



LLP Members are Workers – The Final Whistle for the LLP Structure?

Executive Summary

Hot on the heels of the recent introduction of new tax treatment for LLP members, which will result in increased national insurance liabilities for LLPs, LLPs have another potentially problematic issue to consider.

In a recent case involving City law firm Clyde & Co, the Supreme Court decided that LLP members should be treated as ‘workers’ under the whistleblowing legislation. This decision overturned a previous Court of Appeal ruling that LLP members could not be ‘workers’.

In a narrow sense, this decision means that LLP members can now bring claims against the LLP if they are treated detrimentally because they blow the whistle on unlawful activity. However, there are broader ramifications of this decision as LLP members have also gained other ‘worker’ rights. More detail on who will be caught by this decision and what rights LLP members now have are set out below, but the key actions for LLPs are:

- Review/introduce the LLP’s whistleblowing policy to ensure that LLP members are appropriately covered.
- Review the LLP’s other HR policies so that LLP members are covered in all areas where ‘workers’ have employment rights.
- Provide training to senior management so that LLP members are managed in accordance with the new rights they have.
- Review the LLP’s remuneration structures to ensure that there is not scope for LLP members to argue that they are being subjected to an unlawful deduction from wages.

LLPs need to take this decision into account if they are considering structural changes following the recent changes to the tax treatment of LLP members. There remain many benefits of being an LLP so this is unlikely to be the final whistle for the LLP structure. However, many LLPs are likely to look even harder at the pros and cons of other structures.

Who will the decision apply to?

The Supreme Court made its decision on the basis that the LLP member in question, Ms. Bates van Winkelhof, must be viewed as holding 'worker' status because she could not market her services as a solicitor to anyone other than the LLP, the LLP was not her client or customer, and she was integral to the LLP's business. The situation for Ms. Bates van Winkelhof is likely to be true for most, if not all, LLP members. Consequently, all LLPs are impacted by this decision regardless of what sector they operate in.

Why do LLPs need to worry about whistleblowing?

The fact that LLP members can now bring whistleblowing claims is an important consideration for LLPs given that, compared to more junior members of staff, the LLP members may well have a greater knowledge of the activities of the LLP and be more likely to become aware of potential wrongdoing.

Compensation for whistleblowing, like discrimination, is uncapped so it opens up a new tactic for disgruntled LLP members (or more likely recently exited, former LLP members) to bring a claim. It is very likely that there will be an increase in whistleblowing claims being raised by LLP members looking to exploit the uncapped compensation and potential reputational damage to the LLP to negotiate a favourable exit package.

What other rights do LLP members now have?

The right to whistleblowing protection is only one of the rights a 'worker' has. As a result of this decision, LLP members will also now enjoy the following rights:

- the right to paid annual leave;
- the right to payment of at least the national minimum wage;
- the right not to be subjected to an unlawful deduction of wages;
- the right to be auto-enrolled into a qualifying pension scheme;
- the right to be accompanied at a disciplinary or grievance hearing; and
- the right not to be treated less favourably due to part-time work (or a request for part-time work).

This may not represent a significant change for some LLPs, but all LLPs need to consider the implications of this case and ensure that the risk of triggering liabilities is mitigated.

In particular, remuneration structures will need to be reviewed to ensure that any obligations LLP members have to repay sums to the LLP or any powers the LLP has to clawback sums do not fall foul of the unlawful deductions from wages rules.

Does this decision have tax implications?

The case is unlikely to directly have any impact on an LLP member's tax position. However, given the new rules around salaried members and their tax treatment, these new rights for LLP members should form a part of any review process an LLP is undertaking.