Abolition of the Agricultural Wages Board

Julie Butler explains this major change to agricultural employment, and identifies some tax points

The Agricultural Wages Board (AWB) was abolished in July 2013 and the agricultural wages order came to an end on 30 September 2013. This means that for the first time since 1948, employment in the agricultural sector will no longer be governed by additional regulatory requirements. Instead, farming will come under the jurisdiction of the national minimum wage (NMW) requirements and general employment law principles. But how does this really impact on agribusinesses and their workers?

GREATER FREEDOM FOR EMPLOYERS

The main change resulting from this abolition is that agricultural employers will now have greater freedom when setting pay rates and specifying terms in employment contracts. In straightforward terms, this could lower costs and simplify the conditions of employment, reducing complicated bureaucracy and minimising expenditure in a time of economic instability. Pay increases will be a matter of negotiation between employer and employee. Also, such negotiations will be able to focus more on individual workers' performance and on regional factors than on national drivers. Many parties are thus in favour of the abolition, believing it will improve UK agriculture's competitive advantage.

However, there are potential pitfalls that employers must avoid if adopting such a strategy, to ensure they do not fall foul of UK employment law.

Under current legislation, changes to existing contracts and pay structures could give workers a right to claim for breach of contract, unlawful deductions from wages and constructive unfair dismissal. Indeed, wage levels can only realistically be altered with a worker's explicit agreement, and a reduction in remuneration would have to be fully justified in terms of service and practice in order to be accepted by an employment tribunal. Similarly, employers cannot take on new staff under different employment terms for doing the same duties as existing employees without objective justification as to why the difference exists.

On a practical point, employers need to ensure that the administration previously conducted centrally by the AWB is maintained, as lack of certain items, such as written terms and conditions, directly contravenes current legislation.

NO ROOM FOR ABUSE

The abolition of the AWB does provide agricultural employers with an opportunity to manage their employment expenditure, potentially providing several significant commercial advantages: for example, improved cashflow forecasting and the opportunity to relate remuneration to individual performance and so create greater incentives for the employees.

However, any 'race to the bottom' or abuse of the new system could easily lead to an employer becoming tied up in expensive litigation and employment tribunals. It is important to ensure that any alterations your farming clients make to employment structures comply with employment law and best practice.

REVIEW OF TAXABLE BENEFITS

Employees within the agricultural industry have conventionally been provided with living accommodation by their employers. The tax legislation on the provision of employee living accommodation is in s99, Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). There is often an assumption that there is no benefit-in-kind on the provision of accommodation in the farming community, as exemption can be achieved

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under the provisions for the proper performance of duties (s99(1), ITEPA 2003), on the grounds the employee can perform his duties better in the farm accommodation than if he or she lived elsewhere. Also, the exemption for the customary provision of accommodation for better performance (s99(2), ITEPA 2003) will often apply, and accordingly it is normal practice to provide living accommodation to similar classes of employee.

The question of whether the provision of this accommodation is a taxable benefit has recently been brought under the spotlight by the abolition of the AWB together with moves towards alternative land use. The continued increase in land diversification means the agricultural elements of some estates are diminished, thus increasing the scrutiny over whether the employee is an agricultural worker.

With increased incorporation in the farming industry, the fact that directors of farming companies do not qualify for the exemptions from the benefit-in-kind charges can often simply be missed. (In the majority of cases directors of farming companies do not qualify because they have a material interest in the company). There could be some hefty charges and penalties for those who have overlooked the 'director problem'.

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The predicament has highlighted the fact that employers relying upon the proper performance exemption (s99(1), ITEPA 2003) to avoid a benefit-in-kind charge should draft employment contracts with care to ensure that the employee's duties necessitate occupation of particular accommodation in order to minimise any liability. Such action will tie into a total review of employment contracts following the abolition of the AWB.

More recently, rural estates have begun a new custom of providing employees with accommodation to improve security. Many local police forces have given notice to rural estate owners that it is impossible to police estate property. Owners relying upon this motive for the provision of accommodation to their employees would be prudent to re-examine the employment contracts of the employees concerned and, where necessary, insert appropriate clauses that reflect any new security duties. Records should be maintained to establish that staff with security duties are regularly performing those duties. It is essential that the employee is able to demonstrate that the duties of the employment require occupation of the accommodation for the exemption to be available.

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