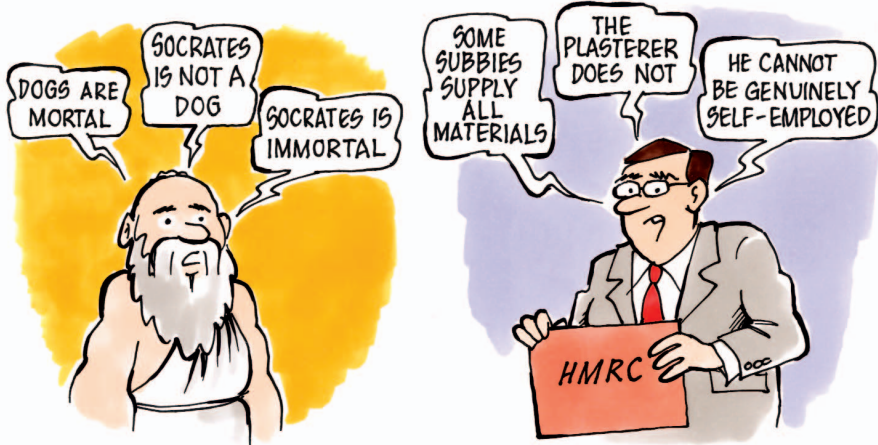




CONSTRUCTIVE LABOUR SOLUTIONS

Briefing



FALLACIES THROUGH THE AGES.....

The Government's "consultation" on "false employment within the construction industry" [sic]

Strapped for cash to cover public expenditure (buy votes!) the Government continues to put the pressure on the private sector and the construction industry in particular. In the April 2009 budget they reaffirmed their commitment to "addressing false self-employment within the construction industry" and have now published their long-anticipated "Consultation" Document. In summary their suggestion is that if subcontractors cannot meet one of three strict criteria

- provision of plant and equipment in excess of tools of trade;
- provision of ALL materials, or

- provision of other workers

then they cannot be genuinely self employed. This is clearly a nonsense that even Taxation Magazine recognises as "a logical fallacy and unworkable".

There is no need for EEBS' clients to be concerned about these changes at present. We are, as ever, monitoring the situation closely and will keep you posted of any further developments.

The consultation period is open until October 2009 and any such radical reforms could not be put into place until at least 2012, by which time it is very likely that we will be under a different Government.

INSIDE: • Another win for EEBS at Employment Tribunal
 • Government pension plans revealed • Court round-up



EEBS triumphs again at Employment Tribunal

an entitlement to holiday pay, are being made with alarming frequency, often backed by UCATT.

Most notable recently was the case of Redrow Homes who lost at the Employment Appeals Tribunal in November 2008 against two self-employed bricklayers who both claimed they were entitled to holiday pay. This loss was despite Redrow having revised contracts in place following an earlier defeat at Employment Tribunal in 2004.

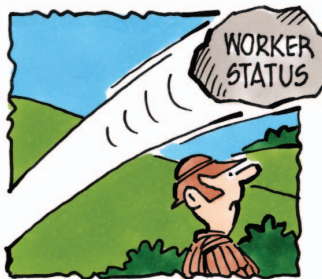
We are pleased to say that

EEBS successfully defended another claim at Employment Tribunal in June for holiday pay, brought by a UCATT-backed subcontractor, who claimed over £2,600 on the basis he had in fact been 'employed' during his engagement or was at least entitled to 'worker' status and hence holiday pay and payment in lieu of notice.

The Judge ruled that the contract in place with EEBS left no room for interpretation or implication of any type of relationship other than that of a self-employed subcontractor.

In addition to the continued threat from HMRC over the employment status of their subcontractors, contractors are increasingly facing opportunistic claims from their subcontractors at Employment Tribunals under the Working Time Regulations. These claims for 'worker' status, and hence

Status Enquiry remains an enormous threat



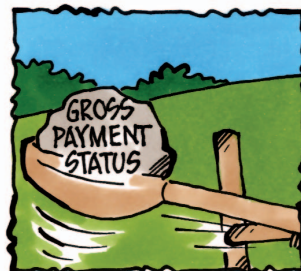
determination to increase the tax take from the construction industry, anybody still engaging subcontractors directly is potentially at risk and may be subject to

- Back taxes (up to 6 years)
- Penalties - £3,000 per offence plus 100% of any tax deemed underpaid
- Loss of Gross Payment Status

Notwithstanding the previous article, Employment Status is still very much an issue. HMRC's new CIS software can flag any subcontractor who

- Works predominantly for one contractor
- Is paid regularly
- Is paid few materials

and they continue to challenge contractors on a case by case basis. With the Government's



As is loss of Gross Payment Status...

Despite the "£100 deminimus" concession granted on 3rd June, it is estimated that as many as 30% of those being considered for review each month are losing their Gross Payment Status over minor technical errors.

This is forcing many out of business, many into choosing to take on only private work, and is disproportionately damaging in the current economic climate (whilst the private sector is so flat) as government departments and other public bodies are required to use gross registered builders.

Advantages of using EEBS?

Our clients

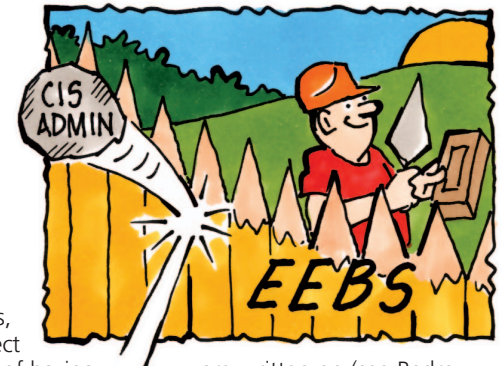
- **Suffer no liability to PAYE and Employer's NI** - saving **25-30%** on wages bills, whilst simultaneously ensuring subcontractors' take home pay is maximised.
- **Have reduced administration costs** - we take over almost all of their CIS burden, verifying subcontractors, calculating weekly CIS and issuing weekly pay advices. Clients simply report once a month the money they have paid to us.

- **Reduce payroll costs and bank charges**

- making one payment to us, usually by direct debit, instead of having to run a payroll and make individual payments to each individual subcontractor.

- **Retain control of labour costs** - being able to react rapidly to fluctuations in demand for labour.

- **Avoid costly legal bills** - paying for contracts that are not worth the paper they



are written on (see Redrow Homes v. Buckborough) or fighting status enquiries and holiday pay claims. Even insurance backed schemes never pay all legal bills and never make any contribution to the lost (months of) management time.

Contracting via EEBS provides a sure fire way to make these savings and protect your business.

Other News National Minimum Wage (NMW) increase

From 1st October 2009, the NMW for workers aged 22+ increases to £5.80 per hour, for 18-21 to £4.83, and for 16-17 to £3.57.

Holiday pay increase

Holiday pay rates increased on 1st April 2009 from 4.8 weeks to 5.6 weeks.

Government finally admits pension intentions

The government has revealed that a new pension scheme, due to come into force in 2012 would see private sector employees automatically enrolled in their company pension scheme unless they specifically opted out.

Compulsory employer contributions are inevitable and will lead to a massive increase in payroll costs for all employers.

EEBS' new website www.eebs.co.uk is live and includes links, accessible only via Timesheetz, where clients can find useful information and download Contracts for Services and Subcontractor Registration Forms. If you don't have access to Timesheetz yet and would like more information contact Siobhan Hay on 0845 257 3327.



COURT ROUND-UP

As usual there have been several new cases of note in recent months, with decisions continuing to go both ways!



In the case of **JL Windows and Malloy v. HMRC (2009 SPC00733)**, the Special Commissioner ruled against HMRC's reclassification of subcontractors as employees by virtue of the fact that they were in business of their own accord "albeit in a small way".

In the case of **Protectacoat Firthglow Ltd v. Szilagyi (2009 EWCA Civ98)** the Court of Appeal found in favour of the 'employee' that the contract did not reflect the actual working relationship and was therefore a sham.

Most recently and significantly in **MPG Contracts v English (UKEAT/0488/08)**, the judge refused to take the lead from the Redrow Homes v Buckborough case and overturned an ET decision that the subcontractors were 'workers'. The judge, Peter Clark, likely to be the next chairman of the Employment Appeal Tribunal, found that the power of veto within the contract was not in itself enough to prevent the self-employed subcontractors from being in business of their own accord.

As a salutary warning to anyone still thinking of going (or indeed sticking with!) the employed route; there have been two far reaching landmark decisions this year on holiday pay:

In **HMRC v Stringer (2009 UKHL 31)** in June this year, the House of Lords ruled that where a worker is unable to take holiday due to sickness, even when on long term sick leave, holiday pay would still be accrued and he had the right to be paid for any accrual or carry it into the following year if still not well enough to take it.

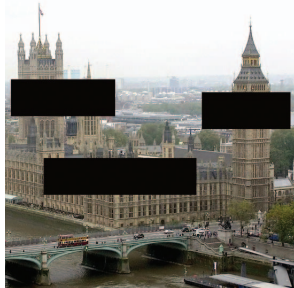
In the Spanish case of **Perada v Madrid City Council (2009 EUECJ C-277/08)**, the European Court of Justice has confirmed that employees throughout Europe have a right to ask for statutory leave to be "reallocated" when time off work is spoilt by sickness.

Both of these judgements will have serious financial and practical ramifications for employers, particularly small businesses that are already struggling to survive the current economic conditions.

Favourite Quote #5

“It is a good thing that we do not get as much government as we pay for.”

Will Rogers, humourist



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NB: It must be noted that while our literature has been prepared with the advice of solicitors and accountants it does not, in itself, constitute legal advice. You are advised to seek professional legal advice before pursuing any course of action.

What we do (in a nut shell)

EEBS is a Revenue approved (CIS6 as was) labour only sub-contractor that engages subbies introduced by you, for supply back to you. This arrangement means both you and they save money, we become responsible for all 'employment' issues and CIS administration, and we prevent these subbies from being reclassified as employees or workers by either the HMRC or Employment Tribunal.