



## TAXATION & FINANCIAL SPECIALISTS

Where the client comes first...

# Newsletter

Winter 2012

## New legal test for justified dismissal of employees

EMPLOYEES who have been dismissed can raise a personal grievance against their employer for unjustified dismissal.

They might have been accused of serious misconduct, made redundant after a restructuring or been medically incapacitated.

The dismissal must be justified, or the employee is likely to be entitled to financial and other compensation. The legal test for justification is in section 103A of the Employment Relations Act 2000. This section was amended in April 2011, and we now have the Employment Court's interpretation of those changes (in the case of *Angus v. Ports of Auckland Limited*, Employment Court, 2 December 2011).

This is important because it sets the standard for how employers must treat employees whenever an employment relationship is terminated – for any reason.

We aren't going to describe the facts of the Employment Court case, as what matters is what it means for employers and employees. It means that whenever an employer terminates an employee's employment the employer must follow a fair process before the termination, and the outcome must be one that a reasonable and fair employer could have reached in all the circumstances.

Briefly, this involves:

- A fair investigation by the employer into the allegation/matter of concern, consistent with

its resources and complying with its policies/procedures.

- Good faith, including the employer disclosing all relevant information.
- The employer raising its allegation/matter of concern before the dismissal.
- The employer giving the employee a reasonable opportunity to respond and genuinely considering that response.
- Checking and considering the employee's employment history and personal circumstances.
- Considering the employer's circumstances, the industry, industry practices and any health and safety risks.
- Assessing the gravity of any consequences of the employee's behaviour.
- The outcome being consistent with how the employer has treated other employees in similar circumstances.

Dismissing an employee is complicated, so generally it's prudent to seek advice from your lawyer if you are in this situation – or about to be.

This article is provided by Bartlett Law, Specialists in Workplace Law. They can be contacted on (04) 472-5579, at [info@btlaw.co.nz](mailto:info@btlaw.co.nz)

## Don't get done with vehicle finance

ON TWO occasions recently we have picked up errors in car finance agreements.

The customer was the loser both times.

In one case the client merely overpaid four payments but

the refund was for only three.

In the other case the client traded in a vehicle and the figures had been manipulated. The net result was that more than \$2000 disappeared.

We found it and got a refund.

Take care when you enter into a finance deal.

Some of the schemes can be difficult to follow. Make sure you fully understand all the figures.

Don't be too trusting.

## Keep your expensive car and save FBT

IT'S nice to update your company car from time to time. However, if you hang on to it for more than five years, there's a reward. There are two options for calculating fringe benefits tax (FBT).

- 20% of the original cost
- 36% of the reducing book value shown in your annual accounts, assuming you use tax rates to calculate this. The minimum figure is \$8333.

Say my car cost \$42,000. Fringe benefits tax calculated at 20% is \$8400 a year. This works out better, in total, than the 36% book value option over a five-year period.

At the end of five years, I may switch from the 20% cost option to the 36% book value option and save FBT. In my case I'll be paying the tax on \$3000 a year instead of \$8400.

# Several factors determine the worth of a business

HOW MUCH is your business worth? The short answer is what someone will pay for it.

There are several things to consider when buying or selling a business.

The first step when valuing a business is to find other sales within the same industry. The price others have paid is a good guide. Often, however, there is very limited opportunity to do this. The more unique a business is, the more unrealistic it is to compare it with others.

Several factors affect the price of a business. Here are a few:

- A business anyone could operate will attract more buyers than one requiring specialist knowledge. The price is therefore higher because demand for the business is greater.
- More people can find \$100,000 than \$1 million. The smaller business would therefore be proportionately more expensive than the bigger one.
- Economic conditions can have a big impact. People with redundancy money eager to buy a job in the form of a small business are more abundant when there is a recession.
- A business with growth potential is worth more than one nearing the end of its life cycle. Who'd want to buy NZ Post in its current form these days?
- Someone buying a business which has unhappy staff might be buying problems.
- Dependence on a few customers or suppliers could be disastrous.
- Some businesses, such as supermarkets and pharmacies, have an industry rule of thumb for calculating a price, which can be a good guide.

### Adjusting the profit

One way to view a business is to see it as a machine which makes money.

Start with the profit plus wages paid to the owners. How much is this?

- Deduct the wages you would have to pay someone else to do the job done by the owners. This might be more than the owners are paying



**Think of a business as a machine which makes money.**

themselves.

- Adjust for any expenses you see as artificial. A charge for the use of your home might be one of these. This is a cost the owner would incur even if they had no business.
- Adjust for abnormal expenses or income, such as a major one-off advertising campaign.
- Adjust for income which would not go to the new owner, such as interest on investments.
- Adjust the profit for any extra interest you would incur if you borrowed to buy the business.

When you have arrived at your adjusted profit, it's time to get advice.

Our ideas above will get you started, but don't rely on them completely, as they are not comprehensive or determinative. There is much more to valuing a business. For example, the figures supplied to a buyer might be suspect. Instead, use this article only as a first step for thinking about what a business might be worth.

## Reminder about PIE benefits & ripoffs

WE STILL have clients using the wrong tax rate for portfolio investment entities (PIEs). For the purposes of this article, we will assume your PIE income is less than \$22,000.

If you remember reading an article like this in our spring newsletter last year, we make no apology.

Investing money through a PIE may save you tax. If your income is more than \$48,000 you will save between two and five cents in the dollar. If you have a family trust, you can save 5 cents in the \$ tax on its income. If the trust distributes income to beneficiaries, use 0% for your PIR.

If you're putting money into a savings account, find out if you can get the same interest rate by investing through a PIE and you may be able to save tax. Banks are unlikely to remind you, so remember to ask.

Note: For individuals on incomes below \$48,000, investing in a PIE will usually offer no advantage. The tax rate in a PIE is the same as the ordinary income tax rate for individuals. A PIE therefore is usually best avoided as you can't get ripped off in the following ways:

1 If the husband and wife were to invest the sum

jointly and one of them was on a higher tax rate than the other, they would have to have the whole sum taxed at the higher tax rate.

2 If you supply the wrong tax rate (called PIR or prescribed investor rate) and it is too high you can't get the overpaid tax back. If the rate is too low, you have to put the income from the PIE in a tax return and pay the shortfall.

Each year check before you confirm your PIR. For the year ended 31 March 2013 look at your top tax rate for your 2011 tax return and your 2012 tax return, (if this has been completed). Take the lower one. For example, your income for the 2011 year is \$47,000 and for the 2012 year it is \$51,000. The highest tax rate on \$47,000 is 17.5% so your PIR is 17.5%. The highest tax you pay on \$51,000 is 30% but your PIR is 28%. You may choose the lower i.e. 17.5%. Note: A PIE could actually save you a massive 12.5% (30%-17.5%) in the above example. This is because if your interest income for 2013 was going to be taxed at 30%, you can legitimately use a PIE to get it taxed at 17.5%!

## Rude staff - who's to blame?

WHEN a staff member is rude to a customer, is the staff member to blame?

Surprisingly, probably not! When things are mishandled like this, it is usually the culture or the systems to blame.

Culture is the attitude and behaviours engendered in the company. Have you ever dealt with a firm which makes you hang on the line for 20 minutes and pushes you from one employee to the next? Do you get the feeling they don't want to know you?

These firms have developed a culture of exactly what you are feeling. You are small, unimportant and a nuisance.

The employee who is rude to a customer may have picked up this attitude from you! No, you are not rude to customers, but perhaps you make derogatory comments about some of them and your staff notice this.

Your staff copy you! It is your job to develop the culture in the firm.

The other big problem, when things go wrong, is the systems. When something does not work out properly, don't dismiss it as a one-off problem. Talk with your staff (even if there is only one) and gather ideas for ensuring the same problem does not repeat.

Agree on a system change to be followed in the future and write this down.



**Staff will reflect the culture and attitudes you present.**

# Make a will and save others extra grief

FROM time to time we hear a sad tale about someone who has died and failed to make a will.

If there is no will, the Administration Act 1969 takes over and the result can be most unsatisfactory. Often people delay making a decision because they have a difficult situation to resolve and cannot find a solution. What should they do?

It will cost you, but the sensible thing to do is to sort it out with a qualified, independent third person such as your solicitor. You never know. Perhaps a family trust would work.

You don't have to leave your possessions and assets directly to a person. An entity such as a trust can sometimes be a good solution.

Don't procrastinate over making your will. You can always change it. If you are going to remarry or enter a de facto relationship, renew your will because your old will is revoked on starting the new relationship.

## DID YOU KNOW ...?

- If you go out to dinner and discuss business with your spouse, this is a personal cost.
- Food, spectacles, smart suits etc are personal costs. They put you in a situation where you can start working rather than being a cost incurred in doing the work. This includes special clothing with a dual purpose. Dame Edna Everage could claim her clothes as tax deductible because they were for the special purpose of her acts. Working boots, overalls etc are, of course, claimable.

## Learn how to think

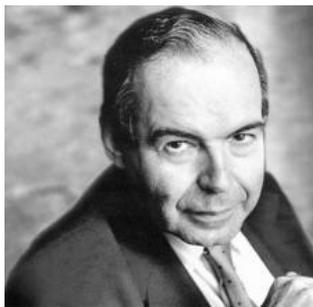
FORGET brain-storming if you want good ideas.

Brain-storming is where a group of people throw ideas into the ring and someone writes them down. What's wrong with brain-storming? The participants build on each other's ideas. The system is not conducive to generating completely fresh ideas. It's lazy thinking.

Edward de Bono has made it his life's work to study thinking. He has written many books and come up with brilliant techniques. If you want to learn to think, study de Bono.

Avoid brain-storming. A better technique is to get everyone in the thinking process writing down all their ideas. Allow them three minutes. They'll all have dried up by then. The system requires real effort from everyone, instead of a nice easy ride of just calling out any idea which comes into your head. List all the ideas, as you would for brain-storming, and prioritise them. In the process of listing, other ideas are usually generated.

Systematic thinking is one of the keys to success. You don't need a big team. In fact, the techniques can be used by just one person.



## TAX CALENDAR

### May 28

1st Instalment of 2013  
Provisional Tax  
(December balance date)

### May 31

Deadline for  
Fringe Benefit Tax return

### July 28

3rd instalment 2012  
Provisional Tax  
(June balance date)

### August 28

1st instalment 2013  
Provisional Tax  
(March balance date)

## Advertising is not the only way

YOU advertise to boost sales but do you stop to think about other ways to grow your business?

Here's an example. Recently, I rang a very busy small business to get an appliance serviced. It took more than a minute to get through. This doesn't sound like much time. However, most customers will probably hang up after about 30 seconds and call someone else.

In this example, fixing your telephone reception might be one of the most effective marketing strategies.

There are an enormous number of ways to promote a business. Find the ones which work best for you. Want to read a book on low and no-cost business promotion?

Try Conrad Levison's *Guerrilla Marketing*. It's hard to get in New Zealand. Try Dymocks or Amazon.

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