

## Legal Offices

10 Blackfriars Street,  
**Perth** PH1 5NS  
Tel (01738) 637311

13 Ward Road,  
**Dundee** DD1 1LU  
Tel (01382) 200000

14 Comrie Street,  
**Crieff** PH7 4AZ  
Tel (01764) 655151

## Property Shops

42-44 St John Street,  
**Perth** PH1 5SP  
Tel (01738) 630222

13 Ward Road,  
**Dundee** DD1 1LU  
Tel (01382) 200301

14 Comrie Street,  
**Crieff** PH7 4AZ  
Tel (01764) 670077

## Tied Accommodation

A service occupancy arises where accommodation is provided to an employee by the employer; the employee lives wholly or partially rent-free in return for working for the employer; and either (1) the contract of employment provides that the occupancy will end with the employment or (2) the contract provides that the accommodation is provided for the better performance of duties or is necessary for the performance of duties. Where these conditions are satisfied, the employee must vacate the tied accommodation on the termination of employment. A number of issues should be considered in relation to tied accommodation:

### The Contract

- Carefully word the contract to reflect the conditions under which a service occupancy will arise and append a service occupancy agreement.
- Make the terms of the supply of the accommodation clear.
- Consider provision for alternative accommodation, for the premises to be kept in good repair and inspected on request.

### Working Hours

- All on-call time in tied accommodation is capable of being working time and attracting payment.
- Make the extent of on call time clear in the contract and correctly calculate working time by deducting non-working time, such as time spent sleeping.
- Comply with the requirements of the Working Time Regulations i.e 6 hourly rest breaks, daily and weekly rest, 48 hour cap on weekly working time.
- Alternatively, consider opting out of the 48 hour weekly cap or provide compensatory rest if applicable.

### National Minimum Wage

- Accommodation may be used to offset liability to pay the NMW.
- Offset rate from October 2012: £4.82 per day or £33.74 per week.
- Offset rate for agricultural workers: maximum £1.50 per week for provision of a house without charge and for other accommodation, £4.82 per day.
- Keep full records of the pay reference period used (one to four weeks), hours worked, rate paid and offset applied.

### Agricultural occupancy

- Arises where an employee or apprentice works in the agricultural sector with accommodation provided by the employer as part of their terms of employment.
- Such employees may have extra rights to stay on when their employment ends. Where there is a foreseeable surge of activity.

For more information or to discuss your requirements, contact:

[alanmatthew@millerhendry.co.uk](mailto:alanmatthew@millerhendry.co.uk)

[emmaallan@millerhendry.co.uk](mailto:emmaallan@millerhendry.co.uk)

Always take legal advice!

These comments are provided for guidance only. Each situation has to be examined on its own merits and you should not, therefore, rely upon the above without taking specific legal advice in relation to any particular matter.