**Employee shareholders**

This scheme was introduced on 1 September 2013 by the Enterprise and Regulatory Reform Act 2013. The idea behind it was to create a new class of employee who would have a stake in the company, but not enjoy the same employment rights as normal employees. The Enterprise and Regulatory Reform Act 2013 can be accessed at:

<http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

An employee shareholder works under an employee shareholder employment contract and this is a new employment status which exists alongside employees, workers and self-employed persons. BIS published guidance on this at <https://www.gov.uk/employee-shareholders> in September 2013.

**What makes a person an employee shareholder?**

The company is required to grant the employee shares in the employing company or in its parent company and these must have a minimum value of £2000 on receipt. There is no upper limit to the value.

**Taking an employee shareholder position**

Any person can take an employee shareholder position, but there is obviously no obligation to do so. In particular those who are in receipt of Jobseekers Allowance will not be obliged to apply for a position with this status.

Employers may also ask existing employees if they wish to change their contract of employment to one with employee shareholder status, but again there is no obligation to accept the position and if an employee were subjected to any detriment for refusing s/he could submit a complaint to an Employment Tribunal.

The idea behind the concept is that the company may use the offer of a stake in the company as an incentive to attract a high calibre employee who will then have a commitment to the business. From the employee's point of view the hope is that employees will be attracted by the ownership of an asset which may well increase in value and which carries reduced capital gains tax liability, and be interested in the idea of owning some part of the business.

**Creating the status**

There are six conditions that must be met on order to create an employee shareholder relationship:

* + the employer and the employee must have agreed on the status
  + the employer must give the employee fully paid up shares in the employer's company or parent company with a minimum value of £2000
  + the individual must not pay for the shares in any way
  + the employer must give the employee a written statement of the particulars of the status of employee shareholder
  + the individual must obtain legal advice from a relevant legal adviser on the terms and effect of the written statement and the company has to pay for that advice, whether the employee takes the job or not
  + the individual cannot accept the job until seven days have passed since the advice has been received, starting on the day after the advice is received.

**The rights of the employee shareholder**

The employee shareholder still enjoys the following rights:

* statutory sick pay
* statutory maternity, paternity and adoption leave and pay
* unfair dismissal rights where they are classified as automatically unfair dismissal, such as for pregnancy, health and safety etc (see ss98-101 Employment Rights Act 1996)
* minimum notice periods on termination of employment by the employer
* time off for emergencies
* collective redundancy consultation
* Transfer of Undertakings (TUPE) rights
* national minimum wage
* not to suffer unlawful deduction from wages
* paid annual leave
* rest breaks
* the right not to be treated less favourably because they are fixed term or part time workers
* anti-discrimination protection eg race, sex, disability etc.

However, employee shareholders will not have the following rights:

* unfair dismissal, other than the exception above
* redundancy payment
* the statutory right to request flexible working other than in the two weeks following a period of parental leave
* the statutory right to request time off to train
* the employee shareholder who is returning from maternity leave will have to give 16 weeks’ notice if they wish to return early compared with eight weeks for other employees.

**Procedure for offering a position to an employee shareholder**

The following actions must take place before a person can accept or refuse an offer of employment as an employee shareholder. If these actions are not undertaken, or if they are not undertaken in the right order, the individual will not be an employee shareholder:

1. The company offering the job to a job applicant or an existing employee must provide a written statement of the particulars of the status of employee shareholder.
2. Once that person has received the offer of the employee shareholder job and the written statement, that individual must get independent advice on the terms and effect of that specific job offer.
3. The individual must take seven calendar days to consider the independent advice received and whether they wish to accept or refuse the employee shareholder job. The seven days commence on the day after the independent advice is received.
4. The contract will only have legal effect as an employee shareholder contract after the seven days have passed.

**The contents of the written statement**

The written statement must include:

* the employment rights that an employee shareholder is foregoing
* the fact that s/he must give a minimum of 16 weeks’ notice of an early return from maternity, additional paternity, or adoption leave
* whether there are any voting rights attached to any of the shares being given
* whether the shares carry any rights to dividends
* whether the shares would, if the company were wound up, confer any rights to participate in the distribution of any surplus assets
* if the company has more than one class of shares, and any voting or dividend rights, explain how those rights differ from the equivalent rights that attach to the shares in the largest class. If the shares offered are already part of the largest class of shares, then the explanation should refer to the next largest class
* whether the shares are redeemable and if they are, at whose option
* whether there are any restrictions on the transferability of the shares and what those restrictions are
* whether any pre-emption rights are excluded in the case of the shares given to the employee shareholder
* are the shares subject to drag-along or tag-along rights, and if they are, explain what that means.

Drag-along and tag-along rules relate to minority shareholders and whether they would have to sell their shares if:

* majority shareholders have agreed to sell
* minority shareholders require the majority shareholders to procure the same offer to sell their shares if the majority are selling.

The company could, if it wished, include more information than set out above, or include any other information that may be relevant or useful for the individual to know.

**Independent advice**

The employee shareholder's employment contract will not be valid and binding unless the employee has received independent legal advice from a relevant legal adviser. It is important for employees to have this advice in order that they can understand the implications of accepting such a position, and if they refuse to seek it, they should not be offered the position. In order to be independent, the lawyers must not be the company’s lawyers, have acted for the company, or be specified by the company. The employer bears the reasonable costs of obtaining the advice.

Independent advice can be given by:

* a qualified lawyer
* an officer, official, employee or member of a trade union whom the trade union has certified as competent to give that advice
* a person who works in an advice centre provided the advice centre has certified the person as being competent to give that advice
* any person authorised to give legal advice by the Secretary of State – currently a fellow of the Institute of Legal Executives.

### What employees need to consider

### the employment rights that they will have, and those that they will forego by agreeing to this status, and what implications this might have for them

* the fact that their employment status do not change if they sell their shares; it can only be changed by agreement of both parties
* that they will receive a minimum of £2,000 worth of shares, with an explanation of how that valuation was reached and any further information they require
* if an employee disagrees with the valuation, they can request their own valuation (although they would have to pay for it), or refuse to accept the new status
* the shares will be fully paid up shares of any class in either the company employing the employee or its parent company and there must be no cost for the employee in receiving them; they may carry a vote and a right to dividend, or may not.
* The written statement will specify the type of shares being offered, what rights are attached and how they differ, if at all, from the majority of shares held by shareholders, or from the next largest class (if they are the same as the largest class of shares)
* The statement will also say whether the shares can be gifted or sold, and this will depend largely on whether the company is private or public.

If the employee leaves:

* the written statement should make it clear what happens if the employee leaves
* the articles may specify that there will be a buyback of shares
* if there is no provision for buy back, the employee can keep the shares on leaving on the same terms.

## **What employers need to consider**

* that it needs to be a company limited by shares and either UK registered, a European company or an overseas company
* shareholder authorisation is required to issue shares and they must be fully paid and either in the company or a parent company and no charge can be levied on the employee
* that the company’s articles of association need to allow for the shares to be issued and permit the directors to allot them – any amendment to articles will require a Special Resolution
* what impact the issue of shares will have on current shareholders and on the new employee shareholders and employers may wish to inform existing shareholders of the rights attached to the shares being offered, particularly if they carry votes.
* if the employee shares carry greater rights than those of existing shares they are likely to be worth more, if fewer or less valuable rights than existing shareholders, the employee may be less likely to accept the new status.
* that they need to prepare the written statement (contents laid out above) as required and give it to the prospective employee shareholder.
* that once employee shareholder shares are allotted there is no requirement to allot further employee shareholders the same type of share.
* the shares must have a minimum value of £2,000 although there is no maximum, and the employer needs to be able to explain to the employee shareholder how that valuation was reach.
* the value to be used to determine any tax or national insurance arising on either the company or employee shareholder at the point of issue or upon a later disposal of shares can be agreed with HMRC. There is an upper limit on the value of shares received by a person which are exempt from capital gains tax (see below).
* if the shares are not worth £2,000 at the time of issue, the employee shareholder may make a complaint to the Employment Tribunal and could claim his or her rights as a normal employee eg to redundancy or unfair dismissal
* income tax and NICs will usually not be chargeable on the first £2,000 of share value received by an employee shareholder, there will usually be CGT exemption for £50,000 of shares received by an employee shareholder and when an employer funds the costs of the independent legal advice received by a person considering an employee shareholder offer, this will not usually be a taxable benefit
* that the rules on transfer of shares need to be considered ie whether the employee shareholder is to be allowed to transfer them, and if so to whom, and also what will happen to the shares if s/he leaves the company ie whether to provide for a buy back
* as these agreements are bespoke and will need to reflect the facts and terms of each individual case it would be advisable to seek appropriate legal advice for contents of each written statement.

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