

Your Legal Questions

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Q. My business recruits a lot of temporary workers through employment agencies. I understand there have been changes to the rules relating to agency workers. What are these?

A. Engaging workers through an employment agency has traditionally been used by employers, or more accurately hirers, to prevent workers becoming employees and thus avoiding potential claims for unfair dismissal and redundancy when their contracts come to an end.

Where a business has a fluctuating need for staff it is understandable to seek flexibility to hire and fire without facing employment claims. Unfortunately, it has also been used by some less scrupulous hirers as a means to pay temporary workers considerably less than the going rate for the job and to avoid giving the benefits enjoyed by permanent employees.

The Agency Workers Regulations will come into force on 1st October 2011 and will give a right for agency workers to the same basic working and employment conditions as if they had been employed directly by the hirer rather than through an agency. The regulations relate to pay, hours, night work, rest periods, rest breaks and annual leave.

Interestingly, the regulations also allow for temporary workers to qualify for bonuses that are directly attributable to the quality or quantity of work done. Employers need to look carefully at the terms of their existing bonus schemes to see how they may be affected.

Agency workers will have to complete 12 weeks continuous work in the same role before qualifying for the right and there will undoubtedly be attempts to get around these provisions. However, agencies and employers should be careful because under new anti-avoidance measures they will face having to pay compensation of up to £5000 if they attempt to circumvent the rules by rotating employees.

At 35 pages in length the devil is in the detail of the regulations and legal advice is essential.

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