

### Sleeping Partners – Wake-up call on NIC

*There's been a change of mind by HMRC on NIC in respect of "sleeping business partners". They now say contributions have always been due; will it be back-dated?*

Previously HMRC concluded that partners who played no active role in a business (sleeping partners) were not subject to NIC on their profit share. Why? because they did not count them as earnings; they now say they were always earnings.

**Advice** – HMRC's position is being challenged but to be on the safe-side it would be prudent to register for and pay NI. If HMRC loses then you will be due a refund.

**Back-dating** – HMRC have indicated that they will not be back dating liability, they intend to charge from 2013-14 forward.

**Tip** – You don't have to pay NIC on partnership profits if your total earnings from self-employment are below the LEL (lower earnings limit) currently £5,725/yr.

### Alcohol testing-New fingerprinting device

*A new device is available which can detect alcohol in an employee's system purely from a fingerprint. Is it a good idea to use it?*

**The device** – available now in the UK (Alcosense TruTouch) is claimed to accurately measure blood-alcohol in 8 seconds.

**Can you use it** – The short answer is no, in the UK employers do not have the right to perform automatic alcohol tests on their employees. If you did we believe you would run into trouble very quickly.

**Tip** – If you have employees in safety-critical positions, then you need to have a contractual right to perform the test. Although you have the contractual right an employee still can't be forced to take part. However you can use an unreasonable refusal as grounds to commence disciplinary proceedings.

### Health & Safety for the Self-Employed

*The government intends that some self-employed be made exempt the laws on health & safety.*

**At present** – The H&SAW act 1974 requires self-employed individuals to make sure the health & safety of themselves and others is not put at risk. The government intends to remove this obligation from October 2013 or April 2014.

**To be exempt** - an individual will have to be (1) not have any employees. (2) be self-employed. (3) the work carried out, products created or services provided must not pose a risk to others.

**Who will be covered** – Workers in low risk activities such as sales/service/ office professions but not traditional tradesmen It's such builders, electricians and plumbers. You will still be responsible for the H&S of persons working on your property.

### Rules relaxed on share buy-backs

*The government continues to encourage share ownership and has made it easier for shares to be bought back by companies when employees leave"*

Research has shown that businesses with less than 75 employees that have "Employee Ownership Schemes" are more profitable than those that don't (nearly double the sales growth).

**Tip** – Setting up an approved scheme for example an Enterprise Management Incentive Scheme could provide a lower tax method to reward key personnel.

**Relaxations** – (1) Off-market share back approval by a simple majority rather than by ¾ of shareholders. (2) Ability to hold shares in reserve (treasury shares) rather have to cancel any shares bought back. (3) Private companies may be able to use cash up to £15,000 or 5% of share capital to fund buy-backs. The amount does not need to come from distributable reserves.

### Staff activity on social media

*Can you dismiss an employee for making comments that are detrimental or inappropriate on social media sites?*

**The press** – recent press reports state that many employees in the public sector have been subject to dismissal for unacceptable posts on the likes of Twitter or Facebook.

**Can you do this?** – The final decisions will be made by the courts but in the meantime you must have a watertight case.

**What do you need?** – (1) a clear social media policy which sets out clear behaviour rules of behaviour. (2) Set out clearly what is not acceptable (3) The strongest control is to prohibit employees from directly or indirectly identifying your business or their role in it. (4) Follow proper disciplinary rules and if the employee gives a full apology, immediately deletes any unacceptable postings and your business has not suffered; don't proceed to dismissal as you will probably lose at a tribunal (always remember the watch words "fair & reasonable").

### Allowing children into the workplace

*Should you allow employees to bring children into the workplace when they have childcare issues.*

**It's best to say no** – (1) You will create a precedent that will be difficult to control. (2) There is likely to be disruption or distraction to the rest of your workforce. (3) Most importantly, there is a potential health & safety risk even in a low risk workplace.

**Tips** – If the issue can be foreseen (e.g. school holidays) then the right to dependants leave is unlikely to be triggered. Instead allow annual leave or some unpaid leave to be taken so long as it is not disruptive to your business..