

Agency Workers Directive an overview of the government's consultation

Briefing note

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The government has commenced the consultation process for its implementation of the Agency Workers Directive. The current consultation concerns the general principles of the implementation and closes on 31 July 2009. Following this consultation, the government will produce draft regulations and there will then be a consultation on those draft regulations.

The consultation document reveals the government's current thinking on implementing the Agency Workers Directive and based on this we can say that:-

- The government is not intending to formally change the current employment status of agency workers or their entitlement (or otherwise) to existing employment rights.
- The legislation will focus on the supply of temporary workers by agencies, rather than the supply of candidates for permanent employment. It is also the government's intention to exclude workers who are genuinely self-employed or working through their own limited companies.
- In line with the CBI/TUC Agreement of May 2008, the government intends to take advantage of a twelve week qualifying period before agency workers gain an entitlement to equal treatment on matters such as pay and working time.
- The principle of equal treatment will apply to pay and basic working and employment conditions. Under the Directive this is limited to applying to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays and pay. There will be a limited definition of pay. The government proposes to limit this to basic pay plus additional payments related to the actual work carried out. This would include payment for overtime, shift allowances, unsocial hours premiums/bonuses and bonuses directly related to individual performance or output.
- The government is of the view that the equal treatment principle will apply to holiday pay (and time off in relation to public and bank holidays).
- There is no proposal for the regulations to extend an entitlement to agency workers to the wider benefits package available to permanent employees in any workplace.
- The primary liability for a failure to comply with the obligations should, in the government's view, rest with the agency rather than the end user. The end user will have to provide the agency with relevant information on pay and other terms and conditions and the end user may be liable for a failure to provide this information. However, there would be no wider liability.

- The government still intends to introduce legislation during this parliamentary session but is open to views on the actual date for implementation of any regulations.

The consultation covers the above issues, in addition to a number of other points arising out of the implementation of the Directive. We intend to respond to the consultation paper and will be seeking the views of our clients and contacts on this. Full details of the consultation will follow at that stage.

More information

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