

INTRODUCTION TO THE AGENCY WORKER REGULATIONS

The Agency Workers Directive is a piece of European legislation which became law on 5th December 2008. All EU member states have 3 years from that date to implement the Directive via their own national legislation. In England, Wales and Scotland, the Directive will be implemented via the Agency, Workers Regulations 2010 (“the Regulations”) which will come into force on 1st October 2011. Northern, Ireland will draft separate legislation which is expected to come into force at the same time.

The Regulations will give agency workers the right to the same basic working and employment conditions they would receive if they were engaged directly by an end user client to do the same job; this is limited to conditions that relate to pay and working time. Agency workers will also be entitled to access on-site facilities that an end user client provides to its own workers and to be advised by a client of vacancies which arise in the client’s business.

1. WHO IS AN AGENCY WORKER?

For the purpose of the Regulations, an agency worker is:

- an individual;
- who is supplied by a temporary work agency (see below) to work temporarily under the supervision and direction of a hirer; and who
- has a contract of employment or any other type of contract (a contract for services for example) under which they provide their services personally for the agency.

An agency worker then is the individual typically supplied by employment businesses to a client to work under the client’s direction and supervision.

2. WHAT IS A TEMPORARY WORK AGENCY?

The Agency Workers Directive (on which the Regulations are based) applies a different definition.

FACTSHEET SUMMARY

In this Factsheet we explain some of the important definitions which agencies will need to be familiar with in order to better understand how the Regulations apply and who they will affect. Because recruitment matters to the word “agency” to that which recruiters will be familiar with in the UK. For the purpose of the Regulations a temporary work agency is an undertaking which is in the business of **“supplying individuals to work temporarily for and under the supervision and direction of hirers.”** This definition more accurately describes what recruiters will recognise as an employment business as defined in the Employment Agencies Act 1973 (“the EAA”). In fact an “employment agency” (as defined in the EAA) which introduces work seekers to clients to be engaged directly by the client, is not a “temporary work agency” under the Regulations and therefore is excluded from the provisions.

The Regulations have been drafted quite widely to capture other businesses which do not see themselves as, or do not meet the EAA definition of an employment business. The Government is keen to ensure that the Agency Workers Directive is properly implemented and provides protection to everyone who is supposed to be in scope.

The definition of a “temporary work agency” in the Regulations therefore also includes an undertaking which is responsible for *“paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.”*

These conditions ensure that in addition to those businesses which operate as employment businesses, umbrella companies, that employment business often engage as limited company contractors, will also fall within the definition a temporary work agency. The definition is also wide enough to capture payroll providers which solely handle payments for agency workers. We will refer to a “temporary work agency” as an “agency” in these Factsheets.

3. ARE SELF-EMPLOYED WORKERS AND LIMITED COMPANY CONTRACTORS “AGENCY WORKERS”?

The Regulations are not intended to apply to the genuinely self-employed workers. The wording used to define agency workers in the Regulations requires an agency worker to work under the client’s direction and supervision, which will not be the case for a genuinely self-employed contractor. Also workers who provide their service in such a way which means that the agency or end user hirer is effectively their client or customer, i.e. they are genuinely in business of their own account, the Regulations will not apply. (For further information on limited company contractors and self-employed status please see Factsheet 2).

4. ARE MASTER AND NEUTRAL VENDORS COVERED BY THE REGULATIONS?

Yes, the wide definition also includes vendors which are involved in the supply of agency workers, although they do not contract directly with the agency workers. The Regulations contain a number of provisions which are intended to ensure that workers who are supplied by agencies are still afforded equal treatment rights even when there are a number of intermediaries involved in the supply chain.

5. WHO IS THE HIRER?

Essentially this is the end user client, i.e. the party to whom the agency worker is ultimately supplied, and under whose direction and supervision the agency worker works. We will refer to the “hirer” as the “client” in these the agency worker works.

6. WHAT IS A MANAGED SERVICE CONTRACT AND ARE THESE COVERED BY THE REGULATIONS?

The service which is provided to a client under a managed service contract is quite different to that which is provided by an employment business. Whilst an employment business simply provides workers to work under the client’s supervision and control, a managed service contract provider will be responsible for delivering an entire service for a client and will supervise and direct the workers itself. In this sense, a managed service contract provider does not meet the definition of a temporary work agency and such services are not covered by the Regulations. Employment businesses will need to give careful consideration to any decision to opt to provide this type of service as it will be necessary to have sufficient staff, skills, expertise etc to deliver the service to the client.