



Employment alert

Agency workers to receive protection of discrimination law

Background

Agency workers are used by many employers to provide flexibility for their business. They tend to be more expensive than permanent staff because of the agency's profit element but the benefits include the fact that they are outside the ambit of much employment law.

For example, employers can lawfully discriminate against agency workers compared to the main workforce; they needn't be paid the same, given the same benefits or even invited to the staff party.

Also, agency workers do not gain unfair dismissal or redundancy rights after a year's employment, unlike direct staff.

This has for a long time been a bone of contention for the unions who believe that employers are using agency staff (especially in the manufacturing industries) to create a second-class system of workers with minimum pay, conditions and rights. By contrast, industry leaders fear that granting equal rights to agency workers would cost Britain £9 billion each year and make us less competitive.

Pressure has been growing on the Government since Europe put a draft Directive in the pipeline (which the UK has so far resisted) and, more recently, since the early day motion of Andrew Miller MP earlier this year started gathering momentum.

The Government has reached agreement with the unions and employers on granting discrimination protection to agency workers. This deal is likely to allow the Government to keep the opt-out from the 48-hour week as the issues are linked at the European level.

The new headline agreement

- (a) *After 12 weeks agency staff will be entitled to equal treatment.*
- (b) *This means they must receive the same conditions that would apply to a direct employee doing the same job.*
- (c) *The Government will consult industry and unions on the precise details, including a dispute resolution mechanism (which might be outside the Employment Tribunal system).*
- (d) *The new arrangements will be reviewed at an appropriate point in the light of experience.*

The intention is to avoid employers finding ways around the law by issuing repeat contracts and so on.

Conclusion

This is big news for many of our employer clients, some of whom may wish to ensure that agency staff are rotated so as not to have to increase their pay and improve their conditions after 12 weeks.

Probably the inconvenience of having to re-train agency workers on a rolling basis will only be justified with the least-skilled roles and even then employers may prefer simply to bite the bullet

and assimilate their conditions.

Potentially we could even see the decline of agencies that supply workers (as opposed to recruitment agencies), depending on how critical flexibility past the 12 week point is to employers. Half of agency staff are with employers for this length of time.

These new rules will not extend unfair dismissal rights to agency workers, so employers who are content to give the same pay and conditions to post-12 week agency staff will not have to replace them before 12 months has elapsed.

The devil will be in the detail as the draft regulations become available, we'll report on them and their likely impact on you.

The BBC report on this can be found [here](#).



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