

Employee shareholders snagged

[Alex Bearman](#) 24 Apr 2013  1 comments

Laws creating a new employment status get a bumpy ride through Parliament

Plans to introduce new rules allowing employment rights to be exchanged for shares were once again rejected by the House of Lords recently. The proposals have been 'ping-ponging' between both Houses of Parliament for some months and will now return to the Commons for further consideration.

Rights

The Government wants to give employers the option of offering roles with reduced employment rights on condition that staff are given shares in the employer worth at least £2,000. These 'employee shareholders' would lose various rights including unfair dismissal and the right to a statutory redundancy payment.

Criticism in the House of Lords has focused on the fact that, although existing staff could not be forced to become employee shareholders, employers will be free to insist that new recruits accept a role on this basis. Not all individuals who take up an offer of free shares will appreciate that if they lose their jobs in a redundancy situation, those shares might then be worth little or nothing.

If the new rules do come into force, the initial indications are that employers will not be rushing to take advantage of them. When the Government put the measures out to consultation, the response was overwhelmingly negative.

Challenges

One of the main criticisms from businesses has been the complexity and cost of implementation. Employment rights will only be validly excluded if the shares offered have a value of at least £2,000. Companies which offer shares at or close to this minimum value face the risk that staff will challenge the valuation later on. This could lead to complex employment tribunal hearings involving expert evidence.

Where shares are offered with a value in excess of £2,000, income tax and National Insurance contributions will be due on the excess. This would also require the shareholding to be valued properly which is not a straightforward matter for an unlisted company.

It is likely that most businesses would want to have in place rules requiring employee shareholders

to sell their shares when their employment comes to an end. This would again require a valuation to be carried out and could lead to disputes which would be as costly to deal with as unfair dismissal claims.

Claims

Another concern for companies is that employee shareholders without unfair dismissal rights will be more inclined to raise discrimination or whistleblowing arguments when their employment is terminated, as these rights would not be given up. Claims of this type are generally more complex than 'ordinary' unfair dismissal claims, meaning that they are more costly and time consuming to defend.

The Government has stated that its proposals are aimed principally at small and medium sized high growth businesses for whom having a flexible workforce would be particularly beneficial. In some cases, these types of companies might feel that the benefits of employee shareholder status would be quite attractive, provided that giving each individual £2,000 worth of shares does not add up to too big a slice of the business. Whether they will ever get the opportunity to try out the measures will depend on whether the Government can eventually persuade the Lords to drop their rather determined objection to them.

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