LEGAL ALERT

DISPUTE RESOLUTION NEWSLETTER

Rollits SOLICITORS

Smoke Free Premises

The requirement for certain premises to be smoke free has been well trailed and we expect you know this legislation comes into force on 1st July 2007.

The legislation has already given rise to some potentially knotty problems. In essence it covers all workplaces which are enclosed, or substantially enclosed, and used as a place of work by more than one person. One result is that smoking rooms for workers, for example, will no longer be allowed. There is no obligation, however, for the employers to provide a smoking shelter for smokers. If you choose to do so then appropriate permissions may need to be obtained.

Additionally it is thought that the vast majority of work vehicles, including those privately owned but used for work purposes, will have to be smoke free. Each case will be fact sensitive. Generally signs have to be displayed. In reality there are very few exemptions to the requirements of the legislation and there are penalties for failure to display signs or failing to prevent smoking in a smoke free place. There is quite a degree of organisation required in order to be compliant with the legislation on time so if you have not already started get your skates on!

Consultation Over Directors' Health and Safety Duties

There are no statutory duties which require Directors to oversee their organisation's health and safety performance. There is guidance which the Health & Safety Commission issued in 2001 and this contained a number of aims that Boards of Directors should have in mind when it comes to considering health and safety within their organisation.

There have been consistent cries from some quarters for Directors to have formal statutory duties on health and safety. The latest position is that the Institute of Directors at the request of HSC has produced new guidance setting out what is expected of Board members. Consultation is taking place on this guidance which indicates that three principles underpin good health and safety performance.

- Strong and active leadership from the top.
- Worker involvement.
- Assessment and review.

The guidance confirms that all Board members should be seen to be taking a lead in not just communicating health and safety duties but also the benefits which are derived. It contains both core actions and actions of good practice when it comes to planning and delivering health and safety. The guidance also acknowledges that monitoring and reporting are vital parts of the health and safety equation, arguing that it is only if your monitoring is strong that you can properly review and act upon the results of such review.

The guidance goes beyond the basics of having a health and safety policy by asking a series of questions of organisations and their Boards of Directors, all of which should be answered in the positive. Taking steps to ensure they have a positive answer for those questions will be a very good start for those businesses who acknowledge that health and safety is vital across so many layers of organisations and who believe good health and safety is good business.

IN THIS ISSUE

SMOKE FREE PREMISES • DIRECTORS' HEALTH & SAFETY • TENANCY DEPOSIT PROTECTION • AN INSPECTOR CALLS • DA VINCI CODE LITIGATION

Tenancy Deposit Protection now in force

As from 6 April 2007 all landlords and letting agents who take a deposit from a tenant of a property let on an Assured Shorthold Tenancy must protect that deposit by using one of the government authorised tenant deposit schemes.

Failure to comply will result in the landlord losing the advantage of his/her automatic right to repossess the property at the end of the tenancy.

There are three schemes a landlord or agent can choose from; one custodial scheme and two insurance backed schemes. Under the custodial scheme the landlord or agent pays the whole of the deposit to the Deposit Protection Service at the beginning of the tenancy. Under the insurance-based schemes, the landlord or agent keeps the deposit but pays a fee to the scheme to insure against failure to repay the tenant.

Within 14 days of receipt of the deposit the landlord or agent must notify the tenant which scheme is being followed and must give the tenant certain prescribed information.

At the end of the tenancy the landlord or agent should check the condition of the property and attempt to agree with the tenant how much of the deposit should be returned. The deposit must be returned within 10 days of agreement being reached.

If the parties cannot reach agreement then whichever of the three schemes that protects the deposit will provide a free service to resolve the parties' differences.

If the landlord or agent fails to comply with the new law then, in addition to losing the advantages of automatic repossession, the tenant may apply to the County Court for an Order requiring the landlord or agent to pay the deposit into one of the tenancy deposit schemes. Failure to comply can result in the court ordering the landlord to pay the tenant three times the amount of the deposit.

For further information on the above or generally about property dispute resolution please contact either Ralph Gilbert on 01482 323239 or David Watson on 01904 625790.

Trespassers Beware!

Rollits' Property Dispute Resolution Group has recently dealt with a number of possession claims against trespassers on both residential and commercial land.

Whether the unwanted occupants are groups of travellers or individuals, provided that a landowner is able to prove they have title to the land in question, the Property Dispute Resolution Group aims to issue possession proceedings against trespassers within 2 working days of a landowner approaching the Group for help although often proceedings are issued on the day instructions are received.

In a recent trespassing matter, we were approached by a commercial client who one morning had discovered that a group of travellers and accompanying vehicles had entered onto the client's land overnight. On being asked to leave, a representative of the client was told by a member of the group of trespassers that they intended to remain on the land for 6 weeks. Unimpressed by this show of bravado, especially given that the land was part of a commercial development site, the client approached us for assistance in removing the trespassers.

By the close of business on the day the Property Dispute Resolution Group was instructed, possession proceedings had been issued, a possession hearing listed by the Court and all Court papers (including notice of the hearing date) served on all the trespassers. A Possession Order was obtained at the possession hearing taking place the following week (instructions were received just before the weekend) but the trespassers had themselves all left a few days after being served with notice of the possession proceedings. Whilst the speed at which a possession order can be obtained is reliant on the Court's availability to hear a possession claim, the case showed that few trespassers remain on site when possession proceedings are served upon them.

We are able to react promptly to any instructions received from disgruntled landowners with a trespassing problem and utilise their expertise and know how to the landowners advantage. The sooner the Property Dispute Resolution Group is involved, the sooner it can address a Landowner's primary needs, such being the removal of the trespassers to protect the land and also the securing of the site to minimise the risk of future unlawful occupation.

Should you have a problem with trespassers or simply want to know more about the Property Dispute Resolution Group , contact Ralph Gilbert at our Hull office on 01482 323239 or David Watson at our York Office on01904 625790

Corporate Manslaughter

The impetus which this legislation has gained recently (bearing in mind it started life around 10 years ago!) may be coming to a halt.

A current issue has been whether the country's law makers can find a compromise over the issue of deaths in custody. The Home Office wants to exclude deaths in prison and police cells from the legislation, whereas the House of Lords has taken the opposite view. A compromise may be agreed allowing inclusion in the future by means of government intervention. Whilst it is difficult to predict, given the tortuous path so far, it would not come as a total surprise if this Bill never saw the light of day, certainly not in the foreseeable future. Even if it continues its Parliamentary progress it is difficult to know what the end position will be. If there are no changes then the present law will remain, which is capable of capturing both companies and individuals. It should therefore be health and safety business as usual to avoid this most serious of cases!

Rollits Launches New Regulatory Group

Rollits has launched a new Regulatory Group to help guide companies through the maze of red tape that is currently entangling business.

According to a recent report by the British Chambers of Commerce, the burden of red tape now costs British business £56 billion and that figure is expected to rise further as new European legislation impacts on business.

The new Regulatory Group is headed by Rollits Partners George Coyle and Chris Platts. George comments: "It seems that every day, new regulatory liabilities, trading standards, Health & Safety, reporting obligations, penalties for existing liabilities, codes of practice and guidance documents are created.

"This means that regulatory costs are the fastest rising burden that businesses face and it is important that companies keep abreast of their obligations."

It is against that backdrop that Rollits have decided to refocus on such issues and to bring together its experienced defence lawyers in a dedicated Regulatory Group. The team, in addition to George and Chris, includes solicitors Chris Drinkall and Rebecca Crowther, specialist paralegal June Watson and Jennifer Kirman, who will join the Group when she qualifies in September.

Between them George and Chris have over thirty five years experience of advising Rollits clients from the manufacturing, retail and service sectors of industry on regulatory authority investigations and prosecutions arising from allegations of breach of Health and Safety, Food Safety and other regulations affecting food companies, Product Safety, Trading Standards, Licensing, Consumer Protection and Environmental Protection legislation.

Chris adds: "Rollits' decision to launch a dedicated Regulatory Division comes at a time when many companies have been approaching us with issues relating to Trading Standards, Health & Safety and other regulatory authorities."

Rollits offers a Regulatory Audit to help organisations assess any regulatory risks to which they may be prone. Undertaken by a team of experienced regulatory lawyers, the service provides companies with an understanding of their regulatory weaknesses and what measures they need to take to bring them up to the standards required.

For further information on Rollits' Regulatory Group call George Coyle or Chris Platts on 01482 323239 or visit the Rollits website at www.rollits.co.uk

An Inspector Calls

Businesses cannot help but be aware of the mountain of "red tape" which surround them. There are of course any number of regulations which can impact and all those regulations are enforced by some enforcing authority or other, principally in the guise of an inspector.

It is important to be aware of the potentially wide powers of these individuals. It is often easy to be lulled into a false sense of security. When an inspector calls things are said either in the heat of the moment or when somebody's guard is down, and there can be serious consequences. It is important to understand that enforcement is always at least in the mind of an Inspector even if the visit appears to be informal. True an Inspector can decide to do nothing after a visit, or could issue verbal encouragement or deal with matters in correspondence – this is a relatively relaxed means of enforcement but it is still a form of enforcement.

However, at the other end of the spectrum much more formal action can follow a visit. For example an Improvement Notice or Prohibition Notice can be issued or indeed in the final analysis prosecution can result. If matters get that far it will almost certainly be preceded by an interview under caution. We would always recommend seeking legal advice right at the outset but most certainly if matters get to the stage of an interview under caution because the only remaining step is a decision as to whether a prosecution should be brought and hard work is necessary to ward off this eventuality.

Because of these possible consequences it is important to have a basic working knowledge of the powers inspectors can exercise when they call. They may for example be entitled to enter onto your premises at a reasonable time, begin examinations and investigations and ask you to ensure a site remains undisturbed. They can take measurements, photographs or other recordings, require you to produce copies of documents and certainly ask questions. It is important to manage the situation and particularly important to bear in mind that there can be consequences for an individual as well as the organisation. Do not be afraid to get in touch with us even if an inspector is in the middle of the call because you are entitled to take advice. All you need to do is call us and we will manage the situation including speaking to the inspector there and then. The inspector may not like this but taking such steps is not being obstructive and might just save you a lot of subsequent grief. Penalties can be severe and consequences longer lasting not least in terms of loss of reputation and/or the ability to tender for contracts. Whilst it never pays to underestimate what can occur when the Inspector calls equally there are steps you can take to protect your position.

Lifting the Lid

Most court proceedings are conducted entirely in public. Whilst this is known generally, what is not often considered is that third parties who have no direct interest in a Court case can obtain details of the cases of those who are involved.

If such a third party wants to obtain documents then it needs to make an application to the Court which could result in the Court ordering release of other documents. A lot of sensitive commercial information could therefore come into the hands of your rivals, particularly where cases are brought where, inevitably, commercially sensitive information has had to be included. A balance therefore needs to be struck when you are pursuing or defending a claim between what is put into the public domain and what commercially sensitive information needs to be kept back. The rules give some comfort in that it is possible to make an application to the Court to restrict or prevent a particular document from being supplied to a particular non-party or a class of individuals. This is a step which should be considered if you embark on litigation. Protecting your information is important. This could become an issue in a climate of increased transparency and parties need to give full thought as to the implications of releasing information in a statement of their case.

Da Vinci Code litigation – Court of Appeal verdict

The high-profile litigation surrounding this popular page-turner ("DVC") has been rumbling on, and if author Dan Brown is fond of ancient institutions with obscure rules and traditions, he would have felt very much at home when Michael Baigent and Richard Leigh (authors of The Holy Blood and The Holy Grail – "HBHG") took their case to the Court of Appeal, having failed in their claim against Brown in the first instance.

Baigent and Leigh claimed that Brown copied directly what they said was the central theme of HBHG (namely the story of the continued bloodline of Jesus Christ) into DVC.

The Judge at first instance had held that although HBHG had several "central themes" it could not be said that the bloodline story was the single central theme, and that to the extent that there was copying by Brown, this was merely of "the expression of a number of facts and ideas at a very general level" and such material was not capable of being protected by copyright.

The Appeal Court judges agreed, finding that although relevant theme elements were to be found in both books, and although Brown had undoubtedly used HBHG in writing his novel, what Brown had taken amounted to very general propositions at too high a level of abstraction to qualify for copyright protection.

In other words, what Brown had copied was not the result of the application of skill and labour by Baigent and Leigh in their creation of HBHG. The Court of Appeal also held that this "theme" did not represent a "substantial part" of Baigent and Leigh's copyright work. Their Appeal was dismissed.

The decision re-emphasises the important line in copyright law between mere ideas, and the physical expression and recording of those ideas. The former is not protected by copyright, while the latter (if an original work of the author) generally is.

New copyright enforcement powers for Trading Standards

Almost all businesses generate material which is protected by copyright. However, for some businesses, producing printed materials or multimedia works of whatever sort, their copyright works can be the cornerstone of their commercial value. As such, protecting and enforcing copyright is an issue that should not be overlooked.

At present it is estimated that peddlers of counterfeit goods (ranging from small scale local operations to those connected with serious organised crime) are costing UK businesses around £9 billion per year.

From 6 April 2007, a new provision of the Criminal Justice and Public Order Act 1994 has come into force which puts into force additional provisions in sections 107 and 198A of the Copyright Designs and Patents Act 1988.

In essence these provisions give new powers to Trading Standards officers for the general enforcement of the criminal law elements of copyright enforcement. The new powers include rights to make test purchases of allegedly infringing items (demonstrating the infringer's commercial exploitation of the infringing goods) and to enter premises to search for and seize goods and documents that they believe to be involved in copyright infringement.

The Government has provided substantial additional funding to Trading Standards officers to carry out work under these new powers, as part of a drive to make the UK a more dangerous place for copyright infringers. Some of the offences under the Copyright Designs and Patents Act carry a possible 10 year prison sentence or an unlimited fine.

Businesses with valuable copyright materials, and those advising them, should therefore consider making a report to local Trading Standards officers as an additional step to pursuing civil action against an infringer to obtain a court order against further infringement, and an award of damages. The UK Intellectual Property Office (formerly the Patent Office) has published guidance for those wishing to make such a report.

INFORMATION

If you have any queries on any articles in this newsletter please contact:

Chris Platts on 01482 323239
David Watson on 01904 625790

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this newsletter useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

We are regulated by the Solicitors Regulation Authority.

The law is stated as at 24 May 2007

Wilberforce Court, High Street, Hull HU1 1YJ
Rowntree Wharf, Navigation Road, York YO1 9WE
www.rollits.com