

Factsheet 1 - An introduction to the Agency Worker Regulations

The Agency Workers Regulations 2010

The Agency Workers Regulations will come into force in England, Scotland and Wales on 1 October 2011. In Northern Ireland the Agency Workers (Northern Ireland) Regulations 2011 will come into effect on 1 December 2011.

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.

This Factsheet is the first in a series of 7 which will look at the Regulations in detail. They have been written for REC Members that operate as employment businesses.

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.

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 to work temporarily under the supervision and direction of a client; 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.

So an agency worker is the individual typically supplied by employment businesses to a client to work under the client's direction and supervision.

The Regulations do not apply to:

- workers who have found a “perm” job with a client, even if they were introduced by an agency;
- workers who are genuinely in business on their own account (i.e. genuinely self-employed) will not be within scope. Workers engaged via umbrella companies or other intermediaries will be in scope unless they are genuinely self employed (for further information see Factsheet 2).

2. Are self-employed workers and limited company contractors “agency workers”?

The Regulations do not specifically exclude limited company contractors; however individuals who are genuinely self-employed, i.e. in business (whether by way of a limited company or otherwise) of their own account and who do not work under the supervision and direction of the hirer are not “agency workers.” (See Factsheet 5 for further details).

3. What is a temporary work agency?

The Agency Workers Directive (on which the Regulations are based) applies a different definition 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”). An “employment agency” (as defined in the EAA) which introduces work seekers to clients to be engaged directly by the client (often referred to as ‘perm’ recruitment), is not a “temporary work agency” under the Regulations and therefore is excluded from the provisions.

“Intermediaries”

The Regulations have been drafted 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 will also fall within the definition of a temporary work agency. The definition is also wide enough to capture payroll providers which solely handle payments for agency workers.

Master and neutral vendors:

The definition of “temporary work agency” also includes master and neutral 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.

4. 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.

The anti-avoidance provisions in the Regulations (see Factsheet 5) also refer to “*hirers connected to a hirer.*” Hirers are connected to hirers where one (directly or indirectly) has control of the other or a third party (directly or indirectly) has control of both hirers.

5. Managed services contracts – are these covered by the Regulations?

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 will not be required to comply with the same obligations as agencies. However if the managed service contractor uses an agency to supply its workers, the workers may still meet the definition of agency workers for the purpose of the Regulations and the managed service provider may be required to comply with the hirer obligations under the Regulations.

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Other Factsheets

Factsheet 1: An introduction to the Agency Worker Regulations

Factsheet 2: The application of the Regulations to limited company contractors

Factsheet 3: How does an agency worker qualify for equal treatment?

Factsheet 4: What is equal treatment?

Factsheet 5: Liability for breach of the Regulations

Factsheet 6: Maternity rights under the Regulations

Factsheet 7: Employed agency workers – when does equal treatment not apply?

The Department of Business, Innovation and Skills (BIS) is currently working on guidance to assist clients and agencies to implement the Regulations correctly. The REC is working closely with BIS on this guidance which should be released in April 2011. The Department of Employment and Learning (DELNI) are currently consulting on the NI Regulations (these are almost identical to the UK Regulations) and will produce separate guidance later this year.

This document has been created for REC members for information only. It is not a substitute for legal advice on related matters and issues that arise and should not be taken as providing specific legal advice on any of the topics discussed.

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