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COMMERCIAL NEWS

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Going Green on Patent Applications

Speed up the patent
process for eco-friendly
ideas at no extra cost

PLUS

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Welcome

Welcome to the latest issue of Palmers Commercial News, which brings you updates and practical advice on the latest legal developments that will impact on your business.

In this edition, we consider how eligible companies can use the patent box regime and green channel service to make the most of their patents, along with the measures outlined in the Enterprise and Regulatory Reform Bill.

We also take a look at the new regulations covering Energy Performance Certificates that will affect commercial landlords, as

well as guidance from HM Revenue & Customs regarding whether assignments fall under the remit of IR35.

To conclude, we highlight the legal issues that employers need to take into account ahead of the major sporting events taking place this summer and how they need to ensure their online presence meets the requirements of the Equality Act.

We hope you enjoy reading Palmers Commercial News and that you find it useful. We'd welcome your feedback on the content, so if you would like to comment, please contact us.

For professional advice, tailored to your individual circumstances, on any of the topics covered in Palmers Commercial News, please contact us.

The importance of a commercial EPC

Landlords need to ensure that all commercial properties on the market have a valid Energy Performance Certificate (EPC) in order to avoid fines of up to £5,000.

EPCs give information on how energy efficient a building is and also contain recommendations on how to reduce the building's energy use and carbon dioxide emissions.

The new regulations which came into force on 6th April 2012 mean that:

- an EPC must be commissioned for all buildings before they are marketed as being for sale or rent
- where an EPC is not available, those selling or renting buildings must use "reasonable efforts" to ensure that one is obtained within seven days of marketing the property (previously 28 days)
- the first page of the EPC must be attached to the written particulars for the property

Commercial property owners and landlords need to be up to speed on these changes in order to market their properties effectively and compliantly.

The penalty for failing to make an EPC available to any prospective buyer or tenant when selling or letting non-dwellings is



fixed. In most cases, this is 12.5 percent of the rateable value of the building, subject to a minimum of £500 and a maximum of £5,000, so failure to comply could prove costly.

For clarification and peace of mind on the

new EPC arrangements, seeking the advice of a legal professional experienced in this field is a sensible step. Therefore, for more information on EPCs or any other commercial property matter, please contact Carey Jacobs, Aldene Derrick or Simon Fothergill.

Clarifying the IR35 risk for limited companies

New guidance has been issued by HM Revenue & Customs (HMRC) regarding the controversial IR35 legislation.

The guidance includes a series of 12 business entity tests designed to determine whether there is a low, medium or high risk that HMRC will consider an engagement to fall under the remit of IR35.

IR35 was introduced in 1999 to tackle the issue of what HMRC refers to as 'disguised' employment. It targets people who work as a contractor or freelancer, even though they are effectively doing an employee's job at a single company, in order to save tax.

However, it has been criticised for the amount of extra paperwork and expense it creates for small businesses.

The new tests cover the following areas:

- Business premises
- Professional Indemnity Insurance (PII)
- Efficiency
- Assistance
- Advertising
- Previous PAYE
- Business plan
- Repair at own expense
- Client risk
- Billing
- Right of substitution
- Actual substitution

Points will be scored based on factors such as whether professional indemnity

insurance is required, the amount spent on advertising and if the company operates from its own premises. The greater the number of points scored, the lower the risk of HMRC considering that IR35 applies.

Those who fall in the low risk category are required to keep evidence to support their answers. If HMRC requests this, and the case can be proven, then HMRC will close its IR35 review and not check again for the next three years, as long as the circumstances remain the same.

For more information on the IR35 legislation, or any other matters relating to employment law, please contact Karl Barnes or Lara Murray.

Queen announces changes to employment law

In her speech at the official state opening of Parliament, the Queen outlined the government's plans for the forthcoming year, including the Enterprise and Regulatory Reform Bill.

The Bill, which will be considered during the next session of Parliament, will make it easier for businesses to manage their relationships with employees due to an overhaul of the tribunal system.

In addition to higher costs for bringing cases against former employers to tribunal, those looking to make claims for unfair dismissal will need to attend a dispute resolution service first.

Furthermore, the new legislation will look to improve the competitiveness of

British businesses by strengthening the anti-competition regime and improving the speed and predictability of outcomes.

The Bill will also give shareholders a binding vote on future executive pay, speed up the UK's transition to a green economy – which includes setting out the purpose of the Green Investment Bank – and repeal any unnecessary legislation to reduce the burden on businesses.

Commenting on the new legislation, business secretary Vince Cable said:

"Securing economic growth through business investment and trade is absolutely essential to recovery.

"Government's plans to cut red tape, boost green investment, reform the competition landscape and reform the banks are vital moves that would help strengthen the business environment and boost consumer and business confidence."

For more information on any aspects of employment law relating to your business, please contact Karl Barnes or Lara Murray.

Creating a winning team

While major sporting events such as Euro 2012 and the Olympics become key talking points for the few weeks they are on, many employers worry as much about productivity levels as the fortunes of their favoured team.

So what are the main issues employers should be considering?

Firstly, employees may want to use their holiday allowance to watch such sporting events. Although workers have a statutory right to annual leave, they need to give notice, and employers can say when holiday can be taken and how many people can be off at any particular time.

Employees may also take unauthorised time off or fake illness to avoid working. In these cases, it is important to refer to company policies and the employee's contract, though employers will need to ensure that any absences are not genuine before taking disciplinary action.

Even if employees are in work, there is still the possibility that they may use the internet to follow events online. Again, having clear policies in place beforehand and referring to these will help employers manage the situation.

Another consideration is employees who have spent the previous evening celebrating or commiserating their team's performance, and then arrive at work with a hangover.

Research by the charity Drinkaware showed that one in ten employees go to work suffering from the after-effects of too much alcohol, which is over half a million every day. This can significantly affect productivity, with almost one-fifth of those who go into work with a hangover admitting to struggling with their workload and to making mistakes.

Again, employers should have a clear policy on alcohol so that all employees know what is acceptable, and any repeated incidents should be carefully investigated to check for underlying problems.

However, dwelling on these potential problems could mean employers miss out on an opportunity to engage with employees and enhance staff morale – an unfortunate casualty of the recent economic downturn.

With some of the Euro 2012 matches starting at 5pm UK time, employers should consider being flexible where possible by altering start and finish times on match days.

This is also the case for employees who are required to conduct business in London during the Olympics, when journey times may be longer or alternative routes may need to be found. Consequently, employers should consider avoiding peak congestion times or holding meetings in offices outside the capital.

However, it is vital that all employees are treated fairly, so that those who are not interested in sport do not feel resentful or discriminated against, and that workers of all nationalities have the same opportunities to watch their country compete.

Communication is key – it is important for employers to explain in advance what they expect from employees in terms of attendance and performance during sporting events. If they are unable to make any changes to their working patterns, employers should explain this; but if they do make allowances, they should ensure employees understand these are only temporary.

At Palmers, we can advise on all aspects of employment law, so please contact Karl Barnes or Lara Murray for further guidance.



Opening up the patent box

A patent box regime is set to come into force from April 2013 that will allow eligible companies to benefit from a 10 percent rate of corporation tax on all the profits arising from qualifying patents – whether through royalties or as part of the sale price of products – and other intellectual property rights.

All patents granted by the UK Intellectual Property Office (IPO) and the European Patent Office (EPO) will be covered by the legislation, as well as those granted by EU national patent offices where the patentability criteria are similar to those in the UK.

The regime will be phased in over four years, with the 10 percent rate applying to 60 percent of the qualifying profits in the first year. This will rise incrementally by ten percent each year, reaching 100 percent from April 2017.

Consequently, companies looking to make the most of this regime should ensure that each of their new products is protected. This will make sure that as much of the company's profits as is possible will be covered by the patent box, and thus liable for the ten percent tax rate.

In addition, as the patent box regime only applies to granted rights (and not pending



applications), it is worth pursuing both UK and European rights separately. With the IPO process taking less than four years – compared to six or seven years for the EPO – this can result in products qualifying

for the patent box rate more quickly.

At Palmers, we regularly advise on intellectual property matters, so please contact **Chloe Bunn** for more information.

Going green on patent applications

Innovative businesses should make the most of a green channel that helps speed up the patent process for eco-friendly ideas at no extra cost.

Accelerated processing of a patent application can be requested under the green channel if the invention relates to a green or environmentally-friendly technology.

The benefits of this service were highlighted by intellectual property minister, Baroness Wilcox, who praised Gordon Murray Design for its use of the green channel.

This has allowed the small company to get its product off the ground faster and go

on to produce low-cost, environmentally-friendly cars, which use recycled plastic bottles in the cars' body panels.

She said: "It's tremendous to see how an idea has been turned into an actual business product swiftly and efficiently. By using the green channel, an environmentally-friendly idea and novel approach to manufacturing is being brought to market quickly, helping to deliver real value and growth to a typically inventive small British firm."

Protecting your intellectual property, and maximising its economic potential, is important for all companies. However, intellectual property issues can be confusing, particularly for small businesses with limited resources.

Taking the appropriate steps to protect intellectual property, with the assistance of legal professionals specialising in this field, is likely to prove a wise investment for the future, so please contact **Chloe Bunn**.

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Ensuring your web presence is accessible to all

As the world of business becomes ever more reliant on technology, more and more companies are setting up an online presence to complement their physical operations.

With increased competition, businesses need to stand out by having websites that are both eye-catching and simple to navigate. However, firms also need to remember their obligations under the Equality Act, especially in terms of making sure that their sites can be accessed by disabled customers.

This point was recently highlighted by a review of five of the most popular price comparison sites by the charity AbilityNet. Four of the sites did not comply with the terms of the Equality Act, and the other only met some of its requirements.

Although the Act does not specifically mention services provided online, the consensus has always been that it applies as much to these services as it does to conventional bricks and mortar operations.

The introduction of the Equality and Human Rights Commission's code under the Equality Act last year made this even clearer by explicitly stating that websites are included with regards to the provision of services.

Consequently, businesses will need to ensure they make the necessary adjustments so that their websites can be accessed by disabled individuals.

"The law is clear on this issue," said Robin Christopherson of AbilityNet. "It is just as illegal to bar disabled visitors from accessing your goods and services online as it would be to keep them out of your shop in the 'real world'.

"Whilst no company would do this knowingly, as this report shows there are plenty of high profile sites that are contravening the Equality Act (2010) by not considering their disabled customers."

For more information on this topic, or any issues relating to the Equality Act or discrimination, please contact Karl Barnes or Lara Murray.



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