



Bulletin 210

10 August 2011

STOP PRESS: GOVERNMENT PUBLISHES THE AGENCY WORKERS (AMENDMENT) REGULATIONS 2011

The Government has published the Agency Workers (Amendment) Regulations 2011 (“the Regulations”). The Regulations aim to correct various errors in the Agency Workers Regulations 2010 (“the AWR”). The Regulations will come into force on 1 September 2011 (a month before the AWR).

The Regulations amend the definition of an “agency worker” under the AWR. Regulation 3(1)(b)(ii) of the AWR will be amended so that part of this definition requires the agency worker to have “*any other contract with the agency to perform work or services personally*” rather than the previous requirement of having “*any other contract to perform work and services personally for the agency*” [both our emphasis]. The amendment removes the requirement for the agency worker to be providing work and services personally to the agency. This makes sense as agency workers will normally provide work or services to the hirer (the end user) rather than the temporary work agency.

The Regulations also amend Regulation 10 of the AWR (the Swedish derogation). Regulation 10 provides an option for temporary work agencies to be exempt from the requirement to provide parity of pay (as defined) to agency workers under the AWR, provided that certain requirements have been met. The Regulations amend the wording in Regulation 10(1)(c), which sets out the steps that a temporary work agency must take during any periods under the agency worker’s contract of employment when the agency worker is not working for a hirer, but is available to do so. The Regulations amend Regulation 10(1)(c) to state that the steps that must be taken by the temporary work agency will only apply to any period under the contract “*after the end of the first assignment under that contract*” in which the agency worker is not working for a hirer, but is available to do so. It is now clear that the requirements of Regulation 10(1)(c) will only apply after the end of the first assignment under the agency worker’s contract of employment with the temporary work agency.

In addition, the Regulations amend the “reasonable steps” defence in Regulation 14 of the AWR. Regulation 14(3) of the AWR confirms that a temporary work agency will not be liable for breaching Regulation 5 of the AWR if it meets certain requirements including the obtaining, or taking reasonable steps to obtain, certain information from the hirer. The Regulations amend the AWR to make it clear that only temporary work agencies can rely on the defence (and not hirers). Further, the specific information that must be sought from the hirer has also been amended to clarify what precise information should be requested from the hirer by the temporary work agency.

For completeness, the Regulations also make some additional minor administrative amendments to the AWR. A copy of the Regulations can be found at the following link: http://www.legislation.gov.uk/ukxi/2011/1941/pdfs/ukxi_20111941_en.pdf.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

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