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Prepare for new temp hiring law

From October, temporary staff hired through agencies will gain more rights. Solicitor Jonathan Bruck shows how this might affect your business.

The problem

I run a hotel and need a flexible workforce to deal with seasonal changes in demand. In the past, I have used agencies to provide me with temps, as that is cheapest and most convenient option for me. I have been told that the government plans to give temps more rights though. What are these rights and how might they affect my business?

The law

The Government does indeed plan to give temporary workers (temps) supplied by agencies more rights via the Agency Worker Regulations 2010. This comes into force on 1 October 2011.

The Regulations will apply to temps who are supplied by agencies to hiring businesses such as yours. They will require agency workers to be provided with the same "basic working and employment conditions" as they would have been entitled to had they been directly employed (as permanent employees) by the hirer to do the same job.

Those basic terms and conditions will include:

- Pay (including basic salary, holiday, overtime and certain bonuses)
- Duration of working time
- Length of night work
- Rest periods

- Rest breaks; and
- Annual leave.

Only agency temps who have undertaken the same role, with the same hirer, for 12 continuous weeks will qualify for this right. Therefore, temps brought in to work for a short time (perhaps to work on a one-off event) are likely to be excluded.

This qualifying period is broken (and will restart) if the worker:

- takes a break of at least six weeks either during or between assignments;
- starts a new assignment with the same hirer with the work or duties which are ‘substantively different’ from the work or duties he carried out during the previous assignment.

However, the Regulations contain anti-avoidance provisions which prevent hirers from rotating workers in order to deliberately avoid them accruing the 12 weeks’ service. If assignments are structured in this way, a fine of up to £5,000 could result.

The Regulations also provide that agency workers be given further rights from day one of their assignment. This includes rights:

- to be told of any relevant employment vacancies at the company during any assignment;
- to be given the same opportunity as a comparable worker to find permanent employment within the company; and
- to equal access to collective facilities and amenities, including canteen and child care facilities.

Agencies and, in certain circumstances hirers, will be liable for breaches of the Regulations on equality of basic terms and conditions. Liability depends on responsibility for the breach (and the information given to the agency about terms and conditions of permanent employees).

Hirers will be solely liable for any failure to provide equal access to onsite facilities and employment opportunities.

Expert advice

I would recommend that you carry out an assessment of your workforce, so you can consider whether the Regulations will impact on your business.

The key question for you is whether you ordinarily engage agency workers for periods in excess of 12 weeks at any one time. If so, from 1 October, you will need to ensure that those temps are paid at least the same as equivalent permanent employees. An overall consequence of this could be an increased cost of engaging temps.

If engaging temps no longer makes sense for your business, you may want to consider other staffing options which provide flexibility, for example employing staff directly on zero hours or short fixed term contracts. However, there are potential risks of doing this.

If, you intend to continue using agency workers, you should start working with your agency now to plan ahead. The Regulations will not apply where agencies employ workers directly on permanent contracts and satisfy certain conditions (such as paying them between assignments). Whether and which agencies would be able to do this though, remains to be seen, but you should find out what your agency is planning.

To do checklist

- Carry out an assessment of your workforce to gauge the potential impact of the Regulations.
- Consider the risks and benefits of other staffing options.
- Start liaising with your agency to plan ahead (and find out what their plans are for October).

Beware!

The Government has, to date, failed to publish any guidance on the Regulations. This much needed guidance will hopefully provide more information about how the Government intends the Regulations to apply to businesses such as yours (and deal with some unanswered legal questions). The Government are promising that the guidance will be published soon, so in the meantime, businesses will have to watch this space!

If you would like to talk to us about the issues raised by this note, please contact:

Jonathan Bruck

01895 207975

jonathan.bruck@ibblaw.co.uk

IBB Solicitors

Capital Court

30 Windsor Street

Uxbridge UB8 1AB

Tel: 08456 381 381

Fax: 08456 381 351

www.ibblaw.co.uk

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