

# Legal Update



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*Keep Updated.*

## **10 things a Company should consider before removing a director.**

1. It's not as simple as just dismissing the director. You could be in hot water so follow the procedure set out in the Companies Act 2006.
2. The Shareholders of the Company must pass an ordinary resolution to remove the director. An ordinary resolution is a resolution that has been passed by a simple majority (i.e. 50% plus) of shareholders or their proxies, at a company general meeting.
3. Special notice is required for that meeting meaning that 28 clear days is needed. What exactly are "clear days" though? It's not as simple as just counting out 28 days, the Company must exclude both the day on which the notice is given and the day of the meeting.
4. The ordinary resolution cannot be passed as a written resolution it must physically happen at a properly convened meeting.
5. On receipt of notice of an intended resolution to remove a director the Company must immediately send a copy of the notice to the director concerned.
6. The director has a right to be heard at the meeting in which his removal is discussed and to make written representations.
7. If the director makes written representations then these must be sent out to all the shareholders prior to the meeting, however if this does not occur for some reason (e.g. sent too late or the Company defaults) the director still has the right to have the representations read out at that meeting, whether or not he attends.
8. Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application to court either of the Company or of any other person who claims to be aggrieved, the court is satisfied that the rights given are being abused.
9. Check the Company's articles because there very well may be a different procedure set out allowing for the director to be removed by other means.
10. Be careful.

*Speak to your advisor at Newsome Vaughan and make sure that the process is handled correctly. There are likely to be employment aspects as well and these have to be dealt with separately.*



## FREE ADVICE

**3 NOVEMBER 2009**

Newsome Vaughan LLP is hosting its annual Autumn Business School from 8 to 10am on the 3rd of November 2009 at the Coventry & Warwickshire Chamber of Commerce, Oaktree Conference Centre in Coventry.

This event is being held in conjunction with the Chamber and not only is it free but there's a chance to have a decent breakfast whilst getting the inside track on all the new changes brought about by the new Companies Act 2006 to every company's Articles of Association. Places are limited - Don't be left out. Contact us to book a place. E-mail [davidl@n-v.co.uk](mailto:davidl@n-v.co.uk) or call 02476-234-265

Be aware

### Disability and Discrimination

Two recent cases have shed some further light on some key issues in cases of disability discrimination.

#### Failure to make reasonable adjustments

In the case *Fareham & College -v- Walters* the Employment Appeal Tribunal has made it clear that a dismissal can itself be an unlawful act of disability discrimination by reason of a failure to make reasonable adjustments. The Claimant in this case was a lecturer who had a condition which caused pain in her feet and restricted her mobility. In February 2006 she commenced a period of sickness absence. Following various meetings to discuss her absence, she was dismissed on 7 September 2006. The Claimant's request for a phased return to work commencing in January 2007 was rejected. The Tribunal determined that, as there was a reasonable adjustment that could have avoided the dismissal, the dismissal itself was an unlawful act of disability discrimination.

It did not matter, therefore, in this case whether someone who was not disabled but had been off on a similar period of sick leave to the Claimant would have been treated in

the same way. The failure to make the reasonable adjustment itself made the dismissal discriminatory.

#### What does 'likely' mean in the context of disability discrimination?

The Disability Discrimination Act uses the word 'likely' in a number of contexts. For example, one of the requirements in order for someone to be able to demonstrate a disability under the Act is that they have an impairment which has lasted or is 'likely' to last at least 12 months. The word is also used in other contexts so that an impairment which would be 'likely' to have a substantial adverse affect on a person, but for the fact that corrective measures are in place, is to be treated as having that affect.

The House of Lords has considered what the word 'likely' means in this context. They decided that 'likely' did not mean more probable than not i.e. that there was at least a 51% chance of something happening, but should simply be taken to mean only that 'it could well happen' – a much lower hurdle. The effect of this is that it is likely to become easier for employees to claim that they are disabled for the purposes of the Disability Discrimination Act.

*Helen Essery*



Is the Credit Crunch Biting?

## Help, I'm a Director - get me out of here

The golden rule is get help ASAP because as soon as the directors are aware that their company is in financial difficulty they should seek outside professional advice.

The moment you are aware that there is no reasonable prospect of avoiding insolvent liquidation, or you think it's possible, you should immediately raise the issue with the rest of the board and aim to get independent professional advice.

So don't go spending further money and incurring extra credit: at this point the directors should be looking at every possibility to save cash, stop unnecessary expenditure and to put whatever process into place to minimise possible losses to creditors.

Don't throw the towel in and resign...just yet: As a director you have many duties and responsibilities and you could end up with some personal liability for your actions.

The most important step to take is to get good legal advice and look into the possibility of one of the insolvency procedures. Only after failing to get other members of the board to consider taking advice should you resign and then only after making it clear that it is under protest and after having taken your own legal advice.

It can't be stressed enough so once more, let's be clear, "Get professional independent legal advice".

*David Lee*

What every Business should know.

## Employment Law Update

As ever, there have been some significant changes in employment law over recent months. Here are just some of the highlights...

The right to request flexible working has been extended to parents of children under 17; previously it was only parents of children under 6 who had the right, unless the children were disabled. The right of course also applies to carers of adults. Just a reminder, it's not a right to work flexibly, but only a right to request flexible working, which can be refused for certain, legitimate business reasons.

The old rules with regard to statutory dismissal and disciplinary procedures and handling grievances have been abolished. They have been replaced by a new ACAS code of conduct, which, if not followed, can lead to an adjustment in any tribunal award of up to 25%. The code sets out certain minimum good practice requirements which should be followed and of which all employers should be aware.

Paid holiday entitlement is now 5.6 weeks as a minimum, equivalent to 20 days plus 8 bank holidays for a full-time worker.

With effect from 1 October 2009, the maximum weekly pay taken into account when calculating redundancy and other statutory payments will increase from £350 to £380.

The Government is currently consulting on a new Equality Bill designed to bring together the law on all forms of discrimination in one piece of legislation. This will herald some significant changes in employment law when implemented, so it's a case of watch this space...

*Helen Essery*

## NEW TEAM

Newsome Vaughan is launching its new Governance Team to help Housing Associations have a one stop legal shop.

If you want to find out how we can help you then contact Paul Saunders at [pauls@n-v.co.uk](mailto:pauls@n-v.co.uk)

### Contributors

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If you require any further advice on any of the issues arising from these cases, or any other aspect of disability discrimination law, or employment law generally, please contact Helen Essery on 02476-234-227 or [helene@n-v.co.uk](mailto:helene@n-v.co.uk)

If your query relates to Company or Commercial law please contact David Lee on 02476-234-265 or [davidl@n-v.co.uk](mailto:davidl@n-v.co.uk)

The information contained in this letter is not and should not be construed as legal advice. Speak to your legal adviser so that you have the latest and most up to date advice.