

Recruitment Industry Update

GOODMAN DERRICK LLP

EU Agency Workers Directive Update

Readers will be aware of the ongoing saga relating to the proposed EU Agency Workers Directive. Originally proposed in March 2002, the draft directive seeks (amongst other things) to give agency workers the same basic working and employment conditions (e.g. pay and holidays) during their assignment as if they had been recruited directly by the hirer company to occupy the same job after a qualifying period. However as a result of resistance to its provisions, the directive has never been made into law.

On 20 May 2008 the draft directive received a vote of support from the government, the TUC and the CBI, when agreement was reached between these three parties *“on how fairer treatment for agency workers in the UK should be promoted, while not removing the important flexibility that agency work can offer both employers and workers.”*

The agreement included the following points:

1. that agency workers should have an entitlement to “equal treatment” after 12 weeks in a given job.
2. equal treatment will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by the end user/client to occupy the same job. It will not cover occupational social security schemes, such as pensions, occupational insurance schemes or private medical care.

Goodman Derrick LLP attended the REC Agency Summit on 2 June where the effect of the agreement was discussed. Representatives from the TUC, CBI, REC and other interested parties were present. A number of interesting points were made, for example:

1. The CBI intends that equal treatment will be restricted to pay, hours and holiday only. However, the definition of “pay” is an area of ambiguity which will have to be resolved in the legislation which is to follow.
2. Equal treatment will be determined by reference to an actual comparator. In specialised recruitment where no comparator exists, then the requirement for equal treatment will not be capable of enforcement.
3. How “equal treatment” is to be defined in legislation is also an area of uncertainty and potential flexibility at the current time.
4. Over 50% of temporary assignments are of a duration of 12 weeks or less. Assignments of less than 12 weeks will not trigger the requirement for equal treatment.
5. Most of the EU states and the USA already have legislation in place to protect agency workers and in general, it has not had a detrimental impact on the recruitment industry.

The government has stated that it will now work with EU members to reach agreement on the exact terms of the Directive in its draft legislative programme for 2008/2009. It is unlikely that new law will be introduced in this area before April 2010.

The private members bill entitled Temporary and Agency Workers (Equal Treatment) Bill 2007-08 which was introduced by Andrew Miller in December 2007 and addressed similar issues to the proposed EU directive, was withdrawn on 21 May 2008 as a result of the government’s announcement of its agreement with the TUC and CBI.



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If you would like further information about the issues raised in this newsletter, or any other aspect of employment law or the recruitment industry, please contact Helen Wyatt, Head of Employment, or any other member of Goodman Derrick LLP’s employment department.

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This guide is for general information and interest only and should not be relied upon as providing specific legal advice.

Money Laundering Regulations Update

We reported in our March and April 2008 editions of this newsletter (copies of which can be found on our website www.gdlaw.co.uk), that anti-money laundering legislation was to impact on the recruitment industry for the first time. Certain types of recruitment company will become obliged, later this year, to take measures to identify and prevent money laundering and to register with HMRC for supervision and monitoring.

The specific types of recruitment company that are affected are:

1. "Trust and company service providers" ("TCSPs"), i.e. employment agencies or businesses that arrange for a person to act as a director, company secretary or partner in a business.
2. "Accountancy service providers" ("ASPs"), including recruitment companies that operate a payroll agency as part of their business. In this context, we believe that a payroll agency is one where the agency arranges payment of the employees of a third party. We do not believe that an employment business can be considered to be a payroll agent if it is paying temporary workers who are contracted to supply services to clients by virtue of a contract for services between the worker and the employment business.

Originally, recruitment companies who fell within the ambit of the regulations were expected to register with HMRC by 1 April 2008 in the case of TCSPs and by 1 July 2008 in the case of ASPs.

However, HMRC is in the process of reviewing and clarifying its guidance on the ambit of the regulations and the obligation to register. Whilst ASPs are currently still required to register by 1 July, TCSPs are now required to register in the 4 weeks following the publication of the HMRCs updated guidance on money laundering. This has not yet been published. TCSPs should visit <http://www.hmrc.gov.uk/mlr/latest-news.htm> for updates on this issue.

National Minimum Wage Increases

From 1 October 2008 the national minimum wage rate per hour shall be:

For 16 to 17 year olds: **£3.53**

For 18 to 21 year olds: **£4.77**

For adults of 22 years or over: **£5.73**

Withdrawal of VAT staff hire concession

From 1 April 2009, HMRC's Staff Hire Concession will be withdrawn meaning that employment businesses will not be able to charge and account for VAT on their margin alone. This practice was only usually seen in sectors where clients were unable to recover all the VAT they incur, such as banks, insurance companies and the health, charities and education sectors. It was only available where the conditions of the concession were met.

From 1 April 2009, all employment businesses will be required to charge and account for VAT on the full value of the charge for their supply of temporary workers, including the temporary worker's remuneration.

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