

Employment news: EU Directive gives Equal Treatment to Agency Workers

02 FEBRUARY 2009

CATEGORY:
ARTICLE

After six years of negotiations the European Parliament has approved proposals extending some employment rights to agency workers. The Agency Workers Directive ('AWD') will give agency workers the right to the same basic working and employment conditions as would apply if they had been recruited directly by the end user. This means that agency workers will be entitled to the same pay, benefits, holidays, breaks and maternity rights as their permanent counterparts.

The UK has derogated from the AWD's requirement to ensure equal treatment from day one. Agency workers in the UK (unlike in the rest of Europe) will need 12 weeks employment before they are entitled to equal treatment.

In addition the AWD:

- Imposes an obligation upon employers to inform agency workers or their staff of any permanent vacancies that become available, and give them the opportunity to apply for these posts.
- Bans agencies from charging a worker a fee if he or she is recruited as a permanent employee by an end user.
- Prevents employers from placing restrictions on the use of temporary workers, such as preventing them performing a particular role, unless this can be justified on objective grounds, such as health and safety concerns.

These proposals are likely to have a significant impact on the recruitment industry. Although they will only apply to agency workers with over 12 weeks employment, the CBI estimates that 50% of all agency workers fall into this category. Agency workers are often paid less than their permanent counterparts and as such this could cost businesses significant sums in increased wages.

The proposals will enable temporary workers to bring a claim before an Employment Tribunal for the difference in their pay if they can show that a permanent employee doing the same job is paid more. The claim will be against the agency rather than the end user, as it is the agency rather than the end user who is legally responsible for paying the worker. The difficulty for the agency is that it is the end user rather than the agency that will determine levels of pay.

Agencies will need to take measures to minimise their exposure to claims. Agencies and end users will need to work together in order to ensure that pay for agency staff is comparable to their permanent counterparts, and continue to monitor pay in order to ensure that it remains so. Agencies may also seek to review their contracts with end users in order to determine who will be liable for any equal pay claim brought by an agency worker.

The Government has indicated that the AWD will be implemented within the current parliamentary year. The current economic downturn is likely to mean that demand for a flexible and disposable workforce will be high. Employers will need to be careful to ensure that in doing so they do not fall foul of this legislation and become exposed to potentially costly equal pay claims.

On a more positive note for users of agency workers, the new legislation will not give agency workers other important rights such as the right not to claim unfair dismissal (although they may acquire these rights in other ways).