

ASK GSC

JUSTIN GOLDSPIK WHO SPECIALISES IN MEDIA AND INTELLECTUAL PROPERTY, TESSA FRY WHO ADVISES ON EMPLOYMENT LAW AND SANA SHEIKH WHO ADVISES ON PRIVATE CLIENT LAW, ANSWER YOUR QUESTIONS



Q *We are a UK based tech company and considering a joint venture with a firm in India. We are concerned about IP rights and ownership of the platforms we're creating. How should we approach this?*

A In general, the approach you will take should be the same as with any joint venture. You must decide the basis upon which the joint venture will use your IP rights – as well as any rights created during the operation of the joint venture – and will have any rights to the platforms. You then need to ensure that the joint venture agreement clearly sets out this position, as well as explaining what happens to the rights if the joint venture comes to an end.

The fact that the other company is from India highlights two key points which joint venture agreements should always cover.

First of all, it is common to talk about copyright in a document or piece of software as if there was just one item of intellectual property. However, there are likely to be many different copyrights (one for each country in which the necessary rules for copyright protection are satisfied). So the agreement must cover all of these

different copyrights. Similarly, to protect the joint venture's branding and platform around the world, it will be insufficient to rely on just a UK trade mark and so it may be necessary to take further steps to obtain trade mark protection outside the UK.

Secondly, the joint venture agreement should also clearly provide what country's actual law governs its interpretation and in the courts of which country any disputes about the agreement can be heard.

Q *We were about to make someone redundant but she now tells us she's pregnant. Can we still go ahead?*

A You can make a pregnant employee redundant provided there is a genuine redundancy i.e. the requirements for the job are no longer required or you were planning to close down her place of work and in both cases, there is no suitable alternative employment available.

Any dismissal due to pregnancy is automatically unfair. Unlike ordinary unfair dismissal claims, no qualifying period of service is required and there is no cap on the compensation awarded if the claim includes pregnancy discrimination.

If the employee did bring a claim, you would need to satisfy the tribunal that the dismissal for redundancy was genuine and was not due to the pregnancy. This would be easier to prove in a group redundancy rather than a 'one off' redundancy.

If the employee has over two years' service, she would be entitled to a statutory redundancy payment and notice. If she has 26 weeks' service by the end of the qualifying week (fifteenth week before the baby is due) and is still employed on this date, then you would also be required to pay her statutory maternity pay for 39 weeks. This would be off-set by national insurance contributions for other staff up to 92% unless you can show hardship.

The only way to prevent a claim is for the employee to sign a settlement agreement for which you would have to pay additional compensation and a contribution towards legal fees.

Q *How will inheritance tax rules affect my family business?*

A The inheritance tax rules provide generous exemptions for owner managers, but the requirements must be carefully navigated to ensure that your family business falls within the rules.

The exposure of your family business to inheritance tax will depend on the nature of the business. Certain types of businesses qualify for 'Business Property Relief' (BPR) which allow them to be passed on free from inheritance tax, provided the individual concerned has owned the business for at least two years prior to death. Broadly speaking, businesses that carry on a trade rather than investment activities are able to qualify for BPR. The business must "wholly or mainly" consist of trade, which generally means more than 50% of its activities must be trading. For example, if a trading business also holds buy-to-let property, it could still qualify for BPR as long as the letting business accounted for less than 50% of the whole business.

If the family business is passed to the next generation while the individual is still alive, the estate can still claim BPR as long as the next generation keep the business going until the death of the individual. It is also important to note that whilst your family business may today qualify for BPR, there is no guarantee that it will continue to qualify in the future as tax rules constantly change.

If you have concerns regarding succession planning for your business, please contact a solicitor to discuss your options.



● If you have any questions on any of the legal topics on this page contact us at info@gscsolicitors.com or call 020 7822 2222; gscsolicitors.com

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