



welcome to this latest edition of Newsbrief.

Here at Berwins we too run a business – and we don't think that as "professionals" we are in any way better than any other business. We know that the professionals and suppliers with whom we work have to share our values

to be able to give us the support we need to succeed – and so it is with every business. Just as we are passionate about Berwins, so we have a passion for our clients' businesses, and to work with them to achieve success – in ways which suit them, not us.

Every business knows that you never reach the plateau of easy achievement – and so we set ourselves ever higher goals to be the best, for you.

Paul Berwin, managing director.

driving success?

Does your business own or lease vehicles?

Do your staff drive their own cars for business purposes?

If the answer is yes to either of those questions, have you considered what would happen if, for example, an employee driving on a business trip knocked down and injured or killed somebody?

The first thing that would happen is that the police would turn up on your doorstep and give you a grilling. They would ask, for example:

What checks do you undertake to ensure the vehicle being driven is safe?

How regularly do you check your employees' drivers' licences to ensure that they are legally permitted to drive?

What steps do you follow to ensure that the individual and / or their vehicle are comprehensively insured?

Do you have an express company vehicle policy setting out circumstances in which employees should not drive (eg if they have consumed alcohol the night before and there is any possibility

of still being over the legal driving limit) or in which they should exercise extreme caution (ie driving when tired or in extreme weather conditions)?

If you are not able to demonstrate that you have addressed these risk issues and taken appropriate action, the business may be found guilty of corporate manslaughter. This can happen in situations where the way in which an organisation's senior managers manage or organise its activities causes a person's death.

If you would like further information about how to protect your business, Berwins in association with Garbutt & Elliott and Synergy Automotive can help. We offer a "one-stop shop" - seamless advice and expertise on the legal, taxation, finance, vehicle provision and maintenance aspects of fleet.

Natalie Saunders is Head of Berwins' Commercial Unit and runs the Employment Team.

Contact Natalie on 01423 722568 or NatalieSaunders@berwin.co.uk

can you spot a TUPE transfer?

I don't mean the removal of a hair piece but rather the Transfer of Undertakings (protection of employment) Regulations 2006.

As an employment lawyer in a busy commercial unit I spend a lot of time advising on TUPE issues. TUPE affects many more businesses than you may think.

In the current economic climate it is more important than ever to know about the TUPE Regulations and the effect they could have upon your business.

In order to help you to identify a potential TUPE issue consider if any of the following scenarios apply:

1. You are considering selling your business as a going concern.
2. You are purchasing a business.
3. You are considering selling part of your business as a going concern.
4. You are outsourcing your cleaning contract, catering supplier or IT or other in-house service for the first time.
5. You are bringing previously outsourced services back in house.
6. You are considering changing Service Provider for any outsourced services.

If any of these do apply then you should be aware of the TUPE Regulations and their implications.

In brief, the Regulations protect employment rights.

If you are selling your business for example the Regulations automatically apply to protect the employment rights of any affected employees. The general rule is that all employees in the business will transfer to the purchaser upon completion with all their employment terms (including continuity of service) protected.

If you are the potential purchaser of a business this is a liability you will need to take into account when making any offers.

In 2006 the Regulations were extended to specifically protect employees in the event of a Service Provision Change. So for example if any of the scenarios 4-6 apply, employees in the area to be outsourced may transfer to the new contractor. Similarly if you are bringing contracts back in house you may be inheriting employees and taking on any liabilities.

One area that astounds most employers is that employees can also automatically transfer between service providers. For example business X outsources its IT services to firm Y and after 2 years changes service provider to firm Z. Employees working on that contract from Firm Y can automatically transfer to Firm Z despite the fact that the two providers may not have had any dealings with one another.

So beware of the TUPE regulations.

Marie Walsh is a solicitor in Berwins' Employment Team
Contact Marie on 01423 542777 or Employment@berwin.co.uk



punching above
your weight –
they'll always talk.

One of the themes that comes through the feedback we receive from clients is the extent to which they feel we help them punch above their weight – whether it's in agreements with big corporate suppliers or customers, in selling their businesses or in joint ventures.

Often there are issues over the ownership of intellectual property – the core knowledge and processes which fuel businesses. And big corporates often have standard agreements, which they try to impose and which just don't fit the circumstance;

they also try to grab the intellectual property rights of their suppliers.

By a careful, robust and reasoned approach – based on our deep experience in these areas – we find we can invariably negotiate the apparently non-negotiable; and make sure you, the client, retains ownership of the rights which have such value to you. Don't let them take that away from you, and don't take "non-negotiable" for an answer. If they have decided they want to do business with you, they will talk.

Paul Berwin is head of Berwins' Company Commercial Team with a speciality in IT and IP law for which he has been ranked by the prestigious Chambers and Partners and Legal 500 directories. Contact Paul on 01423 543101 or PaulBerwin@berwin.co.uk

staying out of court by managing your customers

Whether your business is fitting bathrooms or providing expert advice in a specialist area, clients across the board are becoming more demanding, with higher expectations and an increased willingness to "shop around".

At the same time, as the economy continues to struggle, it is also increasingly common for clients to resist paying on time, or in some cases at all. One of the most common reasons for non-payment that we are seeing at the moment is the claim that the client did not receive what they contracted for. This may be on the basis that the work was not done correctly, was not of a sufficiently high standard, or that it was not as comprehensive as the client expected. In particularly serious cases, it may even be time to call your professional negligence insurers as the client intimates a claim against you.

Whilst this can happen to anyone, there are a number of things that you can do to minimise the risk to your business. In the first instance, always work from a written contract. If this is not possible, then you should at least write to the client and set out what you understand the job to be in as much detail as possible. Sadly the days of the "gentlemen's agreement" being good enough are largely behind us.

Secondly, be clear about the cost of the service you are providing. Are you providing a fixed quotation or an estimate of what you expect the cost to be? What are your payment terms? In most cases any ambiguity will be read in your client's favour.

Thirdly, if you detect any problems during the course of your work, document these. For example, if the client seems unhappy with the job you are doing, write and ask them if there are any problems. If they are given this opportunity and don't raise a problem, then they will struggle to argue that the work was defective later. If appropriate, take photographs of the different stages of work. Whilst none of us like confrontation, it is often better to deal with niggles while they are only minor, and can easily be put right, rather than leaving them to develop into a major row.

Finally, if the worst does happen and allegations are made, if the work relates to a physical object, always request an opportunity to inspect the alleged defects before any remedial works are done. Whilst the burden of proof will be on the client alleging the defect, the better the documentary proof that you were not in breach of contract, or worse negligent, the easier it will be to get the right result.

Emma Farrell is Head of Berwins' Dispute Resolution Team. Contact Emma on 01423 850330 or DisputeResolution@berwin.co.uk

FOCUS ON...

Emma Farrell

Graduating from Oxford University in 1999, Emma joined a leading Dublin law firm and qualified into their Commercial Litigation and Dispute Resolution department in 2003. Emma is experienced in all forms of Dispute Resolution including mediation, arbitration, and negotiated settlements, as well as traditional litigation. Emma advises clients across the board, from high-value commercial disputes, often with multi-jurisdictional issues, to smaller personal claims. Emma returned to the UK in 2009 and joined Berwins in January 2010 as Head of the Dispute Resolution Team. **Contact Emma on 01423 850330 or EmmaFarrell@berwin.co.uk**



Berwins' Dispute Resolution Team : L to R : Mark Fagan, Emma Farrell and Robert Harvey

Agricultural Team:

John Barrett T 01423 850302
E JohnBarrett@berwin.co.uk
Stephen Root T 01423 850303
E StephenRoot@berwin.co.uk
Gareth Marland T 01423 542770
E GarethMarland@berwin.co.uk
Deborah Myerson T 01423 543111
E DeborahMyerson@berwin.co.uk
Mark Fagan T 01423 722560
E MarkFagan@berwin.co.uk

Company / Commercial Team:

Paul Berwin T 01423 543101
E PaulBerwin@berwin.co.uk
Claire Armer T 01423 543138
E ClaireArmer@berwin.co.uk

Commercial Property Team:

Sophie Barton T 01423 542777
E SophieBarton@berwin.co.uk

Deborah Myerson T 01423 543111
E DeborahMyerson@berwin.co.uk
Richard Whitaker T 01423 542777
E RichardWhitaker@berwin.co.uk

Dispute Resolution Team:

Emma Farrell T 01423 850330
E EmmaFarrell@berwin.co.uk
Mark Fagan T 01423 722560
E MarkFagan@berwin.co.uk
Robert Harvey T 01423 543106
E RobertHarvey@berwin.co.uk

Employment Team:

Natalie Saunders T 01423 722568
E NatalieSaunders@berwin.co.uk
Marie Walsh T 01423 542777
E MarieWalsh@berwin.co.uk
Caroline Acton T 01423 850308
E CarolineActon@berwin.co.uk



2 North Park Road, Harrogate, HG1 5PA
T: 01423 509000 F: 01423 503213 DX 25505 Harrogate-2
E: law@berwin.co.uk W: www.berwin.co.uk



INVESTOR IN PEOPLE

Please note... The content of this Newsbrief is provided for general information purposes only and whilst we do our utmost to achieve accuracy it is not intended to be relied upon as a comprehensive statement of law or to apply in every particular and individual set of circumstances. Please contact us directly for individual advice.

We can provide this Newsbrief free of charge in a different format for people who are visually impaired. To get a copy call 01423 542779 or e-mail Marketing@berwin.co.uk