

# Thinking about leaving an LLP? Read on.

If you are thinking of leaving a Limited Liability Partnership (LLP) you will be disposing of your interests and assets in the LLP for good. Having advised many partners over the years, we know how vital it is for departing partners to have a clear understanding of their entitlements and obligations before, during and after their departure.

Departing partners should satisfy themselves that they understand the financials, process and long-term implications of an exit before taking any decisive steps.

This article signposts the key considerations LLP members should have in mind when planning an exit and what to expect during the process.

## **Understand the financial implications and plan accordingly**

Ordinarily, the financial and non-financial terms of your exit will be set out in a retirement deed. This provides certainty and avoids any unwelcome surprises. Reaching an amicable agreement is not always feasible. Either way, you should get ahead and make sure you understand your financial obligations to the LLP and its obligations to you. A good starting point is the LLP's management and profit and loss accounts.

Once you have reviewed the LLP's accounting documents, you

should aim to address the following financial points with your fellow members at an early stage:

1. The level of earnings you will receive during your notice period. This is likely to be made up of a fixed draw, together with some variable pay or profit.
2. Your profit share distribution. You may already have an idea of what your share of the LLP profits may be. However, if the LLP's profit share distribution will be decided after your proposed departure date, you should prepare your estimates and the reasons and evidence which support your calculations behind the same.
3. The capital you hold in your account and what drawings you expect to make.
4. Whether you need to make any repayment of capital or satisfy any loans.
5. The level of any relevant tax reserve account.

You may also be asked to sign a settlement agreement which requires you to waive claims against the LLP. Given you are waiving important and potentially valuable rights, you must take advice on the terms and effect of a settlement agreement before entering into the agreement.

**How do you leave?**

Your first port of call is your governing document. The LLP's governing document (usually known as a Partnership Deed or Membership Agreement) will deal with exit arrangements and will usually cover:

- the different ways a member may leave the LLP;
- the period of notice a member must give, or is entitled to receive, when leaving the LLP; and
- the process to be followed when a member leaves the LLP.

### *Type of exit*

Subject to the terms of the governing document, a member may retire at their own election or they be compulsorily retired or expelled by the other members of the LLP.

LLP members are not employees and, therefore, do not have protection from unfair dismissal. If you are being exited against your will by expulsion or compulsory retirement, you should seek legal advice on other legal protections you may have as worker, such as protection from discrimination or whistle blowing detriment.

### *Notice, garden leave and suspension*

LLP members are usually subject to a notice period set out in the LLP's governing document.

Subject to the reasons for your exit, and any agreement you enter into with the LLP regarding the same, you may be required to continue to carry out your duties as normal until the end of your notice period. Alternatively, the LLP may place you on garden leave or suspend you (which usually involves a member's exclusion from the workplace and management of the LLP) for all or part of your notice period.

### *Process*

The process by which notice of your exit needs to be given should also be set out in the governing document.

If you have elected to retire, it is likely you will need to provide written notice of this to the LLP.

If the LLP is compulsorily retiring or expelling you, the governing document will set out a procedure the LLP members must follow for taking such a decision. This is usually by way of a vote of the members at a members' meeting, or by passing a written members' resolution.

### *Announcements*

An internal announcement is typically made by the LLP after notice of the exit is given by either party. Subject to the

terms on which you are leaving the membership, you may wish to agree the wording of the announcement in advance, and agree who will be told and when. Our clients often consider this to be important to protect their reputation.

### **Non-financial obligations following your exit**

It's not all about the money and you should make sure you understand the nature and duration of any post-termination restrictions that apply following the termination of your membership. Why? They may impact your future plans and could stop you earning in future.

Information on your post-termination restrictions and obligations will normally be set out in the governing document and may include:

- non-compete and non-poaching or soliciting of clients and/or staff for a set period. These restrictions could lead to issues if your future plans are to work for a competitor or take clients or staff with you to your new venture (including those you brought to the LLP you are leaving);
- restrictions on your future use of the LLP's property, for example its intellectual property; and/or
- confidentiality obligations.

These terms may be negotiable. We are often called upon to provide legal advice on the above and to negotiate adjustments to post-termination restrictions.

If you need advice on any of the considerations set out in this article, including on strategy and negotiating the terms of your exit, we can help. You can read more about our expertise in this area [here](#).

BDBF is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Paula Chan ([PaulaChan@bdbf.co.uk](mailto:PaulaChan@bdbf.co.uk)) and Melvyna Mumunie ([MelvynaMumunie@bdbf.co.uk](mailto:MelvynaMumunie@bdbf.co.uk)) or your usual BDBF contact.

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## **The King's Coronation bank holiday: are workers entitled to have the day off work?**

A national bank holiday will take place on Monday, 8 May 2023 to mark the Coronation of King Charles III. Do workers have the right to have the day off work? If so, does it need to be paid? The short answer is: it depends on what the employer's contracts and policies say.

What does the law say?

- The Working Time Regulations 1998 entitle workers to a minimum of 5.6 weeks' paid leave per year. For full-time workers, this equates to 28 days' paid leave per year.
- Contrary to widespread belief, bank holidays do not have special status and there is no statutory entitlement to time off work for bank holidays. However, employers may choose to include bank holidays as part of a worker's overall leave entitlement.
- When drafting employment contracts employers have freedom in how the minimum annual leave entitlement is distributed – this can be done in several ways with different consequences.

### **What do the contracts and policies say?**

As a starting point, employers should check the drafting of relevant policies and contracts. This will determine whether workers are entitled to leave, and pay, for this additional bank holiday.

Some possibilities of how the contract might set out the 5.6 weeks' annual holiday entitlement include:

- **“Four weeks plus eight standard bank holidays” (and in some cases, the bank holidays may even be specified).** In this scenario, there would be no automatic entitlement to have the Coronation bank holiday as an additional day off, but if the worker had some of their annual leave entitlement remaining then they may request to take it as a day’s leave in the normal way.
  
- **“Four weeks plus all bank holidays”.** This wider drafting suggests that workers would be entitled to have the Coronation bank holiday as an additional day off. This means that full-time workers would get a minimum of 29 days’ paid leave this year instead of 28. If the employer needed the worker to work on the Coronation bank holiday it could offer the worker a day off in lieu at a later date instead.
  
- **“5.6 weeks inclusive of the eight standard bank holidays”.** This drafting means that there is no entitlement to have the Coronation bank holiday as an additional day off, since the leave entitlement is ultimately capped at 28 days for a full-time worker (i.e. a full-time worker would not get a 29<sup>th</sup> day of paid annual leave). However, as above, if the worker had some of their annual leave entitlement remaining then they may request to take it as a day’s leave in the normal way.
  
- **“5.6 weeks inclusive of all bank holidays”.** There would be no entitlement to have the Coronation bank holiday as

an additional day off. Again, this drafting means the leave entitlement is ultimately capped at 28 days for a full-time worker. However, the worker could ask to take it off in the normal way. Further, this drafting would, in fact, allow employer to require that the day be taken as a day's leave (whether the worker wants to or not) out of their usual paid leave entitlement.

### **What practical issues should employers consider?**

In addition to checking what contracts and policies say, employers should also think about the optics of their decision – both internally, in terms of impact on staff morale, as well as externally. Many workers will be expecting to have the day off, regardless of the strict legal position. Indeed, the Government has said that the Coronation bank holiday would *“give people across the United Kingdom the opportunity to come together as families and communities to welcome His Majesty to the throne as we mark this important day in our nation’s long history”*.

It should also be remembered that schools will close on the Coronation bank holiday, and this will have a direct impact on workers with children. Employment Tribunals continue to recognise that decisions impacting childcare have a disproportionate impact on women. Employers should be mindful of indirectly discriminating against mothers with childcare responsibilities. Where a worker’s contract does not entitle them to have the Coronation bank holiday off, and the employer needs them to work, it should consider allowing parents of school age children to either:

- work from home on the day;
  
- take the day off and make up the lost working hours later in the week;
  
- take paid annual leave on the day (assuming they have paid leave entitlement available);
  
- take unpaid parental leave on the day; or
  
- take unpaid time off to provide emergency care for dependants on the day (whether or not this type of leave is engaged will depend on the circumstances).

Employers should also consider what to do if a worker makes a request to have the day off where they have already used up their paid annual leave entitlement. Would you be prepared to let them take it as unpaid leave?

Some workers may actually prefer to work on the Coronation bank holiday. Can employers force workers to take the day off, and take the leave out of their annual entitlement? Can workers ask to take a different day off at some other time? Again, the answers will be found in the employment contract

and relevant policies.

**BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**