

23 January 2015

3HR Legal Weekly

Commercial

Dispute Resolution

Exchange of emails amounting to a binding settlement agreement

In *Bieber and others v Teathers Limited (in liquidation)* [2014] EWHC 4205 which relates to complex litigation, an issue arose as to whether a binding agreement had been made between the parties in email correspondence.

The defendant's settlement offer was accepted by email from the claimants. The claimants indicated in the email that they would be circulating a draft consent order to which the defendant replied "Noted, with thanks." The defendant, upon receiving the draft consent order, sent a settlement agreement to the claimant which contained an indemnity to the defendant in relation to third party claims. The claimants refused to sign the agreement. The court decided that:

It was clear during the whole course of negotiations that the parties had intended to reach a final and binding settlement on the exchange of emails, without the need to agree further terms. The agreement was not subject to contract, and it was expressed to be in full and final settlement of all claims between the parties, counterclaims and costs; and contrary to a previous offer the defendant made to the claimant, the offer which was finally accepted by the claimant was not expressed to be subject to contract and could not be interpreted as including any such implication. Furthermore, the defendant's response, "Noted, with thanks", suggested that no further terms had to be agreed.

The lesson to take from the above decision is that parties need to be extra careful not to enter into a binding agreement until and unless it is in full and final terms and 'subject to contract' should be expressly stated otherwise.

3HR can act on your behalf in complex commercial litigation matters. Should you have any ongoing litigation queries, including any questions regarding settlement, our commercial department will be happy to assist you.

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Immigration

Home Office Immigration Audit

Q. What do I need to be aware of when preparing for a Home Office immigration audit?

A. The first thing to remember as a Sponsor of migrant workers, is that the Home Office may visit your premises at any time to carry out an audit and may not always give prior warning. It is therefore important that you are always prepared for such a visit.

At a basic level, it is also important to always keep the Home Office updated regarding any change of address or other contact details, or of a change of name to the company. If the officers visit the incorrect premises, or attend the correct premises but are looking for an organisation with a different name (for example if you registered as a Sponsor with your full name, but only use your initials on your premises) then they could conclude either that you no longer exist or have failed to comply with your duty to update your details.

It is of course also vital that you have kept all of the necessary documents and records that you are obliged as a Sponsor to keep, and that they are in a format that is accessible by the officers carrying out the audit. This means, for example, that there should be English translations (if the original document is not in English) and there should be a clear filing system so that the specific information or documents can be provided upon request. You should be sure to review your record-keeping duties carefully, since it can sometimes be easy to miss technical points. For example, it is not sufficient simply to have a migrant worker's latest contact details – there must also be a record kept of the history of their contact details throughout their time working for you.

3HR can carry out audits for you to prepare you for an audit by the Home Office and we can also provide template documents and procedures to assist you in always meeting your duties.

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HR

Employee Turnover

Q: We currently have high employee turnover in our organisation. What can we do about it?

A: Employee turnover levels vary between occupations and industries, with the highest turnover rates typically affecting retail, catering and other lower paid services groups. Regional factors and the age or stage of employees also play a part. Employee turnover is not always negative, but if your organisation is finding that turnover is causing problems (perhaps due to the costs associated with recruiting and training replacements, or to the morale of the remaining employees) a first step would be to attempt to identify the reasons for the turnover.

Gathering accurate information from departing employees can be very difficult. Individuals who may be relying on a reference from your organisation are likely to give only partially true reasons for their departure. Exit interviews could be conducted by an external provider, and should not be conducted by a manager who had responsibility for the employee. Confidentiality should be assured. Anonymous questionnaires could be sent to employees a few months after their departure.

Employees resign for both "push" and "pull" reasons –attractive new prospects may pull them away from your organisation, or negative factors may push them away. Anonymous surveys are one way to investigate employees' engagement levels with their current roles. Typically employees are dissatisfied due to lack of training, development and career opportunities, or a poor relationship with their line manager.

For more advice on reducing employee turnover, contact your usual 3HR Consultant.

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