



### Employee Status: case review

08 December 2010

In **Tilson -v- Alstom Transport**, the Court of Appeal held that it was not necessary to imply a contract of employment between an agency worker and the end user/client although the client controlled the way in which the worker performed his duties, and the worker was integrated into its organisation. The fact that there was a contract in place between the worker and the agency, and the understanding between the parties that there was no contract between them were influential in denying the existence of an employment relationship. This case reflects the reluctance of tribunals in recent years to hold that agency workers are direct employees of clients/end users.

In **Tiffin -v- Lester Aldridge LLP**, the EAT held that a fixed share partner in a law firm was a partner rather than an employee, confirming that there is no minimum threshold which must be reached in respect of right to profit or involvement in management before one can be regarded as a partner. Although the Claimant received a salary reflecting a fixed share of equity, he received only a small profit share, and had limited voting rights about limited matters, he was a partner rather than an employee with protection against unfair dismissal. This was the case although the differences between his position as a fixed share partner, and that of a traditional salaried partner, who is regarded as an employee, were slight.

In coming to its decision, the EAT took into account the fact that the Claimant had signed a membership agreement with other partners, he was an authorised signatory on the bank account, he was entitled to enhanced benefits only extended to partners and that he was required to contribute a small amount of capital to the partnership. Partnerships may consider appointing fixed share rather than salaried partners to govern their relationship under a (possibly restrictive) partnership agreement rather than an employment relationship under which the worker may be protected for unfair dismissal purposes.

The exact nature of employment status and the protections afforded to workers will depend upon all the circumstances of each particular case. Employers are advised to consider employment status before terminating the working relationship to reduce the possibility of successful claims.

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If you would like to discuss any of the issues raised in this article please contact either Peter McRoberts or Sarah Rushton on 020 7465 4300.

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This publication is not intended to provide a comprehensive statement of the law. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken.