

Can a member of an LLP also be an employee?



A partner in a partnership cannot also be an employee of the business for the simple reason that a partner cannot employ themselves. The position for Limited Liability Partnerships is different as the LLP has a separate legal personality, so in theory the LLP could employ one of its members in the same way that a shareholder in a company can be employed by the business.

There could be some advantage to being a member as well as an employee (for example, for tax reasons) and therefore this is a live issue. There ought to be simple answer to the question of whether this is in fact possible, but there has been some confusion.

The Limited Liability Partnership Act 2000 (the Act) restricts such employment. Section 4(4) of the Act states:

“A member of a limited liability partnership shall not be regarded for any purpose as employed by the limited liability partnership unless, if he and the other members were partners in a partnership, he would be regarded for that purpose as employed by the partnership.”

This is a classic example of creating uncertainty through complex language. If the legislators had simply said “A member of a limited liability partnership shall not be regarded for any purpose as employed by the limited liability partnership” then that ought to have been sufficient, reflecting the legal position that a partner in a partnership cannot also be an employee.

This ambiguity in the drafting has resulted in some LLPs mistakenly believing that members could also be employed in the business, with the courts having to decide their status (i.e. are they an employee or a member).

In the case of *Reinhard v Ondra LLP* [2015] EWHC 1869 (Ch) the LLP purported to enter into a contract of



employment with all its members and this issue came to the fore when the LLP purported to terminate Mr Reinhard's contract of employment. It was held that Mr Reinhard could not be a member and an employee, so the court had to examine the relationship between the parties to determine whether it was more akin to that of an employment contract or a membership agreement. In this case the court held that that he was a member and therefore the LLP could not simply terminate Mr Reinhard's contract of employment and could only remove him from the business if it had the ability to do so under its membership agreement.

It can be tempting to think of an LLP like a company and in many respects this is right. It has a separate legal personality, there is a limited liability of its members and information must be filed at Companies House, but there are some important distinctions between the two. In particular, a LLP may not employ any of its members and if this has (mistakenly) happened it could cause significant issues to the LLP if it wishes to remove the 'employee'.



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