

Employee behaviour standards

When does a joke go too far in the workplace?

BY KIMBERLY WINDSOR

One of our clients, Alan*, was overseas on a 3 week business trip with other company employees in a very hot climate. A good level of rapport existed between the (all male) employees and two of the group were comfortable enough to spend time in their hotel room dressed only in their underwear while other employees dropped by. At one point, Alan found the situation humorous and took a digital image of the pair sitting side by side in their underwear. General laughter ensued and Alan showed the image to the person sitting next to him and then deleted it. Much to Alan's surprise, the following week he was advised by his employer that a formal complaint had been laid by one of his co-workers regarding this incident.

This case raises questions about acceptable behaviour standards of employees not only in the workplace but during "after hours" events, like Christmas functions (and publication of photos on facebook of work do's). These are topical issues that employers and employees alike need to consider in this communications era. Employers have the responsibility of supervising staff as well as managing relations between respective employees.

Not following the correct disciplinary process or making bad decisions can have big ramifications for a company. Recent media cases include employee payouts of \$34,000 by a logging company, \$25,000 paid out by Fonterra, \$16,500 to a sacked teacher and a Bay of Plenty Trust had to shell out \$13,000 plus a year's earnings to an employee.

So what can employers do to protect their business and keep employees happy?

Risk management is an important first step. Make sure that all employment contracts sufficiently outline required behaviour standards in a broad sense. If employees are fully aware of the expectations on them in the work place then there is less room for controversy when things go wrong. Employers are also able to issue policies that

specify standards of behaviour that are appropriate for specific events, such as business trips or office Christmas functions.

It is impossible to plan for every situation however and when managing employment relations, there will always be grey areas. From the moment an employer is aware of an incident, proper process must be followed and any decision made must be justified. It is a legal requirement for every employment agreement to contain a procedure for resolving employment relation issues so any stipulated process must be followed.

Employers must investigate any allegations thoroughly and neutrally before making any decisions. The employee(s) involved must be told what the issue is and that disciplinary action is a possibility (including dismissal if appropriate). The Employee must be given a genuine opportunity to tell their side of the story before the employer decides what action to take (if any).

If you are unsure about the best way to handle an employment relations issue or have any other employment query, one of our team will be happy to talk to you. A little advice at the start of the process may save your business a lot of time and money at the end.

The situation described is a real one but all names have been changed.

WELCOME

A new solicitor has joined the Commercial team. Kimberly Windsor is originally from Invercargill. She moved to Auckland to pursue a sporting career in badminton and complete a BCom/LLB at the University of Auckland. After graduating, Kimberly worked at a boutique Mt Eden law firm for 3 years before travelling overseas through Africa. Kimberly is working on business and property sale and purchase, leasing, contract drafting, financing, estate and trust work.



Converting Cross Lease to Fee Simple

BY SHARYN ROBERTSON

Property owners with cross-lease titles will be interested to know that their neighbour on the same cross-lease can be ordered by the Court to consent to the conversion of the titles to fee simple.

The Court has a statutory power to order portioning of jointly owned land and we also found case law



confirming that this power extended to the partitioning of cross-lease titles into fee simple titles.

Property owners may want to convert

their cross-lease title to fee simple for a variety of reasons including perception of value and saleability of the property. Resource consent

is required before commencing this type of "subdivision" and a surveyor or architect is typically engaged in the first instance. The costs of the entire project need to be weighed against potential gains to assess the viability of the exercise.

If you are interested in converting your cross lease title to freehold, talk to any member of our commercial team.

Changes in GST treatment for Commercial Properties

The Government has introduced new legislation into Parliament (currently at the bill stage), proposing that all commercial land transactions from April 1 2011 be zero-rated for GST purposes regardless of whether there is a lease in place. There are conditions that will apply however including the requirement for both parties to be GST registered.

This removes the need for a "going concern" test to be applied before a commercial land transaction qualifies to be GST zero-rated. It will be a simplification that is welcomed by clients, solicitors and accountants and reduces the risk of GST being payable when clients had not contemplated that this may be the case. The cash-flow position will be improved for purchasers where commercial premises are sold with vacant possession as under the

current legislation, GST is payable at the rate of 15%.

The changes have actually been introduced to reduce the instance of fraud in circumstances where Inland Revenue refunds GST to a purchaser and no corresponding payment for GST is received from the vendor because the company has been deliberately wound up.

Clients and lawyers alike often encounter confusion in the treatment of GST for commercial transactions and the more streamlined process will be welcomed.

Nevertheless, commercial vendors still need to be aware of the GST issue. If a purchaser is not GST registered then the vendor will still need to account for GST on the purchase price, even where the price is "GST inclusive" - a vendor

would not be happy to discover that 15% of the sale price is payable to Inland Revenue.

Provided this proposed legislation passes into statute, any commercial properties with a "supply date" on or after April 1 2011 will likely be zero-rated for GST purposes. As a good practice however, we always recommend any sale price is specified as "plus GST",

Season's Greetings

Carter & Partners would like to take this opportunity to wish all those whom we do business with the compliments of the season. Have a safe and happy holiday. We will be closed from December 23 and the office will re-open on January 10.