

Client Newsletter

December 2008/January 2009

Flexible Working Arrangements

Flexible working arrangements came into force on 1 July 2008. Certain employees now have a right to request flexible working arrangements to enable them to meet the needs of people in their care.

Before it became law, a survey showed that most employees dropped out of the workforce to take care of their young families rather than approach their employers to vary their employment conditions for fear of being penalised for taking such action. The new law hopes to assist those employees who wish to remain in the workforce but would prefer to have some flexibility at work to balance their family life.

For the Employee

An employee can request to have flexible working arrangements relating to the hours of work, days of work or place of work (or a combination).

Any employee who has been working for their employer for six months or more, has not made another request for the past 12 months, and is responsible for the care of another person is eligible to make a request for flexible working arrangements.

There is no definition of what “care” means, nor is there a requirement for the employee in question to be related to the person they are caring for.

The employee will need to formally make their request with an application in writing.

The written application must:

- state the date of request and that it is being made under Part 6AA of the Employment Relations Act;
- state how they wish to vary the conditions of employment;
- specify whether the proposed working arrangement is to be for a fixed period of time or permanent;
- explain how it will help the employee take better care of the person cared for; and
- explain what changes, if any, the employer may need to make to accommodate the flexible working arrangements.

For the Employer

The employer does not have to accept the request but does have a legal duty to consider such a request. The employer must notify the employee within three months of the formal application of whether the request has been accepted or declined.

If the employer approves the request, the amended working conditions will be permanent (unless arranged for a fixed period of time). The employee then has no right to revert to the initial terms and conditions of the employment contract unless agreed otherwise.

If the employer refuses the request, they have to notify the employee of the grounds of refusal and the reasons for their decision.

The broad grounds for refusing the request include the following:

- Detrimental impact on the quality or performance of work
- Burden of additional costs
- Inability of the business to reorganise work amongst existing staff or recruit additional staff
- Insufficiency of work during the periods the employee proposes to work
- Detrimental effect on ability to meet customer demand

- The request is inconsistent with a collective employment agreement to which the employee is bound

If the employee is not satisfied with the employer's refusal, it may be referred to mediation. Failing that, it can be referred to the Employment Relations Authority. The Authority, however, will not challenge the employer's decision but consider whether the process was followed correctly.

Voluntary Administration

It is interesting to note that not many (insolvent) companies have taken advantage of the new legislation that came into force in November 2007.

Our October/November 2007 newsletter explained the process in detail. Briefly, Voluntary Administration lets a failing business continue under an independent administrator by granting a moratorium on its debts and by allowing it to trade out of its difficulties under skilled management, with the hope of returning more to the company's creditors than would be the case if the creditors had enforced their rights and liquidated it.

Voluntary Administration would appear attractive to those insolvent companies that:

- Have a core of profitability but are burdened with historical debts
- Were undercapitalized in their start-up stages and now have exhausted all sources of funding

- Are able to pay the fees of independent administrator out of "future trading"

There is a precise process and timeline for an administrator to assess the company's future trading ability (and thereby profitability) and make recommendations accordingly to the creditors. A majority of the creditors' agreement is required.

In a liquidation, the IRD is ranked ahead of the company's unsecured creditors, whereas in a Voluntary Administration, the IRD has no special status and does not get paid before the other creditors. This is another advantage that creditors have in Voluntary Administration where the GST or PAYE debt remains outstanding to the IRD.

With limited utilisation of the legislation so far, only time will tell whether or not Voluntary Administration has a positive effect on insolvent companies.

Cars – Buy or Lease

Often business owners get confused when car dealers use 'buying vs leasing' as their sell-point. Leasing here refers to finance leases rather than operating leases.

There are no real tax advantages of one over the other, although sometimes treatment of GST between different types of finance leases may vary.

Whether the car is bought or leased, the tax treatment remains the same for:

- depreciation
- interest expense, if any
- FBT, if any

The question of buying vs leasing is more of a cash flow problem. If the business buys the car outright, it will not incur interest costs; however, leasing is probably a better alternative if the business is able to put the purchase money to better use.

For more information on this, please contact your advisor.

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