

Issue 4 February 2014

Finance Bill 2014 means urgent review needed in tax status of LLP Members

The tax status of fixed share members in LLPs has been brought into sharp focus by the Finance Bill 2014 and the expected reclassification is set to affect many, explains Steven Grant, Head of the Commercial Group at Hampshire law firm Warner Goodman LLP.

Since LLP's were established in 2005, there has been a presumption that all LLP members are self-employed for tax purposes. Last year the government examined this as part of a wide range of measures to clamp down on perceived tax loopholes. The Finance Bill 2014 sets out a new test of whether a member of an LLP is self employed.

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Changes to TUPE arrive but employers disappointed

Employers hoping for a complete overhaul and greater flexibility in the transfer of employee rights following a business sale or change of contractor, under what is known as TUPE legislation, are likely to be disappointed when the new regulations come into force at the end of the month warns Howard Robson, Employment Partner at Warner Goodman LLP.

The new Collective Redundancies & Transfer of Undertakings (Protection of Employment) Regulations 2013 came into effect on 31 January.

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Fighting the Flood!

Flood warnings have been prevalent in the news recently and it looks as if the rest of 2014 will be no different as forecasters warn that climate change will bring more unpredictable and turbulent weather. Paul Winslade, Commercial Property Lawyer discusses why property owners should be prepared, and also what issues developers could face in the future.

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Employment Law Events announced for 2014

2013 saw the Employment Team events calendar expand due to their growing popularity, and 2014 is looking to be just as promising with more informative and enjoyable events ahead. Employment Partner, Sarah Whitmore, tells us what can be expected this year, and why delegates won't be disappointed.

2014 will take the same format as the events calendar in 2013 with four free seminars, three masterclasses, a Mock Employment Tribunal and three Tribunal Field Trips. This formula offers something for everyone, whether it's a morning overview session at a seminar, a morning looking in more depth at the legislation in a masterclass, or spending a day in a live Employment Tribunal.

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No remedy for pre-contract mis-representation

The Court of Appeal has recently ruled that a contract clause denying one party the right to rescind the contract or seek damages for the other's pre-contract mis-representation (false information given which induced the innocent party to enter into the contract) was enforceable in the circumstances of the case, explains Geoffrey Sturgess, Commercial Consultant at Warner Goodman LLP.

The Unfair Contract Terms Act 1977 (which has nothing to do with unfair terms generally, but only with whether exclusion of liability clauses are enforceable) states that a clause excluding liability for misrepresentation will only be enforceable if it satisfies a test of reasonableness, and also makes certain suggestions as to the issues which a court should consider in assessing reasonableness; specifically:

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Causing a Nuisance: Tree Root Damage

When tree roots extend into your neighbour's property they can cause damage, especially if they are close to foundations of a building. Commercial Litigation Solicitor, Kirsten Edberg, here reviews two recent cases between neighbours, the importance of foreseeable risk, and gives guidance to commercial property owners on avoiding these risks.

In the long, balmy hot days of summer (or in those few precious weeks where the rain lets up), water is taken up through the thirsty tree roots from the surrounding soil. Particularly in areas of clay soil, the result is that the ground becomes dry and shrinks.

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Interesting Judgement on TUPE Transfers

It is now commonly understood that if a service providers' contract with its client is terminated employees of the service provider engaged mainly or wholly to fulfil the contract are likely to transfer to the employment of the client under The Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended (TUPE). Emma Wyatt, Employment Solicitor at Warner Goodman LLP reviews the recent case of Seawell Ltd v Ceva Freight (UK) Ltd, in which the EAT considered whether the service provision change test was met where an employee spent all of his time working on a contract for a client.

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