Whistleblowing - Can an LLP Member be a Worker?

[Thanks to Dean Fuller of Fox for preparing this case summary]

Can an LLP member be a worker?

Yes, says the EAT (HHJ Peter Clark) in Van Winkelhof v Clyde & Co LLP reversing an employment tribunal's decision that it did not have jurisdiction to consider the Claimant's complaint of detriment for making a protected disclosure as it was not satisfied she was a 'worker' within the definition of section 230(3) of the ERA.

The Claimant complained that she had been subjected to sex discrimination as a result of announcing her pregnancy and being expelled from the Respondent's partnership and that she was subjected to a detriment for making a protected disclosure, namely that she was disciplined and expelled as a member of the partnership. The employment tribunal found that the Claimant was entitled to bring her sex discrimination claim under the Equality Act 2010 but that as a member of an LLP it was not satisfied she was a 'worker' and therefore she could not pursue a whistleblowing claim. The Claimant appealed.

The EAT accepted that the formulation of the four statutory requirements under section 230(3)(b) for a worker were:

- there must be a contract (in this case the LLP agreement with Clyde & Co),
- under the contract the worker must undertake to do or perform work or services personally,
- the work or services are to be done or performed for another party to the contract, and
- the other party must not be a client or customer of a profession or business undertaking carried on by the putative worker (referred to as the 'exclusion proviso').

HHJ Peter Clark commented that it was 'plain and obvious' that the exclusion proviso did not apply to the Claimant. The Respondent was not the Claimant's client.