

## Case Study

Company X Ltd is a manufacturing company which employs 15 employees; 3 directors, 1 receptionist, 1 admin assistant, 3 salesmen, 6 highly skilled craftsmen and 1 factory hand. It asks you for advice

1. One of the salesmen, Ted, has been undergoing a performance review for failing to reach his targets. In spite of the company's best efforts he is dismissed on performance grounds. He has been employed for 5 years and his contract says he is entitled to 3 weeks' notice.
  - (i) How much notice is he due?
  - (ii) Does he accrue holiday pay during the notice period? If so, until when?
2. The company is concerned that Ted is going to work for a competitor. They want to get him out of the office and ensure that he will not damage the business but there is no garden leave clause or restrictive covenant clause in his contract. What can they do?
3. One of the highly skilled craftsmen, Fred, has been to see the MD. He has worked for the business for 20 years but wants to resign for personal reasons. The MD would like to pay Fred his notice in lieu as a gesture of goodwill because of Fred's long service. There is no payment in lieu of notice clause in Fred's contract but there are restrictive covenants.

Assuming the MD pays Fred in lieu:-

- (i) How much notice does he need to give?
- (ii) Is the notice pay taxable?
- (iii) Would Fred be entitled to be paid holiday pay and any other benefits for the notice period?
- (iv) Would Fred's employment terminate on his last day in the office or at the end of his notice period?
- (v) What effect would this decision have on the restrictive covenants in his contract, if any?

On your advice the company decides not to pay Fred in lieu:-

- (vi) There is a garden leave clause in the contract. Would you advise the company to put Fred on garden leave?
  - (vii) If the company did put Fred on garden leave would he be entitled to be paid his salary and to accrue holidays during this period?
4. The company decides to take on another admin assistant. You are shown a copy of the current contract which contains restrictive covenants and a garden leave clause. Do you advise that these should be retained?

5. The company terminates Bob's contract on the grounds of gross misconduct. He has made allegations against his line manager, who dealt with the initial hearing. You hear the appeal and agree with the decision to dismiss but reach a commercial decision that you will pay Bob £1,000.
- (i) You decide that you don't want the hassle of signing a Compromise Agreement and agree with Bob that he will sign a letter confirming he won't bring a claim. Will this protect the company if a claim is brought?
  - (ii) On your advice the company asks Bob to sign a Compromise Agreement. There is a pay in lieu of notice clause in Bob's contract. Can the £1,000 be paid tax free?
  - (iii) What clauses would you want to include in the Compromise Agreement?
  - (iv) Bob's contract does not contain any restrictive covenants or clauses regarding confidentiality and the return of property. You decide to remedy this by including these in the Compromise Agreement. Do you need to make any kind of payment to Bob for this? Would this be taxable?
  - (v) Bob wants to agree a reference to include in the Compromise Agreement. The company wants advice on whether it can do this and, if so, what it should say?
6. Sally, the company's receptionist decides to leave. She wants to pursue a new career and leaves on 30 September 2010. A month or so after she leaves the company receives a letter from Sally alleging she has not been paid 4 days accrued holiday.
- (i) If the company dispute Sally's accrued entitlement and refuse to pay it, what is the last date she can bring a claim for non payment against the company?
  - (ii) Does her letter amount to a grievance?
- You subsequently discover that Sally has been overpaid in her final salary by two weeks' pay:-
- (iii) What action, if any, can you take?