

"Your staff are your most valuable resource..." Whether your company employs two people or two hundred, this key item should be at the top of every manager's priority list. Yet, keeping up to date with changing employment legislation - especially with added European Community Directives - becomes more complex and costly every day. In these Fact Sheets, we have tried to provide basic guidelines and ideas to help you adapt or improve your personnel procedures. Please remember the advice given is general and not intended to be legally definitive. The Fact Sheets on various employment and human resource matters can be accessed at www.aslrecruitment.co.uk/useful-resources

EMPLOYMENT STATUS OF TEMPORARY WORKERS

CONTRACT OF SERVICE OR CONTRACT FOR SERVICES?

The distinction between a 'contract of service' (contract of employment) and a 'contract for services' is of great importance in establishing a temporary worker's legal status.

A temporary worker engaged under a contract for services will not have the same employment protection that a worker employed under a contract of service, i.e. an "employee", will have because much of the current legislation relating to employment protects "employees" only.

In determining who is and who is not an employee of an employment business a court or tribunal has to draw up a balance sheet detailing all characteristics of the worker's engagement that are consistent with an employment relationship and those that are not. Ultimately they are looking for existence of mutuality of obligation between the parties.

WORKERS ENGAGED UNDER CONTRACTS FOR SERVICES

Temporary workers engaged under contracts for services are not classed as employees of the employment business provided their contractual terms include and reflect in practice such matters as:

- there is no obligation to provide work and no obligation to perform any work offered;
- either party may terminate an assignment at any time without a period of notice or liability;
- no contract for services exists between assignments;
- it is expressly stated that the contract for services does not give rise to a contract of employment;
- there are no grievance or disciplinary procedures.

One common way in which mutuality might be unwittingly established is for employment businesses or their clients to require temporary workers to give notice or to guarantee an assignment for a fixed period thereby creating a fixed term contract. If such provisions, or any others consistent with an employment relationship, are provided in a temporary worker's terms it is likely a contract of employment will have been created.

RIGHTS AND BENEFITS OF TEMPORARY WORKERS

Temporary workers do have certain protection and rights which are enjoyed by all workers, these are as follows;

- not to be discriminated against on the grounds of race, sex or (recent) disability;
- to be paid at least the national minimum wage free of any unlawful deductions;
- to be provided with a safe place and safe system of work where applicable;
- statutory paid annual leave;
- statutory maternity/paternity and adoption pay, subject to fulfilling certain qualifying conditions.

A temporary worker engaged under a contract for services will not be able to claim unfair dismissal or redundancy payment on termination of an assignment unless they were able to prove they were, in fact, employees of the employment business or the client.

WHAT ARE THE FEATURES OF EMPLOYEE STATUS?

Some of the features applied to establish whether or not an employer/employee relationship exists are:-

- the terms of the worker's contract i.e. not only written terms but also any verbal agreement and what occurs in practice;
- whether there is an obligation to find work for the worker and an equal obligation on the worker to perform work offered;
- whether the worker is told what to do, how and when to do it and if so by whom;
- how payment is made to the worker i.e. whether it is made net of income tax and National Insurance contributions;
- whether the worker is obliged to work exclusively for one company or individual;
- whether the worker is subject to any disciplinary, grievance and specific dismissal procedures;
- whether the parties are required to give a period of notice to terminate the contract;
- whether the worker is tied into fixed hours of work;
- whether there is a requirement for the worker to perform the work themselves rather than subcontract or hire an assistant;
- membership of a pension scheme

CONCLUSION

Employment businesses engaging or clients using workers under contracts for services must not assume that courts or tribunals will accept the worker as self employed. Courts and tribunals will not look at the term 'contract for services' in isolation, nor will they consider the terms of that contract in isolation but will consider them in conjunction with the reality of the relationship between the employed business, the worker and the hirer (client).