.

Further information can be found at https://www.acas.org.uk/acas-launches-new-advice-on-managing-stress-at-work-as-1-in-3-workers-feel-that-their-organisation

Property

**Business Interruption Insurance Disputes – Is Arbitration Obligatory?**

Many commercial property occupiers whose businesses were interrupted during the COVID-19 pandemic remain in dispute with their insurers regarding to what extent, if any, they were covered against such losses. In an important ruling, the High Court found that there was no obligation to refer one such dispute to arbitration.

Two companies that owned and operated numerous restaurants and bars claimed on their business interruption policy after they were required to close their premises during the first lockdown. The policy covered losses caused by interruption of, or interference with, business arising from the occurrence of a notifiable disease within a 25-mile radius of relevant premises. The policy, however, specified a maximum indemnity period of three months.

Insurers accepted that they were liable to the meet the claim and paid out more than £2 million. The companies, however, subsequently made further claims, for in excess of £4 million, in respect of losses arising from later government interventions, which imposed reduced opening hours and the second lockdown.

In asserting that their further claims were not caught by the three-month indemnity period, the companies contended that every separate occurrence of COVID-19 within 25 miles of each of their premises gave rise to a separate claim under the policy. The insurers took a contrary view, insisting that only one indemnity period applied and that they had satisfied their obligations under the policy.

After the companies launched court proceedings, the insurers applied for the action to be stayed in favour of arbitration. They pointed to an arbitration clause in the policy, in a commonly used form, which required any disputes concerning amounts to be paid out under the policy to be referred to arbitration.

In refusing to stay the proceedings, the Court found that the dispute encompassed not only a difference of opinion as to amounts to be paid out under the policy, but also a disagreement as to whether the insurers were liable to satisfy any part of the further claims. There was thus no contractual obligation to engage in arbitration and the companies were entitled to pursue their case in court.

We can advise you on any matters relating to commercial property and insurance disputes. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*DC Bars Ltd and Another v QIC Europe Ltd [2023] EWHC 245 (Comm)*

Tax

**Workaholic Director's Careless Approach to VAT Liabilities 'Not Dishonest'**

Workaholic directors who are not good at delegating may take a slapdash approach to paperwork – but that does not make them dishonest. The First-tier Tribunal (FTT) succinctly made that point in relieving a businessman and his company of substantial tax penalties.

Faced with the company's failure to submit VAT returns over a period of more than six years, HM Revenue and Customs (HMRC) issued it with estimated quarterly VAT bills, most of which were paid. It later transpired that the bills underestimated the company's turnover, and thus its VAT liabilities, by more than 50 per cent.

HMRC took the view that the company, which subsequently entered into a creditors' voluntary arrangement, had evaded more than £370,000 in VAT. Penalties were raised against the company and its director on the basis that the latter's conduct involved dishonesty. HMRC asserted that he knew that, had the company filed returns as it should have done, its liability for VAT would have been very much greater. Both company and director appealed against the penalties.

Ruling on the matter, the FTT had no hesitation in finding that the director was solely responsible for dealing with the company's VAT affairs and that he was fully aware of the VAT system and the company's obligation to pay the right amount of VAT at the correct time. It noted, however, that he was a somewhat harassed workaholic who took a hands-on approach and was averse to delegating.

Pouring his heart and soul into the business, he took a 'blitz' approach to paperwork and had little time to focus on non-trading activities, including the company's VAT obligations. His approach to those obligations was careless and probably reckless and his cursory signing off of the company's accounts, without reviewing them in detail, was reprehensible.

In upholding the appeals, however, the FTT found that he had not acted dishonestly. He did not actually know that HMRC's estimated assessments understated the true amount of VAT due. He simply paid the bills in front of him in the belief that he was thereby discharging the company's liabilities. There was no deliberate strategy either to underpay VAT to support the company's working capital or to divert to other creditors money that should have been paid to HMRC.

Our specialist team can advise on all types of business tax issues. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Universal Flooring (Contractors) Ltd and Another v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 282 (TC)*

Company

**What to Do with a Deadlocked Company? High Court Gives Guidance**

What is to be done when a company falls into paralysing deadlock, with equal shareholders unable to agree about anything? A judge addressed that issue in a case concerning a former husband and wife whose business and personal relationships had descended into acrimony.

Following their divorce, the ex-couple remained directors of a company in which they each had a 50 per cent shareholding. In asserting that it would be just and equitable to wind up the company, the man cited the irretrievable breakdown of trust and confidence between them. The woman opposed his application.

Ruling on the matter, the High Court noted that the company was plainly deadlocked. In refusing to grant a winding up order, however, it found that the man was entirely responsible for that situation and had not come to court with clean hands. He had sought to minimise his appalling behaviour towards the woman whilst seeking, in every way, to portray her in the worst possible light.

He had not reasonably pursued alternative remedies to fruition and, if the company were wound up, he would derive a collateral benefit from his wrongful actions at the woman's expense. Noting that winding up orders are a discretionary remedy, the Court found that it would be wholly unconscionable were it to exercise its jurisdiction in the man's favour.

The Court observed that the most appropriate way of relieving the deadlock would have been to place the company in administration. That would have enabled an independent administrator to continue its business so that its goodwill and other assets could be sold as a going concern. For reasons that had not been properly explained, however, no such application had been made and the Court had no power to make an administration order on its own initiative.

For advice on any aspect of company law, contact us.

**Partner Note**

*Taylor v The Whitehall Partnership Ltd and Another [2023] EWHC 596 (Ch)*

Contract

**Do You Understand the Ramifications of Entering Into a Contract Adjudication?**

Anyone who engages in contract adjudication proceedings would be wise to assume that the outcome – regardless of whether it is right or wrong – will be legally binding and swiftly enforceable on a 'pay now, argue later' basis. As a High Court ruling made plain, attempts to avoid such enforcement rarely succeed.

A public authority engaged a construction company to carry out works on a historic residence. The contract sum agreed was a little under £480,000, exclusive of VAT. The authority had, however, paid in excess of £900,000. Its contracts manager issued a final statement in respect of the works executed, demanding that the company repay more than £400,000 of that sum.

After the company responded with a pay less notice, the authority issued a notice of adjudication. The adjudicator found that the company was liable to repay £314,264, plus interest of £25,368, his fees and any VAT due. The authority sought summary judgment against the company in the amount of the award.

Resisting the claim, the company contended that the final statement was invalid and that the adjudicator had exceeded his jurisdiction. It asserted that the statement had not been served in accordance with the contract and that the contracts manager held no genuine belief that it represented a sum that was actually due.

Ruling on the matter, the Court noted that adjudication proceedings are intended to provide a speedy mechanism for settling contract disputes. Save in cases where there is a want of jurisdiction or a serious breach of natural justice, adjudicators' awards are binding. They must generally be satisfied in full before entering into arguments as to whether they were made in error.

In granting the authority's application, the Court found that a crystallised dispute had been placed before the adjudicator which he had jurisdiction to resolve. Whether or not he was mistaken in finding that the final statement was valid, his award was enforceable. To accede to the company's plea that enforcement of the award should be stayed pending further proceedings to determine the true value of the works performed would offend against the 'pay now, argue later' principle.

The company argued that it would be plunged into severe cashflow difficulties were it required to satisfy the entire award straight away. However, the Court found that, even if such hardship were established on the evidence, it would not make it manifestly unjust to order the award's summary enforcement.

Our expert lawyers can advise you on any contractual matter. Please contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Historic Royal Palaces v Piperhill Construction Ltd [2023] NIKB 30*

Intellectual Property

**Creators of John Lewis Dragon Advert Cleared of 'Copying' Allegation**

Creative people often live in fear of allegations that they have copied someone else's work. However, as a High Court case concerning a CGI dragon featured in a John Lewis TV advert showed, the law provides a route to vindication for those on the receiving end of such accusations.

The central character in the retailer's heart-warming 2019 Christmas advert – which was produced by an award-winning advertising agency – was a young dragon who cannot help releasing fire. A spin-off children's book, featuring a dragon called Excitable Edgar, was subsequently published.

A children's author launched copyright infringement proceedings against John Lewis plc and the agency, alleging that Excitable Edgar had been copied from a dragon character who featured in a book she had self-published about two years prior to the advert's appearance.

Dismissing her claim, however, the Court noted that her book had been published in very small numbers, mainly to primary school children in one region of the UK. It was extremely unlikely that anyone involved in the creation of the advert or Excitable Edgar had access to the book prior to the launch of the John Lewis campaign. The possibility that there had been any actual access appeared so remote as to be almost entirely theoretical.

It was John Lewis's and the agency's case that the advert was based on a concept originally conceived and outlined by one of the latter's leading creatives prior to the book's publication. The Court found that similarities between the author's dragon and Excitable Edgar were, in any event, few in number and could easily be explained by coincidence.

In making a declaration of non-infringement in favour of John Lewis and the agency, the Court expressed admiration for all those involved in the creation of the advert and Excitable Edgar. They exited the litigation without the slightest hint of a stain on their creative integrity. The author was directed to publish an agreed statement, reflecting the outcome of the case, on her website and on her Facebook and Twitter accounts. The notice included a link to the Court's judgment.

For expert advice on any matters relating to intellectual property and copyright law, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Evans v John Lewis PLC and Another [2023] EWHC 766 (IPEC)*

Employment

**Chair-Renting Hairdresser Remained an Employee – Guideline ET Ruling**

Many hairdressers rent chairs from salons, paying a percentage of their takings to salon owners. However, as an Employment Tribunal (ET) ruling made plain, their apparent self-employed status is in many cases illusory.

The case concerned a stylist who was employed at a salon for a decade before she purportedly made the transition to self-employed status. She was eager to be paid on a self-employed basis, actively pursuing the change in the belief that she would be better off by £600 a month. She thereafter worked on a chair-rental basis, a commonplace arrangement in the hairdressing industry.

Following her departure from the salon, she launched ET proceedings against its owner, alleging, amongst other things, unfair dismissal and various forms of unlawful discrimination. In order to pursue her claims further, however, she first had to establish that she was an employee. The ET addressed the question of her status as a preliminary issue.

Following her apparent shift to self-employment, she was issued with a P45 and ceased to be a member of the owner's auto-enrolment pension scheme. She was no longer entitled to holiday or sick leave. The ET nevertheless concluded that she had, throughout her time at the salon, remained an employee within the meaning of Section 230(1) of the Employment Rights Act 1996.

The ET noted that, following the purported transition, nothing changed save for the manner in which she was paid. To all intents and purposes, she remained an integral part of the salon team and there was nothing that would have enabled colleagues or her regular clients to distinguish her from other members of staff.

She had no realistic right to substitute another hairdresser to perform her work, she continued to be bound by the salon's dress code, and the hours that she was required to work remained as before. She had to seek her manager's permission before leaving work early or taking holiday leave.

There was no change in the mutuality of obligation between her and the owner and the level of control that the latter exercised over how she went about her work also remained the same. All her takings went through the owner's till and she was neither an independent contractor nor in business on her own account.

Contact **<<CONTACT DETAILS>>** for advice on any employment law matter.

**Partner Note**

*Matthews v Razors Edge Group Ltd*

Health and Safety

**HSE Issues Refreshed Guidance on Violence and Aggression at Work**

The Health and Safety Executive (HSE) has updated its guidance on violence and aggression in the workplace, to help employers better protect their workers.

The guidance has been updated to:

* simplify the navigation to help you easily find the information you need;
* remove outdated content and replace it with up-to-date practical guidance;
* remind employers that the HSE's definition of violence includes aggression, such as verbal abuse or threats – this can be face to face, online or over the phone.

Help is included regarding violence prevention and how to support workers after a violent incident. It also guides employers to relevant legislation.

The guidance can be found at https://www.hse.gov.uk/violence/employer/the-law.htm

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