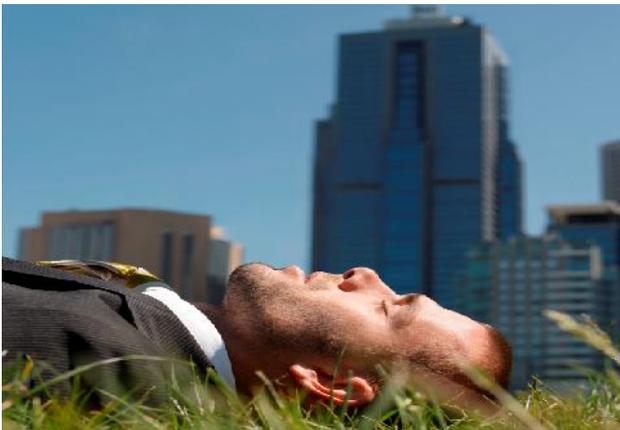


NEWSLETTER

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Closing down for the holidays? Here's what you need to know...



A closedown period is when an employer closes business operations for a certain length of time, often doing so during off-peak times of the year.

Many businesses tend to do this over the Christmas break and many employees are happy to take this time to enjoy summer holidays with family. But there are some rules that employers need to be aware of before shutting up shop:

- There may only be one closedown period per year, although employers can shut down different business sectors at different times of the year
- Employers must give staff at least 14 days' notice of the closedown period
- Employers can require staff to use their annual holidays over this time. Public Holidays are still recognised during the closedown period and are treated as such

There are many benefits for employers during closedown periods, including less disruption to productivity and a reduction in labour and operating costs. If you are planning on closing down over Christmas, be sure to let your clients know. It's not only courteous but is a good way to touch base and wish them a Merry Christmas.

Cashing up annual leave - some things you may not know

What are the rules when it comes to annual leave?

Employees can make a request to employers to cash in annual holidays, opting instead to take a lump sum payment rather than time away from work, but there are a few rules that need to be taken into consideration.

The request must come from the employee and not the employer. Although the employee is entitled to leave, the employer can decline the request at its own discretion and does not need to give a reason for its decision. However, the fact that employers owe a duty of good faith to their employees suggests that an employer's response to a request should be reasonable.

In addition, there is a limit to the amount of leave that can be converted to payment. By law, the employee can only exchange a maximum of one week annual leave for cash payment per annum.

An employer is entitled to have a policy that it will not consider requests from employees in its business or in a particular section of its business.



Personal Guarantees Provided In Commercial Leases

In taking on a commercial lease for a business premises, there are many things for a business owner to consider. One of these could be a request from a landlord for a personal guarantee. Generally a landlord will require a combination of a security deposit/bond or bank guarantee as well as a personal guarantee, as security. The higher the risk or weaker the 'covenant strength' the landlord perceives the tenant to be, the more security the landlord will likely require before committing to a lease.

A guarantor, in the context of a commercial lease, is a person who gives a written undertaking to provide payment for a debt in the event that the tenant company to the lease defaults in its obligations. If called upon, the guarantor could be required to cover many costs that they may not have considered. These costs could include, but are not limited to, any unpaid rent and operating expenses, rent and operating expenses for the remainder of the lease, and other expenses incurred by the landlord such as legal fees, penalties, agent's fees and financial inducements to secure a replacement tenant. Unless the tenant and landlord can come to an agreement as to an exit strategy, the landlord can apply to the court and the guarantor's personal assets could be forcibly sold through a court order to recover any outstanding amount.

For example, a company (tenant) signs up to a five year lease in a new shopping centre, and the shareholder, who owns a house in their own name valued at \$450,000, has provided a personal guarantee to the landlord.

After two years it is evident that the business is not profitable and the decision is made to cease trading and exit the premises.



As the lease still has three years to run, the tenant is liable for the remaining three years of rental payments and operating costs; and is only limited by the landlord's obligation to take all measures to mitigate the tenant's losses by securing a replacement occupant.

Let's assume the landlord agrees that the tenant may exit, on the condition they pay \$200,000 to cover six months' rent, legal fees and agent's fees to find a new tenant. As might be expected with a financially challenged business, the tenant simply has no money to cover this payment. The landlord has the legal right to apply to the court to liquidate the tenant. As the shareholder has provided a personal guarantee to the landlord, the shareholder could lose their home to meet the \$200,000 liability.

In practical terms, when negotiating a lease, a landlord will always want to include a personal guarantee as part of the lease. If the requirement for a personal guarantee seems unreasonable, based on the tenant's circumstances (financial position etc), the tenant should push back on the requirement, given the potential for loss. The result will ultimately depend upon the bargaining power of each party, such as how desperate the landlord is to secure a tenant, or how much a tenant wants to operate in a particular location.

So beware when signing a personal guarantee whether for your own business or someone else's, you may be putting at risk more than you anticipate. Legal advice should be obtained to determine the best course of action to protect your assets when entering into such an agreement.

New Zealand Business Number

In November 2013, all companies on the Companies Register were assigned a New Zealand Business Number (NZBN).

Companies can use the NZBN interchangeably with their Company Number when interacting with the New Zealand Companies Office.

This is the first step towards allocating a NZBN to all businesses in New Zealand, and creating a single searchable public register of businesses.

This will enable government to provide a more consistent and joined-up services, saving businesses time, and enabling greater e-commerce between businesses.

Work is underway to identify how the NZBN can be allocated to other businesses, for example, sole traders, state sector organizations, partnerships and trusts.

Christmas Closing Period

Our offices will close from
5:00pm **Friday 20th December**

Re-opening 8:30am **Monday 13th January**

To all of our fabulous clients, business associates and supporters, we wish you a great Christmas and a successful 2014. From the team at:

Gary Chapman & Associates Ltd

