

# END OF YEAR UPDATE

THE END OF YEAR GUIDE FOR YOU AND YOUR BUSINESS

## PROTECT YOUR MOST IMPORTANT ASSET AT YEAR END

As employees look forward to celebrating the year gone by, employers should not lose sight of their responsibilities.

It is easy for staff to become overly enthusiastic at office functions. However, it is the employer who may be held liable for any injury or misadventure suffered by an employee at or directly after an office function, especially if alcohol is supplied.

Employers may also face liability for any form of sexual or emotional harassment suffered by one employee from another.

All employees attending the party should be made aware of their responsibilities and expected behaviour before the event, as well as disciplinary procedures for employees who breach these standards. In the event of any serious breaches of conduct, action should be taken in the days following the Christmas party, not left to be dealt with in the new year.

If the party is to be held off premises, employers should visit the venue to make an assessment on

any possible risks, and ensure that occupational health and safety requirements are met.

Alcohol should be served responsibly by personnel who are qualified to do so. Many venues employ bartenders who are trained for these functions and will be able to manage rowdy partiers.

It is a good idea for employers to arrange safe travel arrangements for employees, either by handing out cab charges or organising a mini bus. Any employee who has a drink driving related accident on the way home from a function may be able to hold their employer's business responsible.

Ensuring all risks are managed will give employers the peace of mind they need. The most important part of Christmas parties is for everyone to enjoy themselves and create lasting memories and a stronger team that can be carried into the new year.



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We would like to take this opportunity to wish all our clients and their families a very happy Christmas. We will be taking a short break over the Christmas period.

Our closing dates are:  
12:00pm 21st December to 7th January

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## COMMON MARKETING MISTAKES

The holidays are a vital time for small businesses to market their brand effectively, or risk being drowned out by the sea of competitors.

Despite the vast range of literature and resources on how to be a successful marketer, there are some very common, avoidable mistakes that many small business owners make that may be holding back their business' marketing potential.

### 1. Lack of understanding of customers

Many marketers have a completely product-centric view of the world. They know their product up, down and sideways, but have only a vague idea of who might actually want or need it, or how it would be used. Worst case, the marketers do not think that customer research is important because their product is so state-of-the-art that it is obvious why it is a good thing to buy.

### 2. Not listening to customers

Even when marketers do have a concept of the ideal customer, they often spend little time actually listening to them. They do market research and run demographic numbers, but just sitting down and simply listening is not on the agenda. Not surprisingly, the result is marketing messages that do not mean anything to the people who are supposed to buy.

### 3. Not understanding customers needs

Some marketers who listen to an ideal customer listen for the wrong things. They try to find ways that the product they are marketing can fulfill the customer's needs. While that sounds smart, it is actually not.

In business-to-business sales (which is the bulk of most sales activity) what is important is not satisfying the customer's needs, but the needs of the customer's own customer.

### 4. Lack of value-proposition

Marketers who understand their customer's customer, they often have a difficult time formulating a value proposition that makes sense to both the customer and the end customer.

### 5. Too much wordy writing

When marketers do have a great value proposition, they have a tendency to over write about it in long-winded sentences and jargon. Writing a crisp message is a specialised task that only talented individuals can accomplish.



## THE NEW DIRECTOR PENALTY REGIME

The new Director Penalty Regime came into place in June 2012. It once and for all clears up any suggestion that a director can have a passive involvement in a company.

It provides a stern warning to company directors that this position has great responsibilities. Unless directors closely monitor their company's activity, they are placing themselves at great risk.

Companies, as a legal entity, have long been a preferred structure for new business ventures because it provides protection of personal assets of directors.



As a separate legal entity, if things go bad in the business, it is the company that is responsible not the directors personally. However, there are exceptions to this general principle. For instance, when a director seriously breaches their legal duties as a director, or allows the company to trade whilst insolvent, they may be personally attacked.

The new rules go a lot further. Under the new regime, a director will be personally liable for any PAYG withholding tax and employee superannuation if they are not paid or reported within three months from their due date. This liability remains even if the company is later put into administration or liquidation.

Company directors must be fully aware of the financial position of their company. This means taking all reasonable steps to ensure that the company does not incur financial commitments that the company cannot afford. Relying solely on the word of the financial controller will no longer be an excuse.

With the change in law, company directors must ensure that PAYG withholding tax and employees superannuation are paid when due or are adequately reported to the ATO. That means lodging business activity and superannuation guarantee charge statements on time.

The new Director Penalty Regime highlights the serious obligation and risk as a result of being a company director. If in doubt about your obligations, or the financial standing of a company, you have the option of getting legal and financial advice. Like so many other things in business, early advice is usually the best.

## MAKE MORE OF THE FESTIVE SEASON

Usually long operating hours, public holidays and demanding customers can be a recipe for disaster.

The best way to avoid the holiday period chaos is to have a well thought-out operating plan. The following are a few tips that will ensure your business maximises its potential.

- ▶ Have all staff well prepared for the rush periods, train them extensively where possible and use the best performers for the busiest periods.
- ▶ Have extra cash on-hand, especially small change. Look at the cash flow issues from the previous year and learn from past mistakes.
- ▶ Work alongside suppliers to ensure there are adequate amounts of stock available, and have a warning system in place if stock levels suddenly drop.
- ▶ For those operating longer hours than usual, take as many safety precautions as possible. Always have two staff members lock up together at the end of the day.
- ▶ Issue invoices for this period as early as possible. As suppliers everywhere generally demand payment at this time of year, it may be a case of first in first served.

- ▶ Try and negotiate a pre-holiday settlement of accounts with debtors to avoid the post-holiday close down accounts lull.
- ▶ Put accounts staff on notice early, scheduling a meeting mid-year to plan the management for the final quarter, then another meeting at the close of the September quarter.



## FBT and Christmas – the top 10

As the festive season approaches, many businesses may be starting to plan Christmas functions and thinking about offering their staff, clients and suppliers Christmas gifts. Something that is often forgotten at this time is the tax implications these bring.

Here are 10 things about providing such benefits to employees that might help make things a little clearer.

1. The costs of a Christmas Party are exempt from FBT, as long as they are only provided to current employees on a working day on your business' premises.
2. If current employees invite their spouse or another associate of theirs, these costs will be subject to FBT unless these costs are a 'minor benefit' or satisfy the minor benefits exemption.



3. Christmas parties that are provided off business premises will also be subject to FBT, unless they satisfy the minor benefits exemption.
4. This exemption allows for an FBT exemption to be claimed for benefits provided, where each benefit (on a benefit by benefit basis) is less than \$300 (including GST), regardless of whether it is provided to an employee or an employee's associate (i.e. spouse or family member).
5. The application of the minor benefits exemption also requires that the costs associated with the party and the provision of gifts to employees is 'infrequent and irregular'.
6. The FBT and tax implications of gifts given to employees are also dependant on where the employee decides to consume those gifts. Gifts consumed on a business premises are exempt from FBT and the employer cannot claim a tax deduction.
7. A tax deduction for costs associated with the provision of Christmas parties and gifts for employees is allowable only to the extent that the cost is subject to FBT, i.e. if the cost is deemed to be FBT exempt, you cannot claim a tax deduction.
8. Entertainment costs for clients are not subject to FBT. As a result, they not tax deductible.
9. Gifts provided to suppliers and clients are not subject to FBT and a tax deduction can be claimed. That is provided the gifts are not excessive, frequent or overly expensive.
10. If the above seems too complicated, businesses can simplify their FBT paperwork, by electing to pay FBT on 50 per cent of all meal entertainment benefits provided in an FBT year, regardless of whether it was provided to an employee, associate or client.

# SUPER CHANGES AHEAD

**O**n 1 July 2013 the super guarantee rate will increase from nine per cent to 9.25 per cent.

These changes will see the super guarantee rate rising to half a per cent per year, capping out at 12 per cent in 2020.

Rate increases are not the only change. The upper age limit for paying super to an employee will no longer apply. This move is to encourage mature workers to stay in the work force longer. This means employees aged 70 years or older will continue to receive super payments.

Employers may also be required to print information about super on pay slips. This new information may include the amount of super and the date it was paid into each fund. Doing this will provide employers and employees with a point of reference in the case of payment disputes.

If these changes are introduced, employers need to update their payment processes to include these new changes.

These changes are intended to give employees more information. The aim is to help employees keep track of their super and be able to make more accurate long-term plans for their retirement.

# EMPLOYEE OR CONTRACTOR?

**W**hen hiring, employers need to understand the differences between an employee and a contractor to avoid costly consequences.

Many businesses get it wrong when determining if a worker is an employee or contractor because they are not ensuring the arrangements have been set up correctly.

It is essential to get the decision right because businesses will face different tax and super obligations depending on whether the workers are employees or contractors.

A number of recent case decisions have challenged the traditional view on the determination of common law employees and independent contractors for superannuation guarantee contribution (SGC) and PAYG withholding purposes.

Traditionally, the difference between an employee and a contractor was almost exclusively determined under the control test. That means an employee is controlled to the extent that they are told, not only what work is to be done, but also how and when it is to be done.

A decision in the Federal Court established that there is not a singular factor that determines what contractor is. Each case needs to be considered on its own. The case raised a number of factors that should be considered before deciding whether a worker is considered to be an employee or contractor.

As a guideline, the following factors should be considered in determining whether an individual worker is a common law employee or a contractor for SGC and PAYG purposes.

## Control test

The employer directs the employee in relation to what to do and also how and when it is to be done.

Contractors maintain a high level of discretion and flexibility as to how the work is to be done.

## Delegation test

An employee is unable to delegate duties to others except for delegating to other employees.

A contractor has the power of delegation and can delegate to other employees or subcontractors.

## Integration test

An employee generally performs the work on the employer's premises and using equipments provided by the employer.



A contractor carries on a business on in his or her own right. The contractor provides their own equipment and incurs their own expenses to complete the work, and meets their own tax and superannuation obligations.

## Risk test

The employer, not the employee, that is responsible for all the commercial risk including poor workmanship or injury sustained in the performance of work.

The contractor, not the employer, that is responsible for all the commercial risk including poor workmanship or injury sustained in the performance of work.

## Results test

An employee is generally paid based on an hourly rate, piece rates or award rates.

A contractor is paid to produce a given result based on satisfactory completion of the contract.

If the employees are incorrectly treated as contractors by the employer, the financial implications can be significant. The business will be required to pay nine per cent superannuation guarantee contributions. That is in addition to the contracting fees it has already paid.

All the future payments to the contractor will also be subject to PAYG withholding tax. The business is required to remit the withholding tax to the ATO and prepare PAYG payment summaries for payments made to the workers.