

Date: 17 December 2018

**Welcome to EKemp**

Thank you for choosing EKemp to in the preparation and submission of Your claim for redundancy payments and other statutory entitlements under the Employment Rights Act 1996.

**Who can make a claim?**

A Director can make a claim if they consider that they were an employee of the company. The following are indicators of employee status:

- You were under subject to control and guidance internally within the company
- You are employed under a contract of service (which can be written or oral)
- You work regular hours and a fixed number of hours each week
- Tax and national insurance were taken from your pay under a PAYE scheme
- You were paid regularly (or there was agreement for you to be paid regularly, whether oral or in writing)
- You received benefits such as pension, sick pay and/or holiday pay; and
- You have a formal job title and duties within the company.

No particular indicator is conclusive in its own right and the relationship must be considered in its entirety.

**The Claims Process**

The process works as follows:

1. The Claimant (or representative) makes an online claim for redundancy via Government portal,
2. The Redundancy Payment Service (RPS) issues Form RP3 (additional information for directors) to the claimant, usually within 7 days of step 1 above or the insolvency date, if later,
3. The RPS issues a request to the claimant for further information
4. The RPS makes a decision on the claim, usually a minimum of 21 days following receipt of the information requested at step 3
5. Claim proceeds received by claimant approximately 4 working days later (if you have opted to receive electronic payments)

Please could you read through the terms of business carefully and if you wish to proceed, please sign where indicated. I have enclosed a pre-paid envelope for you to return all the documents to us. We look forward to receiving your documentation in order to process your claim further.

Should you wish to discuss the below, please do not hesitate to contact us using the above details.

Kind Regards,

**The ekemp Team**

These Terms of Business explain Our obligations to You and Your obligations to Us and are the basis of the legal agreement between us.

## **Definitions**

**Agent** means EK Employment Law Consultants Limited, whose registered office address is Hazelmere, 70 Chorley New Road, Bolton, Lancashire, BL1 4BY.

**Agreement** means the agreement between You and Us in relation to the Services, in accordance with these Terms of Business.

**Fees** means the fees to be paid by You to Us in accordance with Clause 4 for the provision of the Services.

**Services** means the employment law consultancy services We agree to provide You with under this Agreement.

**Terms of Business** means these terms and conditions of Business.

**Us/We/Our** means Griffin Legal LLP (trading as 'ekemp'), whose registered office address is Martello, Bradshaw Lane, Mawdesley, Nr Ormskirk, Lancashire, L40 3SF or anyone to whom we transfer Our obligations and rights under this Agreement.

**Griffin Legal LLP trading as Ekemp is regulated by the Claims Management Regulator in respect of regulated claims management activities, details available and recorded at [www.gov.uk/moj/cmr](http://www.gov.uk/moj/cmr). Our registration number is CRM43401.**

**You/Your** means you, the person whose name and signature appears at the end of these Terms of Business.

## **1. Appointment and Duration**

- 1.1 You appoint Us and We agree to provide the Services
- 1.2 This Agreement will, subject to Clause 4.4 below, commence when You confirm Your acceptance of these Terms of Business in writing by returning a signed copy.
- 1.3 This Agreement will continue until ended earlier by You as set out in clauses 1.4 and 5 or by Us as set out in clause 6.
- 1.4 You have the right to cancel this Agreement at any time during the first 14 calendar days from the date of Your signing this agreement. You can do this in writing or by telephone.
- 1.5 Please be aware You are able to seek further advice in relation to your claim and you may wish to consider what services might be most appropriate to your claim for compensation. In particular you have the right to shop around and you should be aware that You are entitled to make a claim yourself.

## **2. Services**

- 2.1 We will assist in the preparation and submission of Your claim to the Insolvency Service for redundancy payments and other statutory entitlements from the National Insurance Fund under the Employment Rights Act 1996.
- 2.2 We will correspond and represent you in any dealings that may be necessary with the Insolvency Service and any other third parties in connection with Your claim, including, if separately agreed in writing between both parties to the agreement, attending any employment tribunals as your agent. We will keep You informed of any settlement reached with the Insolvency Service on Your behalf.

- 2.3 There are no risks to You in terms of losing money, as Our Fee is only made payment in the event of a successful claim being made (unless You cancel after the 14 day cooling off period).
- 2.4 The Redundancy Payment Service (RPS) will make the decision in the first instance. You will only need to appear at an Employment Tribunal (“ET”) if Your claim is rejected and You elect to lodge an appeal. The ET will make the ultimate decision. There is presently no cost in making such an application.
- 2.5 ekemp subcontracts the provision of all of the Services it has undertaken to perform under this agreement to Our Agent, EK Employment Law Consultants Limited, whose registered office address is Hazelmere, 70 Chorley New Road, Bolton, Lancashire, BL1 4BY.
- 2.6 Should you have any questions about the Services, please do not hesitate to contact Our Agent by telephone at: 0161 871 0530 or in writing to: [redundancy@ekemploymentlaw.co.uk](mailto:redundancy@ekemploymentlaw.co.uk) or Suites 4 & 5, Phoenix House, 100 Brierley Street, Bury, BL9 9HN; or Us by telephone at: 01772 814455 or in writing to: [enquiries@griffin-legal.co.uk](mailto:enquiries@griffin-legal.co.uk) or Martello, Bradshaw Lane, Mawdesley, Nr. Ormskirk, Lancashire, L40 3SF

### 3. Your Responsibilities

- 3.1 You will provide to Us all relevant personal information regarding Your employment situation, which shall be true, accurate and not misleading.
- 3.2 You expressly authorise Us to complete all documents relating to Your claim on Your behalf in whatever manner We deem necessary for the purpose of advancing your claim, to correspond and negotiate with the Insolvency Service (and any other third parties) on Your behalf, to attend any employment tribunal hearings, if agreed in accordance with 2.2 above, on your behalf and to settle your claim on your behalf.
- 3.3 **We kindly request that you forward all correspondence onto ourselves. We are happy to assist in their completion on your behalf as part of our service.**
- 3.4 You will sign all necessary Insolvency Service forms or any other documents which We consider necessary for Us to carry out the services on Your behalf. Failure to do so may result in delays and may result in Our terminating this agreement.
- 3.5 **YOU WILL FORWARD US COPIES OF ALL CORRESPONDENCE FROM THE INSOLVENCY SERVICE AND THE REDUNDANCY PAYMENTS SERVICES (INCLUDING WITHOUT LIMITATION ANY PAYMENT SCHEDULES ISSUED BY THEM) AND WILL FORWARD TO US A COPY OF YOUR PAYMENT SCHEDULE RECEIVED BY YOU FROM THE REDUNDANCY PAYMENTS SERVICE STATING THE AMOUNT RECEIVED BY YOU.**
- 3.6 We cannot be held responsible by You or any third parties for any legal action taken as a result of fraudulent or incorrect information given by You to the Insolvency Service, or any information We provide to the Insolvency Service on Your behalf.
- 3.7 We are not retained by You for the purpose of giving legal advice to You, except in relation to your redundancy claim (specifically excluding TUPE and Unfair Dismissal). We will not give legal advice to You, except in relation to your redundancy claim (specifically excluding TUPE and Unfair Dismissal). Any informal advice which may incidentally be given to You during the carrying out of the Services other than in relation to your redundancy claim should not be relied upon by You and We accept no liability whatsoever for any loss caused as a result. Other than in relation to your redundancy claim, it will be Your responsibility to obtain legal advice from a qualified practitioner in the event that You require this and We will not be liable to You in the event that You fail to do so.
- 3.8 You warrant and represent that You are not aware of any issues which under the Transfer of Undertakings (Protection of Employment) Regulations 2006 may relate to Your claim.

### 4. Fees

- 4.1 If You win Your claim, Our fees shall be **15%** of all monies received from the Insolvency Service in the event that Your claim does not proceed to an employment tribunal hearing. In the event that Your claim does proceed to an employment tribunal hearing and we agree to act for you in for you in some capacity, Our fees shall, unless otherwise agreed, be 20% of all monies received from the Insolvency Service.
- 4.2 Success fee representative example table:

<i>Example 1</i>		<i>Example 2</i>	
All monies received, and Your claim <u>does not</u> proceed to an employment tribunal hearing.		All monies received, and Your claim <u>does</u> proceed to an employment tribunal hearing.	
Total Compensation	£1,000.00	Total Compensation	£1,000.00
Fee Charged at 15%	£150.00	Fee Charged at 20%	£200.00
Amount You Receive	£850.00	Amount You Receive	£800.00

- 4.3 Our fees shall be based on all amounts received by You whether or not We complete form RP2 (Notice Pay) on Your behalf.
- 4.4 A Fee will be payable for any claim(s) cancelled after the 14 day cooling off period. This reasonable fee will be based on the work completed will be payable for any claim(s) cancelled after the 14 day cooling off period, as detailed below;
- 4.4.1 After the cooling off period, but before a claim is submitted to the Redundancy Payments Services: No charge
- 4.4.2 After the cooling off period and after a claim is submitted to the Redundancy Payments Services on your behalf: £150 + VAT (equivalent to 1 hour)
- 4.5 In the event that Your claim is unsuccessful, there shall be **no fee** payable by You to Us, subject to clause 4.11.
- 4.6 It is a condition precedent to this Agreement that you authorise Us to take payment of our fees from You via GoCardless in accordance with Clause 4.6 below using the bank details You include in your RP1 form (“the Nominated Bank Account”) unless agreed otherwise between us. For the avoidance of doubt, this Agreement will not become effective until and unless such authorisation has been given by You.
- 4.7 You provide your express consent for Us to charge Your Nominated Bank Account with our fee via GoCardless once 7 days have elapsed following the date of any payment schedule(s) issued to You by The Insolvency Service. It is your sole responsibility to ensure that sufficient funds are available within Your Nominated Bank Account to honour the payment of our fees. We will not be held responsible for any charges you incur or any other losses that arises from there being insufficient funds available at the time of or as a result of the payment request.
- 4.8 Once all payments due to You have been received by You from The Insolvency Service and all Our fees due in connection with those payments have been paid to Us by You, We will cancel the Direct Debit instruction.
- 4.9 Our fees shall be payable by You within **14 days** of the date of Our invoice to You. In the event that Our fees are not paid within this period for whatever reason, We reserve the right to refer the matter to Our recoveries department, which will result in further cost to You.

- 4.10 Interest shall be payable on all sums owed by You to Us at a rate of **20%** per annum accruing daily and compounded on the last day of each calendar month.  
(INTEREST)
- 4.11 In the event that You act contrary to Our advice, fail to do so in the timescale stipulated by Us, or do not provide the payment schedule setting out the sums You are due to receive from the Insolvency Service, You will be liable for all fees and disbursements incurred by Us on Your behalf which shall be calculated by reference to Our assessment of the value of Your claim.
- 4.12 Any additional services in relation to TUPE shall be charged on a separate basis in terms to be agreed between You and Us.
- 4.13 In the event that any fees are not paid by You to Us in accordance with the terms of this Agreement, You shall be liable for any expenses We incur (on a full indemnity basis and with interest) in connection with the recovery of Our fees or Our taking, protecting, enforcing or exercising any of Our rights pursuant to this Agreement.

## **5. Your Right to Terminate**

- 5.1 You have the right to terminate this Agreement under clause 1.4
- 5.2 In addition to Your right to terminate under clause 1.4, You may also end this Agreement at any time. However, where We have already submitted forms to the Insolvency Service on Your behalf at the time of Your notice of termination We reserve the right to charge You the Fees (in accordance with Clause 4.4 above) in the event that Your claim unless such termination takes place within the 14 day cooling off period.

## **6. Our Right to Terminate**

- 6.1 We may terminate this Agreement at any time by giving You two Weeks prior written notice if any of the following happens:
- 6.1.1 You are in material breach of this Agreement or have persistently committed a series of minor breaches (even if one individual breach would not necessarily be regarded as a Serious breach on its own); or
- 6.1.2 You are declared bankrupt, petition or make an arrangement or make a separate agreement with Your creditors generally, or make an application to a Court of competent jurisdiction for protection from Your creditors generally.
- 6.1.3 You are in breach of the warranty set out at clause 3.8.

## **7. Effects of Termination**

When this Agreement ends:

- 7.1 Our duties and obligations to You under this Agreement will come to an end;
- 7.2 You may, within 30 days of the end of this Agreement, and on payment of an administration fee, request Us to return all paperwork received from You or the Insolvency Service that has been retained by Us. This fee will cover the postal costs to return said paperwork, capped at £20.
- 7.3 A Fee will be payable for any claim(s) cancelled after the 14-day cooling off period**

## **8. Confidentiality and Data Protection**

- 8.1 Subject to paragraphs 8.2 and 8.4 to 8.5, all information disclosed by You to Us is and shall remain confidential, however You agree that We may discuss personal and financial information directly with the Insolvency Service, any insolvency practitioner

- appointed in relation to your/your company's affairs and Our Agent and process Your personal information in providing the Services to You.
- 8.2 It should be noted that following discussion with the Insolvency Service, any insolvency practitioner appointed in relation to your/your company's affairs, or Our Agent, some agencies may retain the right to share financial information regarding Your file.
- 8.3 You have a right to examine all information that We obtain upon Your behalf in accordance with the Data Protection Bill 2017, and You may request this in writing.
- 8.4 We may use information held about You in the following ways:
- 8.4.1 To provide You with information, products or services that You request from us or which We feel may interest You.
- 8.4.2 To notify You about changes to our service.
- 8.5 Only with your explicit consent we may pass Your data to agreed third parties to use Your data, to provide You with information about goods and services which You have indicated may be of interest to You.
- 8.6 If You wish to withdraw Your consent for the activity detailed in 8.5, please let Us know using our contact details provided above.

## **9. Liability**

- 9.1 Nothing in these terms and conditions shall exclude or restrict Our liability for death or personal injury resulting from negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Subject to this:
- 9.1.1 Our total liability to You in contract law or in tort or otherwise howsoever arising in relation to this Agreement is limited to the Fees;
- 9.1.2 We shall not be liable in any way in respect of any failure, delay or defect in the Services caused by the supply or information by You; and
- 9.1.3 We will not be liable to You for economic loss including loss of profits, Business, contracts, revenues, goodwill, production and anticipated savings of any description howsoever caused and even if foreseeable by Us.
- 9.2 All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from this Agreement to the fullest extent permitted by law.
- 9.3 Our Services may include providing (at our discretion) informal advice in relation to TUPE. Such informal advice shall not be construed or relied on by You as legal advice

## **10. General**

- 10.1 We reserve the right to assign or subcontract any or all of Our rights and obligations under this Agreement. We will obtain Your express prior to this.
- 10.2 You may not without Our prior written consent assign or dispose of any Your rights or obligations under the Agreement.
- 10.3 This Agreement contains the entire agreement and understanding between You and Us relating to the Services, and supersedes any and all prior agreements, arrangements, statements and understandings, and You acknowledge that You have not relied on any representations, statements or warranties except as set out in these Terms of Business, and We accept no liability for any such statement made prior to the commencement of the Agreement (save in the case of fraud).
- 10.4 If any part of the Terms of Business shall be held to be invalid or unenforceable, it shall not affect the enforceability of any of the remaining provisions.
- 10.5 Unless otherwise expressly stated in these Terms of Business, all notices from You to Us must be in writing and sent to Our address as set out above.

- 10.6 Failure or delay by Us enforcing an obligation or exercising a right under this Agreement does not constitute a waiver of that obligation or right.
- 10.7 We shall not be liable to You nor in breach of the Agreement as a result of Our failing to perform Our obligations to You as a result of any matters outside Our reasonable control.
- 10.8 This Agreement does not confer any rights on any person or party (other than You or Us) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.9 This Agreement shall be governed by and in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

## 11. Complaints

- 11.1 We strive to ensure that all complaints are handled promptly, fairly and effectively in accordance with it.
- 11.2 Complaints may be made in writing, by email, by telephone or in any other form in respect of a claims management service provided and that is regulated under the Compensation Act 2006.  
In writing to Our Agent in the first instance, to: EK Employment Law Consultants Ltd, Suites 4/5, Phoenix House, 100 Brierley Street, Bury, BL9 9HN  
Via email to: [redundancy@ekemploymentlaw.co.uk](mailto:redundancy@ekemploymentlaw.co.uk)  
By telephone on: 0161 871 0530  
If, having made a complaint to the above, you remain dissatisfied with the outcome, you may appeal the decision by contacting:  
In writing to: Griffin Legal LLP,  
Via email to: [enquiries@griffin-legal.co.uk](mailto:enquiries@griffin-legal.co.uk)  
By telephone on: 01772 814 455
- 11.3 We strive to ensure that there should be no time that you should have any cause for complaint in relation to the service we provide to you. In the unlikely event that you wish to raise a complaint or have any other concerns with regard to any service we have provided you may submit a formal complaint. This procedure sets out the process which should be followed.
- 11.4 Complaints may be made in writing, by e-mail, by telephone or in any other form in respect of a claims management service that we have provided and that is regulated under the Compensation Act 2006. You should address your complaint to The Complaints Department.
- 11.5 We will send you a written or electronic acknowledgement of a complaint within five business days of receipt, identifying the person who will be handling the complaint for the business together with a copy of this complaints handling procedure. Wherever possible, that person will not have been directly involved in the matter which is the subject of the complaint and will have authority to settle the complaint.
- 11.6 Within eight weeks of receiving a complaint we will send you either:
  - a) a final response which adequately addresses the complaint (including contact details for the Legal Ombudsman should you wish to make a complaint to them); or,
  - b) a response which:
    - i. explains why we are still not in a position to make a final response, giving reasons for the further delay and indicating when we expect to be able to provide a final response;
    - ii. Informs you that you may refer the handling of the complaint to the Legal Ombudsman if you are dissatisfied with the response, the timeframe for doing so and full contact details.
- 11.7 Where we decide that redress is appropriate, we will provide you with fair compensation for any acts or omissions for which we are responsible and will comply with any offer of redress which you accept. Appropriate redress will not always involve financial redress.

11.8 If you are not satisfied with our response, or if a complaint is not resolved after eight weeks, you may refer the complaint to –

Legal Ombudsman  
PO Box 6804  
Wolverhampton  
WV1 9WG  
[enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) or Tel: 0300 555 0333

11.9 Any complaint must be referred to the Legal Ombudsman within six months of the date of our written final response.

**12. Griffin Legal LLP and EK Employment Law Consultants Limited**

12.1 ekemp currently trades under the Claims Management Regulator authorisation of Griffin Legal LLP in respect of the provision of the Services.

12.2 ekemp subcontracts the provision of all of the Services it has undertaken to perform under this agreement to Our Agent, EK Employment Law Consultants Limited.

12.2 In the event that EK Employment Law Consultants Limited (or such entity as it puts in place for such purposes) obtains its own authorisation from the Claims Management Regulator for the provision of the Services (without trading under the Griffin Legal LLP banner), on our request you shall enter into a deed of novation with EK Employment Law Consultants Limited (or such other entity) and Griffin Legal LLP to:

12.2.1 ensure the full novation of the Services from Griffin Legal LLP to EK Employment Law Consultants Limited (or such other entity), whether or not such Services are ongoing or have been completed;

12.2.2 release Griffin Legal LLP from liability for any failure in performance of these Terms of Business up to the date of such novation, on the basis that EK Employment Law Consultants Limited (or such other entity) will assume such liability in Griffin Legal LLP's place;

12.2.3 ensure that EK Employment Law Consultants Limited (or such other entity) is able to continue to provide the Services to you directly and remain responsible to you for the provision of the Services following such novation.

**If you do not understand or have any questions regarding our terms of business, please do not hesitate to contact us via the contact details shown above.**

**I acknowledge receipt of and agree to be bound by these Terms of Business.**

Signed ..... Print Name .....

Address .....

.....

Company Name..... Date .....