Legislation bulletin:

Employment Law changes for agency workers

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Several employment law changes are set to come into force in April 2020. Amongst the changes, are those relating to the rights of agency workers. Two important changes will be implemented on 6 April 2020: the introduction of a Key Information Document (KID), intended to improve the transparency of information given to workers before they agree terms with the employment business and the abolition of the 'Swedish Derogation' or pay between assignment contracts.

Key Information Document

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 introduce regulation 13A to the Conduct of Employment Agencies and Employment Businesses Regulations 2003

Under the new regulation, recruitment companies must give all agency workers must be given a KID before agreeing temporary work assignment, unless terms and conditions already exist between the parties. Where there are existing terms, the worker will be entitled to a KID when they sign up with a new employment business.

The KID must include certain basic information, including:

- The worker's name
- The contract type
- The name of the employment business
- Confirmation of who will pay the worker
- Rate of pay
- Pay intervals
- Statutory deductions
- Non-statutory deductions (any fees for goods and services charged to the worker, for example, a DBS check)

- Any other benefits and
- Leave entitlement.

Key facts documents must also include a representative example statement setting out how listed deductions will be made to a rate of pay. Real numbers must be used in the example statement, although they may be estimated. Recruitment agencies providing temporary workers are therefore likely to require additional information from practices.

Record keeping and enforcement

The Employment Agency Standards inspectorate (EAS) will enforce compliance with regulation 13A. Employment businesses will have to keep records demonstrating that key information documents have been given to agency workers. These records should be retained for a minimum 12 months since work-finding services last occurred.

The Swedish Derogation

Under the Agency Workers Regulations 2010 (AWR), after 12 weeks of service, agency workers are entitled to the same basic employment terms, including pay, as a directly recruited worker. Regulation 10 of the AWR, commonly referred to as the Swedish Derogation, allows agency workers to opt out of equal pay entitlements in exchange for a guaranteed level of pay between temporary assignments. The Swedish Derogation has been widely criticised

for being open to abuse by employment companies. Notably, the Taylor Review of Modern Working Practices, published in July 2017, reported that agency workers were not given the choice of their type of contract, they were either forced to accept a derogation contract or receive no work. The review stated that, under the derogation, it is too easy for companies to avoid paying workers between assignments, by keeping them on longer assignments at reduced pay or by offering them unacceptable assignments when they are out of work.

The Agency Workers (Amendment) Regulations 2019 will revoke the Swedish Derogation, with the aim of increased stability for agency workers. Employment agencies must provide Swedish Derogation workers with a written statement about the change by no later than 30 April 2020. Agency workers can bring a claim in the Employment Tribunal where their agency fails to provide that statement on time. ♦

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