

# Client Alert

Latham & Watkins  
Corporate Department

## Reform, Reform, Reform — The Latest Developments in the UK Government's Efforts to Cut Back Red Tape in Employment Law

In the past two months, the UK government has announced a number of reforms to existing UK employment law which are designed to "give firms more flexibility and confidence in managing their workforce" and reduce the "red-tape" of employment law where possible. The proposed reforms also seek to extend and simplify employee share ownership. This *Client Alert* reviews the latest proposals.

### New "Employee Owner" Status

The UK government has announced proposals for a new "employee ownership" arrangement, under which employees would give up some of their statutory employment rights in exchange for shares in their employer company worth between £2,000 and £50,000. Any growth in value of the shares between acquisition and disposal would be exempt from capital gains tax. The government is consulting on these proposals, with a view to implementing the new rules in April 2013.

From the information currently available it appears that the government intends the "employee owner" to be a new type of employment status, with different rights to the existing categories of employee and worker. In particular the government has proposed that the following variations to statutory employment protections would apply to the new employee owners:

- They would have no right to a statutory redundancy payment if they are made redundant
- The right to claim unfair dismissal would not apply unless the dismissal is automatically unfair or discriminatory on one of the protected grounds (age, race, sex, disability, sexual orientation or religion or belief)
- They will only have the right to request flexible working when they return from parental leave and it will not be automatically unfair for an employer to dismiss an employee owner who requests flexible working in other circumstances. The government also proposes to restrict the period of time in which a flexible working request could be made to within four weeks of return from parental leave
- They will have to give 16 weeks' notice of their intention to return early from maternity or adoption leave, instead of the current eight weeks

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- They will not have the right to request time off work for training (a right available to employees with six months' service in businesses with 250 or more employees) nor will it be automatically unfair for an employer to dismiss an employee owner who requests this time off.

The proposal describes the new status as one which existing employees and new recruits can "voluntarily" agree to although it appears that employers will be able to offer jobs to new recruits only as employee-owner roles.

To date very little detail has been released on the way in which the tax treatment of these employee-owner shares will be incorporated into existing tax rules. Clearly the opportunity to sell shares free of capital gains tax will be attractive to many employee shareholders. However, at this stage it is difficult to anticipate how many employers will adopt the new employee-owner arrangements given the administrative burdens involved in employee share ownership, particularly for private companies. As with existing employee shareholding arrangements, non-listed companies will have to value the shares on acquisition and disposal. The government have stated that employers should buy-back shares from departing employees at a 'reasonable' value although it is considering whether in some circumstances it will be acceptable for shares to be bought back at lower than fair market value, presumably where the employee-owner is a bad leaver. In addition employers will need to ensure they have arrangements in place to buy back the shares from departing employee owners, which may require an employee benefit trust to be put in place.

These can be costly and burdensome administrative processes and employers will need to carefully consider whether the reduced risk of certain employment claims balances out these costs. In particular the government has not proposed that grants of shares to employee owners will be free of income tax and NICs so the new tax saving will only benefit the employee-owner on disposal of the shares and will not provide tax savings for employers. In addition, existing tax advantaged share plans (such as CSOPs) will not be available to the employee-owner arrangements. That said, the government is looking at ways to deregulate employee share ownership more generally (see below) which could help make the new employee-owner status more viable for employers.

## **De-regulating Employee Share Ownership**

As part of a separate initiative, on 30 October the UK government published a consultation paper seeking views on proposals to deregulate the way in which companies can buy-back shares in order to encourage more employee share ownership.

The consultation proposes a number of amendments to the existing rules including allowing the purchase price for a buyback of shares to be paid in instalments where shares are purchased for the purpose of an employees' share scheme and allowing private companies to use treasury shares for employee share schemes. These proposals are likely to be attractive to employers, particularly unlisted companies looking to grant share to its employees.

## **Behind every Good Board...**

The UK government has also published new reporting rules which seek to increase the number of female directors serving on listed company boards. The draft Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 the (Regulations) oblige quoted UK incorporated companies to report on the number of men and women (i) who are employed in the organisation as a whole; (ii) who are "managers"; and (iii) who serve on the board of directors. A 'manager', for this purpose, is a 'person who has authority and responsibility for planning, directing and controlling the activities of a company and is an employee of that company'.

Note that these rules, which are due to come into effect in October 2013, will impact UK incorporated companies listed on certain European and US stock exchanges including the NYSE and NASDAQ.

The new Regulations follow a report by Lord Davies commissioned by the UK government in 2011 which recommended the introduction of such reporting obligations. The government have notably not gone so far as to require quotas of women on boards — a step which the European Parliament has also decided to postpone. Quotas for the number of women on boards apply in some European countries including Italy, Belgium, Spain and France but not in the UK.

## **Other Ongoing Consultations...**

In addition to the new proposals outlined above, in September the government opened the consultation process on a number of other proposed employment law reforms announced earlier this year and reviewed in our previous *Client Alert* [here](#). This includes the following:

- Replacing existing compromise agreements with simpler 'settlement agreements' based on a standard form agreement
- Reducing the compensation cap for unfair dismissal claims (currently £72,300) to either a maximum of 12 months pay or a new, significantly lower cap
- Streamlining the employment tribunal process, proposals include making it easier for weak claims to be rejected and reducing the number of preliminary hearings required
- Simplifying the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Finally one notable announcement is that the government have now confirmed that they will not proceed with introducing the controversial concept of a "no fault dismissal" which means that at least for now the concept of an unfair dismissal will remain, albeit the cost of dealing with such claims may soon become more manageable for employers.

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