

## Recruitment Agencies

### How will the AWR affect recruitment agencies?

The fundamental principle of the AWR is to provide agency workers with the same basic working and employment conditions as a comparable permanent employee after a qualifying period; this being just 12 weeks. There is no doubt in anyone's mind that the regulations will cause extra administration for all operating within the flexible workforce market (the temporary worker, recruitment agency, Umbrella Company and the end client); however, **do not be alarmed** - the regulations are set to be reviewed by the Government before implementation in October 2011, so there is still time to prepare.

### So after 12 weeks, what would happen?

Essentially, the contract worker would be entitled to the same basic working and employment conditions offered to that of a comparable employee of the end client (hirer).

**NB:** The twelve week period cannot be reset by issuing a new assignment/contract, nor can it be reset by a change in recruitment agency, which makes it vitally important that the recruitment agencies gain knowledge of where the contractor has worked previous to the contract they are going to issue.

### What covers 'basic working and employment conditions'?

After 12 weeks, the temporary agency worker would be entitled to the same working and employment conditions as those of a comparable employee. These are:

- Equal Pay to that of a comparable employee
- Commissions, bonuses and overtime rates
- Annual leave
- Night work
- Rest periods and breaks
- Access to staff facilities; i.e. canteens, childcare schemes and transport
- The right to hear about vacant job opportunities

The AWR will not cover:

- Pensions
- Redundancy payouts
- Occupational sick pay
- Share schemes
- Loyalty schemes or long service rewards
- Any payment relating to maternity, paternity or adoption leave



## Who is responsible for establishing & ensuring the basic working and employment conditions are implemented?

The recruitment agency would initially be responsible (except for access to collective facilities/amenities and access to the hirer's employment opportunities). Agencies must show 'reasonable steps' were taken to obtain the necessary information from the hirer and that they acted 'reasonably' in determining what the workers' basic working and employment conditions should be after the qualifying period.

Where the temporary work agency can establish 'reasonable steps' were taken and that they acted 'reasonably' in determining or trying to determine the worker's basic working and employment conditions', the hirer will become liable. From this, we can see that the communication between the temporary worker agency and end client will be essential when ascertaining:

- a) who could be deemed a comparable employee at the end client, and
- b) in obtaining the relevant terms and conditions which apply to that employee.

Upon implementation in October 2011, it will be much easier for an agency worker to claim an infringement on their rights under the AWR within a court of law or in front of an employment tribunal.

Where a tribunal finds that the agency worker has worked up to or beyond the qualifying period (12 weeks) and that their rights have been infringed, "the amount of compensation awarded shall be such as the tribunal considers just and equitable in all circumstances having regard to":

- (a) The infringement or breach to which the complaint related; and
- (b) Any loss which is attributable to the infringement

## Preparation Tips for Agencies

As already mentioned, collection of comparable information from the end client is essential in ensuring compliance with the AWR. We believe you should consider these three tips in preparation:

1. **Think about processes & people** – Start thinking about how you would administer the additional information needed to remain compliant with the AWR. Those agencies that start planning now will be in a better position to adapt to the expected changes.
2. **Educate clients today** – The transfer of information from client to agency and in some cases service provider is essential. Agents will have to request for comparable information, so having the end client on side, fully educated and up to date with the AWR will make things a lot easier when the regulations are implemented.
3. Ensure that you look out for updates. The new government is set to make changes to the AWR and you want to be first in line, ready to put the other two points above into practice.

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