



EMPLOYER UPDATE

TEMPORARY AGENCY WORKERS

On the 16th May 2012 President Higgins signed into legislation the widely debated Protection of Employees (Temporary Agency Work) Act 2012.

The Act is aimed at providing Agency Workers with equal treatment in relation to working and employment conditions to those which they would have received **had they been employed directly by the Hirer Company at that time**. This therefore allows a Hirer to apply a rate appropriate to the current environment rather than rates that applied during the Celtic Tiger times.

Equal Treatment

The Act provides Equal Treatment in respect of pay and basic working conditions to Agency Workers from **day one** of the Agency Workers' assignment in respect of the following:

1. Basic pay
 - Shift premium
 - Piece rates
 - Overtime premium
 - Unsocial hours premium
 - Sunday premium where a premium is normally paid to a directly recruited employee
 - Working time
 - Rest periods / rest breaks
 - Night work
2. Annual leave & Public holidays
3. Access to collective facilities and amenities (e.g. canteen, childcare and transport facilities)
4. Access to information on vacancies in the Hirer Company.

The definition of pay in the Act does not extend to occupational pension schemes, sick pay, bonuses, maternity pay or benefit in kind.

On commencement the Hirer must ensure all relevant information is made available to the Agency so that the worker is paid appropriately.

Where the person is employed directly by the Agency and is paid between assignments by the Agency the Equal Treatment rules do not apply.

Qualifying Period and Retrospective Pay

Equal treatment must apply from day one of the assignment.

However it is important to note that equal treatment in relation to equal pay must be applied retrospectively to 5th December 2011.

Anti-Avoidance Clause

This restricts the Hirer Company from placing the Agency Worker on successive or rolling contracts thereby avoiding their obligations under the Act by recommending the Agency Worker on the Day 1 rate at the commencement of each assignment.

In this regard the Act states that where the gap between the expiration of one contract and the commencement of the next does not exceed 3 months then the contract will be deemed continuous for

the purpose of calculating length of service when considering pay entitlements.

Complaints

Complaints in relation to Equal Treatment, Unfair Dismissal, Health and Safety can be made by the Agency Worker against the Hirer Company. We would therefore strongly advise that you work closely with the Recruitment Agency in relation to terms and conditions of employment in order to avoid an Agency Worker submitting a claim against either or both the Hirer and the Agency.

Agency workers have 6 months from the date of a contravention of the Act to submit a claim to the Rights Commissioner where the decision could be made to either reinstate, reengage or award compensation to the Agency Worker which could be up to a maximum of 2 years remuneration.

**This update is provided by the MSS HR Support Service.
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