

**New unfair dismissal compensation cap Order in force from 29 July 2013**

The power for the Secretary of State to vary the statutory unfair dismissal compensation cap was introduced by Section 15 of the Enterprise and Regulatory Reform Act 2013. The BIS has now announced that under the Unfair Dismissal (Variation of the Limit of Compensatory Award) Order 2013, in force from 29 July 2013, the cap for the unfair dismissal compensatory award will be changed, setting the cap at the lower of the statutory cap (currently £74,200) or one year's pay, to be calculated in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996. While the Order comes into force on 29 July, the statutory instrument makes it clear that the new cap will only apply where the effective date of termination falls after 29 July 2013.

Employee shareholder status in force from 1 September 2013

[Section 31 of the Growth and Infrastructure Act 2013](#), which amends the Employment Rights Act 1996 to create the new employment status of employee shareholder, will be brought into force on 1 September 2013 by paragraph 2 of the [Growth and Infrastructure Act 2013 \(Commencement No. 3 and Savings\) Order 2013](#). Under the provisions, an employer and employee can agree that, in consideration of the individual becoming an "employee shareholder", the company will issue or allot a minimum of £2,000 worth of shares to the individual, with any gains made on the first £50,000 of shares being exempt from capital gains tax. An employee shareholder would have the same rights as an employee with the following principal exceptions: no right (i) to claim unfair dismissal (except in specified circumstances); (ii) to make a flexible working request, except from those employee shareholders returning from parental leave; and (iii) to a statutory redundancy payment. In addition, an employee shareholder must give 16 weeks' notice if they want to return early from statutory maternity, adoption or additional paternity leave. Other exceptions and conditions can be found by following the link to S.31.

Acas publish final version of Settlement Agreements Code

Acas have published the approved version of the statutory [Code of Practice on Settlement Agreements](#). The Code is issued under S.199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and comes into effect by order of the Secretary of State on 29 July 2013. The information set out in paragraphs 1 to 24 is designed to help employers, employees and their representatives understand the implications of new S.111A of the Employment Rights Act (ERA) 1996 for the negotiation of settlement agreements before the termination of employment. In particular, it explains aspects of the confidentiality provisions associated with negotiations that take place to reach such agreements. The Code does not cover all aspects of settlement agreements. Further guidance on settlement agreements will be found in the Acas booklet "Settlement Agreements: A Guide" which will also offer more detailed guidance on the confidentiality provisions set out in S.111A and which Acas confirm will be published by the end of July 2013.

MoJ fact sheet on tribunal fees

The Ministry of Justice has published a [fact sheet](#) providing basic details about the introduction of fees for use of employment tribunals and the EAT. The information covers details about the types of fees payable, who pays the fees, the fee levels, commencement of fees (29 July) and the transitional provisions, i.e. only claims made to the employment tribunals or appeals made to the Employment Appeal Tribunal on or after the implementation date will attract fees; any claim/case/appeal in the system before fees are implemented will not attract any fee payments. Note that the introduction of fees is subject to challenge by way of judicial review in England and Wales, by UNISON, and Fox & Partners in Scotland. In the UNISON challenge the High Court has decided to fast track the application, as a judge decided it merits speedy consideration. In Scotland, the Court of Session found that on all heads of legal complaint, under European and Domestic law, Fox & Partners made out a prima facie case against the Government and the case should proceed to a full hearing. We understand that in the Scottish court the Government has given a very important GB wide undertaking that if the Order is brought into force on 29th July and fees are then found to be unlawful, then all fees will be repaid in full with interest.



Call for evidence on whistleblowing framework

The Government has issued a [call for evidence](#) seeking feedback on whether the current whistleblowing legal framework is operating effectively. Recently, the Government has taken action through the Enterprise and Regulatory Reform Act 2013 to strengthen the whistleblowing protections and the changes are explained in Annex A of the document. The Government now wants to explore further whether there are any other aspects of the law governing whistleblowing which may not be protecting whistleblowers or encouraging them to come forward about wrongdoing and is calling for evidence to help look more closely at the existing protections and consider if further changes are required in light of that evidence. The document sets out in brief the current legal framework for the protection of whistleblowers and asks responders to consider a number of questions about how this currently operates, providing evidence to support their response, e.g. are the categories of qualifying disclosures sufficient to capture all potential instances of wrongdoing that may require public disclosure?; and do the protected methods of disclosure affect whether a whistleblower might expose wrongdoing? Responses are required by 1 November 2013.

Response published to early conciliation consultation

Sections 7 to 9 of the Enterprise and Regulatory Reform Act 2013, provide for the introduction of early conciliation, meaning that other than in specific circumstances, prospective claimants will first need to contact Acas before they can present a claim at employment tribunal. Acas will then seek to help parties resolve the issue without the need for tribunal involvement. In January 2013, the Government sought views on how early conciliation should operate and it has now published its [response](#), which sets out the content of the early conciliation form and certificate, exemptions from the process and some further detail of how Acas will work with parties to seek settlement. The Government will continue to work with Acas, Her Majesty's Courts, Tribunals Service and stakeholders to get the detail of early conciliation right, ready for implementing in early 2014.