Communications

Date: August 22nd 2013

National Minimum Wage (Amendment) Regualtions 2013 approved by Parliament

Employee shareholder contracts to come into force from 1 September 2013

The National Minimum Wage (Amendment) Regulations 2013 have now approved by Parliament and they will increase the various rates of the national minimum wage from 1 October 2013 as follows:

- The standard adult rate for workers aged 21 years and over will increase from £6.19 to £6.31 per hour.
- The development rate for workers aged 18 to 20 years inclusive will increase from £4.98 to £5.03 per hour.
- The young workers' rate for workers aged 16 and 17 who have ceased to be of compulsory school age will increase from £3.68 to £3.72 per hour.
- The apprentice rate will increase from £2.65 to £2.68 per hour.
- The accommodation offset will increase from £4.82 to £4.91 per day.

Employee shareholder contracts to come into force from 1 September 2013

The Growth and Infrastructure Act 2013 (Commencement No. 3 and Savings) Order 2013 will bring the new employment status of employee shareholder under new section 205A of the Employment Rights Act 1996 (inserted by section 31 of the Growth and Infrastructure Act 2013) into effect on 1 September 2013.

Under the new status, companies can arrange for employees to give up certain statutory UK employment rights in return for a minimum £2,000 worth of free fully paid-up shares in their employer. This is voluntary for existing employees but new employees can be required to take up a job on these terms if they want to accept the job offer. There is a CGT (capital gains tax) exemption in respect of any growth in value on the first £50,000 of shares issued.

In exchange for receiving shares, employee shareholders will give up their rights to:

- Claim ordinary unfair dismissal (apart from automatically unfair dismissals, health and safety dismissals or dismissals amounting to a breach of the Equality Act 2010).

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- A statutory redundancy payment.
- Request flexible working (except if made within 14 days of returning from a period of parental leave).
- Request time off to undertake study or training.

In addition, they will be required to provide 16 weeks' notice of an early date of return from maternity/adoption/additional paternity leave, instead of the usual eight/six weeks.

In order to be an employee shareholder, there are four basic requirements:

- The company and the individual have agreed that the individual is to be an employee shareholder.
- The company must issue or allot fully paid up shares in the company (or its parent company) which have a market value of at least £2,000 on the day of issue or allotment (if the shares are not worth £2,000 then the individual will not be an employee shareholder).
- The company must give the individual a written statement of the particulars of the status of employee shareholder and significant information relating to the rights which attach to the shares (see below).
- The individual must give no consideration except entry into the employee shareholder agreement (if the individual is found to have given any other consideration, they will not be an employee shareholder).

Employers who want to use the scheme must issue a written statement of the particulars of the status of employee shareholder, (a) specifying the employment law rights that the employee is giving up (and, in the case of the various types of family leave, the notice periods that are being altered), and (b) setting out the details of the shares being offered and the rights and restrictions they carry, including whether they are voting or non-voting shares, whether they carry a right to a dividend, whether they can be bought back or redeemed, whether they can be freely sold and whether certain other rights and restrictions are attached to them. The legislation sets out precisely what must be covered and this statement is in addition to the written statement of employment particulars already required to be issued by section 1 of the Employment Rights Act 1996.

An agreement that someone shall become an employee shareholder is also invalid unless, prior to entering into the agreement, the individual has received advice from a relevant independent adviser as to the terms and effect of the proposed agreement. A relevant independent adviser is a solicitor, a barrister, a fellow of the Institute of Legal Executives employed by a solicitors' practice, a certified and authorised trade union official or a certified and authorised adviser in an advice centre. The employer also has to pay any reasonable costs of that advice (even if the individual then decides not to take up the job offer).

There is a seven day cooling off period, after the day on which the employee receives the legal advice, during which any acceptance of an employee shareholder contract will not be binding and will have no legal effect. **Contd/.**

Jobseekers will not forfeit their jobseekers' allowance if they do not want to accept an employee shareholder contract and existing employees will be protected from detriment or dismissal if they refuse to switch to an employee shareholder contract.