

upfront



AGENCY WORKERS



The European Union Temporary and Agency Workers Directive was agreed in November 2008. The main purpose of the Directive was to guarantee equal pay and conditions to those working through employment agencies when compared with employees in the same business who do the same work.

The core of the Directive is equal rights on 'basic working and employment conditions'. These include pay, duration of working time rest periods, night work, paid holidays and public holidays, work done by pregnant women and nursing mothers, children and young people and also action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership.

The Agency Workers Regulations that will implement the above Directive were originally published on the 20th January 2010 and are due to come into force on the 1st October 2011. An important feature of the Directive and the Regulations is that they allow for the implementation of the Directive in accordance with the Agreement reached on the 20th May 2008 between the Confederation of British Industry and the Trade Union Congress, which provides for equal treatment for agency/temporary workers, but this protection will not be acquired until the agency workers have worked in the relevant role for 12 weeks. Therefore, all agency workers in the UK will qualify for the same terms and conditions as comparable permanent employers after working for the same client via an agency after 12 weeks. There are also provisions affecting successive shorter contracts and/or placements to ensure that protection is not easily avoided

In the United Kingdom, approximately 4% of workers are employed via an agency. This is almost double the average across Europe as a whole. However, because of the proportion of agency workers in the United Kingdom, British companies will be more affected by the legislation when compared to their European counterparts. Employment agencies were illegal in some European countries until very recently, so the impact will vary across member states.

The initial investigation undertaken by the Department for Trade and Industry suggested that the total cost to agencies relating to the implementation of the Directive would be between £80million and £194million. Furthermore, the cost to the end user/client of those agencies would be between £239million and £387million. It is only fair to say that many of the figures quoted in the DTI's regulatory impact assessment have been questioned. However, it is clear that proposed regulations could have a significant impact upon agency recruitment.

The end result could be a reduction in the availability of temporary work in the United Kingdom. A practical reality is that, because pay and benefits are protected, payroll companies and recruitment agencies will have to obtain detailed information from their client/end users relating to the pay and benefits afforded to their client's permanent work.

Continued overleaf 

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AGENCY WORKERS (Continued)

This is to ensure that the temporary/agency workers are not being paid less than a comparable employee of the client or are not receiving diminished benefits. This could lead to increased administration costs, particularly in relation to any disputes when dealing with temporary workers' pay levels.

There are two specific problems in relation to employers. Firstly, the benefits of employing agency workers on terms which are less favourable than permanent workers will generally disappear for any agency workers who worked longer than 12 weeks for the client. The clients therefore have to make an important decision namely whether to employ agency workers for a period of less than 12 weeks or alternatively to engage them on permanent full time terms and conditions. The former will result in the loss of

potentially valuable workers, particularly bearing in mind that the Regulations provide protection in the event of a series of short contracts being undertaken, or alternatively, in the event of the agency workers subsequently being employed on a full time basis, then there will be additional costs to the employer generally in relation to pay, terms and conditions and administration.

For further information please contact Peter Byrne on 01254 54374 or email peter.byrne@forbessolicitors.co.uk



2012 OLYMPICS VOLUNTEERS AND TIME OFF

The news has been full of reports about issues that Olympic fans have had with the London 2012 ticketing system, with some 250,000 fans missing out on tickets. There are, however, issues that businesses need to begin to consider.

Whilst the majority of the events are London based, there are also events in venues located in Manchester, Coventry, Cardiff and Glasgow.

Businesses are likely to receive a number of requests for time off to attend at the Games from those lucky ones who have tickets. In addition to this a campaign has been launched to find 70,000 volunteers from across the Country to assist with the games. The volunteers will need to take part in up to 20 days training before the Games and then at least ten volunteer days during the event. Employers need to be prepared to deal with requests from their employees to volunteer.

There is no legal requirement for employers to allow time off to volunteer or attend the Games. There are various options for dealing with requests for time off which include:

- **Treating this as normal annual leave to be requested in the normal way. This may not be feasible for volunteering due to the length of time required.**
- **Allowing time to be made up at a later date or other flexible working arrangements on a temporary basis.**
- **Granting special leave which can be paid or unpaid and could link with annual leave.**

Business needs can and should be taken into account when deciding whether to grant time off and the best way of doing this.

If employers consider there may be issues with this then they should make it clear to their employees how they will deal with these requests and this should be documented. If there is a concern that there may be a number of requests for time off, leave or flexible work then the process for granting and agreeing this should be considered and implemented at an early stage.

It is important that businesses plan carefully to ensure requests are dealt with consistently and fairly which is crucial to ensure problems are avoided.

For further information please contact Amy Crabtree on 01254 54374 or email amy.crabtree@forbessolicitors.co.uk



EVENTS

Annual Employment Law Updates

6 October, Stanley House Hotel, Mellor, Blackburn
18 October, Deepdale, PNE FC, Preston
9am - 1.30pm

The experienced team will be covering all the latest UK and European employment law developments and the implications for your organisation. A full programme is yet to be finalised but to register your interest early, please email catherine.butler@forbessolicitors.co.uk

Lancashire HR Employers' Forum supported by Forbes Solicitors

Wednesday 9th November 2011
Clayton Park Conference Centre
Hyndburn

12pm - 2pm
Email amin@cbpartners.org

THE BRIBERY ACT

The Bribery Act 2010 received Royal Assent on the 8th April 2010 and is due to come into force on the 1st July 2011.

The Act modernises the law on bribery and makes it a criminal offence to offer or receive bribes; to bribe foreign public officials in order to obtain or retain business or an advantage in the conduct of business; and to fail to prevent bribery on behalf of a commercial organisation. The maximum penalty that can be applied to an individual for committing an offence under the Act is ten years imprisonment. Commercial organisations can be subject to unlimited fines and prevention from tendering for public contracts.

A commercial organisation can have a full defence to the offences under the Act if it can show that despite a particular case of bribery, it nevertheless had adequate procedures in place to prevent persons associated with it from bribing.

The Ministry of Justice has published detailed guidance about the procedures which

If you require advice or assistance in implementing an anti-bribery policy or any other policies and procedures, please contact Emma Newbould on 01254 54374 or email emma.newbould@forbessolicitors.co.uk



commercial organisations can put in place to prevent bribery. One such method would be to implement a detailed anti-bribery policy, outlining the provisions of the Bribery Act 2010 and making it clear that any behaviour which may constitute an act of bribery will not be tolerated. The policy should set out rules for providing business entertainment, in order to ensure that any such hospitality could not be seen to create a conflict of interest, or unduly influence a business decision. Similarly, the policy should deal with the giving and receiving of gifts from business contacts, for example, by requiring employees to disclose the fact and nature of any gift that they receive to management, in order that management can then determine whether or not there is any risk that the gift may constitute a bribe or other inducement.

From an HR practitioners point of view:

Where employees promise, give or receive bribes, then this is subject to disciplinary action and reference to this should be noted in your Disciplinary & Grievance Policies.

If you require any assistance from a HR point of view please contact Joanne Pickering on 01254 580000 or email joanne.pickering@forbessolicitors.co.uk



FORBES' SUPPORT SAVES HR EMPLOYER'S FORUM

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The Lancashire HR Employer's Forum is co-ordinated by Community and Business Partners and meets every four months to discuss local private sector business issues and share best practice between HR professionals and business owners.

The forum is free to attend and regularly attracts over 50 businesses with meetings covering issues relevant to HR including employee engagement, legal updates and case studies.

Joanne Pickering, Head of HR and Training at Forbes Solicitors who chairs the meetings comments, "I am delighted that with the support of Forbes the Employer's Forum will be continuing as I know that attendees find the meetings invaluable. It is always useful to speak to those in different sectors who are facing similar issues."

Jane Houghton-Fenning, Business Development Director at Community and Business Partners, the organisation behind the forum, comments, "We are very pleased to have the support of Forbes Solicitors to ensure this essential and effective forum continues supporting HR professionals and business owners throughout Lancashire."

For further information about the forums please contact amin@cbpartners.org



For legal advice that is straight to the point:

Blackburn Office t: 01254 54374

Preston Office t: 01772 220022

www.forbessolicitors.co.uk

THE IMPORTANCE OF GETTING IT RIGHT



When defending unfair dismissal claims on behalf of employers we have to show that a reasonable investigation has been carried out, that the decision to dismiss was reasonable and that the employee was dismissed for the reason given.

Many people will remember the reports of the death of "Baby P" which many found disturbing as it resulted from criminal acts or omissions of those with responsibility for his care. Following the convictions of the child's mother, her boyfriend and his brother there was understandably a significant public outcry. Baby P had been the subject of a child protection plan devised by the London borough of Haringey. Following his death the then Secretary of State requested an urgent report into child safeguarding arrangements within Haringey. An OFSTED report was produced within approximately two weeks. The Secretary of State directed that the Director of Children's Services was removed from her statutory position and Haringey immediately suspended her.

Following a disciplinary hearing which took place approximately one week after the direction of the Secretary of State, the Director was dismissed from her employment without notice. The reasons for dismissal were the Secretary of State's direction to remove her from her position and fundamental breach of trust and confidence.

The OFSTED report did not name the Director of Children's Services as culpable but looked at the provision of the service as a whole. Haringey's position was that they had to dismiss the Director based on the direction of the Secretary of State and in light of the OFSTED report. What Haringey did not do was carry out any further investigation and instead relied upon the content of the report and the Secretary of State's direction. That direction was later found to be unlawful.

Another individual had been appointed to carry out the Director's statutory role on a temporary basis and she was under suspension. The Court of Appeal indicated that as such, it was not really necessary for them to remove the Director

from employment with such urgency and before giving her a full opportunity to answer the charges against her. The dismissal of the Director without notice appeared to be predetermined due to press conferences held by Haringey when they had stated that no compensation would be paid.

Whilst this case was not heard within the Employment Tribunal, the fairness of the process was scrutinised in reaching the decision that her dismissal was unlawful and void.

The outcome of this case goes to show that even where the circumstances are extremely serious and it appears that the individual concerned is accountable; the employee has to be given the opportunity to address the specific allegations against them. The employer should be cautious if dismissing based on a third party's decision or investigation without further consideration or the employer will find themselves faced with what can be substantial awards of compensation.

From an HR practitioners point of view:

In any cases of a disciplinary, you should document investigations, disciplinary meetings and appeal meetings. As an employer, you will be relying on these documents should you get to an Employment Tribunal, which could be six to 12 months down the line.

If you require any assistance from a HR point of view please contact Joanne Pickering on 01254 580000 or email joanne.pickering@forbessolicitors.co.uk



If you have any queries concerning such matters please do not hesitate to contact Ruth Rule-Mullen on 01254 222302 or email ruth.rule-mullen@forbessolicitors.co.uk