

Proposed Protection for Agency Workers

Following their strategy paper *Success at Work*, the Department for Trade and Industry have released a consultation paper entitled *Consultation on Measures to Protect Vulnerable Agency Workers* which contains a number of proposals in relation to the treatment of agency workers.

Currently, agency workers receive limited protections under the Conduct of Employment Agencies and Employment Business Regulations 2003. They also have the right to receive the national minimum wage and benefit from protection under the working time legislation, as well as protection in relation to health and safety and anti-discrimination legislation. However, the question of whether an agency worker is an employee of the end-user of their services is still a matter of debate for employment tribunals and the status of agency workers, continues to confuse the issue.

Despite this confusion, *Success at Work* concluded that there was no need to introduce further legislation clarifying the employment status of agency workers or extending their rights. However, the Government have made a commitment to "protect vulnerable workers", many of whom are engaged through agencies. We have summarised the Government's proposals from the consultation paper below:

- Charges for services: It is already an offence under the Conduct Regulations to make a job offer conditional on an agency worker paying for other services, such as accommodation or transport. The proposal is to allow agency workers who have agreed to pay for such services the right to withdraw from taking the service without suffering any detriment.
- Loans: UK agency workers who take out loans from an agency to enable them to take up a position with an end-user are protected from having to repay a greater sum than the money borrowed. However, this protection does not apply to overseas workers who may take out loans in their home country in anticipation of earning enough in the UK to repay them, without taking into account the potentially higher costs of living. The Government propose to distribute information and advice to workers in relevant EU Member States, including information about the cost of living, before they decide to come to the UK.
- Simplification of the information provisions for short-term assignments: Currently, agencies must provide detailed information on every assignment to both the agency worker and the end-user. The proposal is to create an exemption to this requirement for assignments under five working days (provided that the essential details have already been provided with the agency's terms and conditions).
- Drivers supplied by agencies: No amendments are proposed to the existing law, but the Government will amend its guidance on the Conduct Regulations to ensure that agencies that employ drivers are aware of the requirements.
- Fees payable by entertainers and models: The proposal is to prohibit agencies from taking fees from would-be entertainers or models at the first session, and possibly to introduce a cooling off period before fees can be taken. Under the Conduct Regulations, any fees should be limited to a reasonable amount and further guidance will be given as to what can be included as reasonable costs.

Trade unions have criticised the Government's approach for failing to address the fundamental issues, which they say, threaten agency workers. The issues for trade unions appear to be that there has been no attempt by the Government to tackle the fact that some agency workers do not receive the same rate of pay as permanent workers for like work (unlike other categories of atypical workers such as part-time employees and workers on fixed term contracts) or to deal with issues such as sick pay, holiday pay and overtime.

The consultation on the DTI's proposals, closes on 31 May, with a view to the changes taking effect from 1 April 2008. The paper can be found on the DTI's website at <http://www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers-consultation>.

If you have any queries in relation to your organisation's use of agency workers or how the Government's proposals may affect your business, then please contact any member of our team.

This e-briefing is sent to you by Anderson Strathern's [Employment Department](#). We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact Alan Masson, or any other member of our team.