Apex Resources Limited: Managing & working with the AWR

Please Note: From 1st October 2011 the Agency Workers Regulations come into effect.

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Agency Workers Regulations Introduction

Agency Workers Regulations

The Agency Workers Regulations (AWR) are due to come into force on 1st October 2011. Apex Resources Ltd have put together this document to try and better prepare and update our clients and our customers on their obligations and new responsibilities as soon as this legislation becomes active.

General background

EU regulations already enshrine equal treatment for part-time and fixed-term workers. The aim of the EU Agency Workers Directive was to extend this principle to agency workers. Initial drafts of the EU Directive were blocked in Brussels for many years following lobbying campaigns by REC and other business bodies.

Equal treatment for temporary workers has been in operation in many other European countries since the 1980s and 1990s.

A main debating point was at what stage equal treatment should kick-in – trade unions and most national Governments calling for it to be from day one of an assignment, business organisations calling for a derogation period.

In 2008, there were no longer enough countries blocking the Directive in Brussels. The UK Government agreed a compromise deal with business and unions whereby equal treatment would apply after 12 weeks of an assignment.

Following the agreement in Brussels, discussions moved on to how the Regulations should be implemented in the UK.

Following two consultation phases, the Government published the final version of the UK Regulations in January 2010. The Department for Business, Innovation and Skills (BIS) also published its final guidance on the AWR in May 2011.

The Government has reviewed a few specific areas within the Regulations. At the beginning of August, the Agency Workers (Amendment) Regulations 2011 were published to amend the Agency Workers Regulations 2010. These amendments are relatively minor and where needed have been indicated throughout this document.

In summary, the Regulations provide for rights that apply from day one of an assignment, as well as further rights that apply after a 12 week qualifying period. These rights are discussed in more detail later in this document.

The Facts

1. When do the Regulations come into force?

The Regulations come into force on 1st October 2011. Time spent working on an assignment before that date does not count for the purpose of counting the 12-week qualifying period. Therefore, for those agency workers already on an assignment, access to day one rights starts on 1st October, and the 12 week qualifying period begins to run from this date.

2. Who do the Regulations apply to?

The Regulations apply to:

- individuals who work as temporary **'agency workers'**
- **'temporary work agencies'**;
- and **hirers**

As defined by the Regulations, an 'agency worker' means an individual who is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer, and has a contract of employment with the agency or any other contract with the agency to perform work and services personally.

Note: This includes PAYE workers, Umbrella workers & some Limited Company workers.

A 'temporary work agency' is defined by the Regulations as a person (whether an individual or a company) engaged in the supply of temporary agency workers. Therefore, this definition also covers Umbrella companies or Limited Companies if they are involved in the supply of agency workers.

3. Individuals who may fall 'out of scope' of the Regulations:

- The self-employed - Self-employed workers are not automatically excluded from the Regulations. It is not the employed/self-employed status of the worker that is determinative of whether an individual is an agency worker, but whether the worker has been supplied, and whether they are under the supervision and direction of the hirer. Where these elements are present, the worker will still fit the definition of an agency worker, and therefore the Regulations will still apply
- Individuals who find work through a temporary work agency but are a business in their own account
- Workers who are hired via their own personal service company if they are self-employed - These workers will only be excluded from scope provided the correct contract(s) are in place. As above, the focus is not on the employment status of the worker, but whether there is supply, supervision and direction.
- Workers, such as cleaners, who work via managed service arrangements
- Individuals working on managed service contracts, where the worker does not work under the direction and supervision of the hirer - It is important to note that in order to be taken out of scope this must be a genuine managed service arrangement. In other words, there must genuinely be no supervision and direction on the part of the hirer.
- Individuals who find direct employment with an employer through an employment agency
- Those working under the supervision and direction of the supplier rather than the hirer
- Individuals on loan or secondment from one employment agency to another. This is where the main activity of the organisation seconding the individual is not the supply of work temporarily under the supervision or direction of another party – This applies only where it is not a tripartite arrangement i.e. the equivalent to a direct hire.
- Individuals working for in house temporary staffing banks where a company employs its temporary workers directly

Further, Regulation 3(2) provides for an exclusion from the Regulations which may take an individual out of scope where the correct contract is in place and the actual arrangements reflect the contract.

However, the Regulations can apply to workers contracted to an "umbrella company" as an umbrella company fits the definition of a temporary work agency for the purpose of the Regulations. This means workers who work through a service company, but who are not self employed. This is the same thing that applies to PAYE candidates.

4. Will the Regulations change the employment status of agency workers?

No. The Regulations will not change the status of temporary agency workers and will not make them employees.

5. Will the Regulations give your direct employees any rights?

No. The Regulations will not give employees or directly engaged workers any rights and therefore if an agency worker is paid more than a comparable employee or directly engaged worker, the Regulations will not give the employee the right to be paid more.

6. What rights will the Regulations give agency workers?

The Regulations will give agency workers access to certain rights from day one of an assignment (which are the hirer's responsibility), and after 12 weeks in the same role with the same hirer, an entitlement to equal treatment in relation to the 'basic working and employment conditions' as if they had been employed directly by the hirer. In many cases this will mean that agency workers will be entitled to the same rate of pay as a comparable employee or directly engaged worker, but they are not entitled to get to all of the terms and benefits that the comparable employee gets. Note, that there can be a difference in pay for an employee and pay for a worker. So where an agency worker would have been directly engaged as a worker, as opposed to an employee, they will be entitled to the same rate of pay as the worker.

7. What does equal treatment include?

The Regulations will require equal treatment in respect of the 'relevant terms and conditions' ordinarily incorporated into the contracts of those working in the hirer. This means the relevant terms and conditions in collective agreements, relevant pay scales and terms generally included in contracts of employment.

'Relevant terms and conditions' are defined as:

- pay
- the duration of working time
- night work
- rest periods
- rest breaks
- annual leave.

However these rights are subject to a 12-week qualifying period (see question 10)

8. How will pay and holiday be calculated?

In the Regulations, 'pay' means basic pay, plus any fee, bonus, commission, or other payment directly referable to the employment, such as overtime or unsocial hours payments. The rate to take into account is the rate that would be paid on day one – in other words, a 'starter rate'.

Bonuses do not include long-term loyalty bonuses, but do include performance bonuses provided they relate to the 'quality or quantity' of work and not loyalty or long service. This means that some hirers will need to set up a process for monitoring the worker's performance, although there will be no obligation to provide the same appraisal system as your employees receive. Any 'appraisal like' system that may be set up for agency workers this purpose should not amount to evidence that an agency worker has gained employee status.

The holiday entitlement includes any entitlement above the statutory minimum requirement of 28 days per annum including bank holidays, which in most cases will mean the relevant contractual entitlement applicable to the hirer's employees or directly engaged workers. The Regulations allow payment to be made in lieu of holiday entitlement above the statutory minimum either as part of the daily/hourly rate or at the end of the assignment.

9. Does equal treatment include occupational pensions, sick pay, maternity pay and similar payments?

No. The definition of pay in the Regulations excludes:

- occupational / company pensions
- occupational sick pay
- maternity, paternity or adoption leave pay
- redundancy pay
- loans
- health and life insurance or assurance
- share option schemes

10. How will the 12-week qualifying period be calculated?

Any period of work (full or part-time) carried out by the agency worker for the hirer in a calendar week will make that week count towards the 12-week qualifying period. Once an agency worker has worked in the same role for the same hirer for 12 continuous calendar weeks (regardless of how many hours he or she works each week) they will qualify for equal treatment in relation to the basic working and employment conditions. It does not matter whether he or she has completed the 12 weeks in a single assignment or in a number of assignments, and whether it is through the same agency or different agencies, as it is the time spent with the hirer that matters. So in theory you should keep note of agency workers who are working for you through various agencies to monitor whether they become an agency worker that inherits the AWR rights whilst working for your company through an agency.

For the purposes of calculating the qualifying period, continuity will normally be broken by a break of more than six weeks between assignments in the same job, or when an agency worker takes up a new role with the hirer where the whole or main part of the duties in the new role are substantially different from the whole or main part of the duties in the old role. BIS have issued guidance on what "substantively different" means, suggesting amongst other things, to look at the differences between the skills and attributes required for the roles. However, the focus must be on whether there is a genuine and real difference between the roles. Note, that in the event of dispute, a combination of factors may be taken into account by the Tribunal in determining whether or not the roles are substantively different. However breaks between assignments due to a number of specified reasons, such as sickness (of up to 28 weeks), jury service or pre-determined closure periods (e.g. school closures during holidays) will not break the qualifying period. Instead the 'clock is paused'. For example, if a worker works for 11 weeks in a school, and the school closes for six weeks, when the agency worker returns their first week back will be week 12 for the purposes of the qualifying period.

The situation is different in the case of absence related to pregnancy, childbirth or maternity during the "protected period", and for maternity, paternity or adoption leave. In such cases the worker is for the purposes of calculating the 12-week period deemed to continue working in their role for the original intended length of the assignment, or likely duration of the assignment, whichever is longer. The "protected period" starts at the beginning of the pregnancy and ends at the end of the 26th week from childbirth, or when the worker returns to work, if earlier.

11. Will the 12-week qualifying period be broken if the agency worker is placed with the same hirer for a second assignment, but through a different agency?

No, not unless the gap between assignments is more than six weeks or the new role is a substantially different to the first one. This is because the 12-week qualifying period is calculated by reference to service with the hirer, irrespective of which agency places the worker.

Because of this, local authorities should put in place procedures with their agencies and agency workers to check whether the worker has worked for them in a previous assignment.

12. What about access to job vacancies and collective facilities and amenities?

Under the Regulations, it is the hirer's responsibility to ensure that during an assignment an agency worker is treated no less favourably than a comparable worker in relation to access to collective facilities and suitable job vacancies. Access to these is a 'day one' right and is not subject to the 12-week qualifying period. Therefore, for those agency workers already on an assignment, access to day one rights starts on 1st October.

The right to access to job vacancies means the right to be informed of relevant vacancies with the hirer. In practice this means that agency workers should be provided with the same vacancy lists that comparable employees or directly engaged workers receive or have access to. However, the hirer can still operate 'closed' processes in redeployment situations where there is a headcount freeze and consequently there are not any vacant posts.

Collective facilities include canteens, childcare facilities and transport services, and unless objectively justified, agency workers must be given the same access to those facilities as other comparable workers (not just employees) receive. BIS guidance provides further examples on what benefits may fall into the category of collective facilities and on the issue of objective justification. The guidance suggests that transport services does not include season ticket loans and company cars. The objective justification defence for the hirer is essentially the only element of the Regulations where there can be objective justification for less favourable treatment. It simply means that a hirer can refuse to provide access to collective facilities if there is a genuine objective reason for doing so. For example, where a crèche is full and has a waiting list, the hirer could refuse to offer a place on the grounds that there are no vacancies.

Note: The Regulations do not provide agency workers with 'enhanced' access to these rights, but simply that these rights are made available.

13. What protection will the Regulations provide for pregnant and new mother agency workers?

Pregnant agency workers who have met the 12-week qualifying period are entitled to take paid time off for ante-natal appointments. The agency is primarily responsible for providing this right, and for paying the worker for the time off. However, local authority hirers should ensure that practical arrangements are put in place so that the worker is able to take the time off.

Hirers, as now, will be required to carry out risk assessment for pregnant workers, and where a risk is identified make reasonable adjustments to remove the risk. Where that is not possible, under the Regulations the agency will be responsible for offering alternative work, and where that is not possible, for paying the worker for the remainder of the assignment for any period that she cannot work due to the health and safety risk.

There is no obligation on hirers to keep a role open for an agency worker who is on maternity leave.

14. How do I work out what an agency worker will be entitled to?

The right is to equal treatment in respect of basic working terms and conditions as if the agency worker had been employed directly to do the same job on day one (see question 6 above). Although in some cases that could mean a relatively speculative assessment of what those terms would be, the Regulations provide that equal treatment is deemed to have been provided where the worker receives the same relevant terms and conditions as a comparable employee working for the hirer. Therefore, hirers will need to work out to extent to which the agency worker's basic working terms and conditions match those of a comparable employee or directly engaged worker.

For example, local authorities employ a large number of people in a variety of roles, in most cases it should be relatively straightforward to identify a comparable employee. Where incremental pay and benefit scales are in place, the default position should be that the agency worker is paid at the bottom of that pay scale, as a new employee or directly engaged worker would be paid on day one.

15. Who will be responsible for providing equal treatment?

Responsibility for day one rights lies with the hirer. Liability for failure to ensure equal treatment in relation to the basic working and employment conditions (the '12 week rights') can lie with either the agency or the hirer for the extent to which they are responsible for that breach. However, an agency may be able to defend a claim and the hirer will become liable if the agency can show that it took "reasonable steps" to obtain the necessary information from the hirer to determine the agency workers' basic working and employment conditions and treated the agency workers accordingly. Therefore, local authorities as hirers will have to ensure that they set up systems for providing their agencies with appropriate information on the terms and conditions that are in place in their company.

16. How will the Regulations be enforced and what are the liabilities for non-compliance?

An agency worker will be able to bring a claim in an Employment Tribunal to enforce their rights under the Regulations, against the agency and/or the hirer. Compensation for a breach will be calculated by tribunals on a "just and equitable" basis, with no upper limit on awards. Liability for the award between the agency and the hirer will be determined by the employment tribunal, according to the extent to which it finds the agency and/or the hirer liable for the breach.

17. How will agency workers be able to find out whether they are receiving their rights?

After meeting the 12-week qualifying period, an agency worker can ask their agency for relevant information about the basic terms and working conditions in the hirer. If the agency fails to provide the information within 28 days of the request (or the request is about access to collective facilities) the agency worker may make the request direct to the hirer, who then has 28 days to respond.

Where the agency and/or hirer fails without reasonable excuse to respond or the response is late, evasive or equivocal, then in any employment tribunal proceedings that may follow, the tribunal can draw an inference from the failure or delay that the temporary work agency or the hirer has infringed the right in question.

Note: an agency worker is under no obligation to make a request for such information prior to bringing a claim, this procedure is optional.

18. Will the Regulations mean an increase in the cost of agency workers who work in assignments for more than 12 weeks?

This will depend on whether the agency workers in question are paid less than a comparable employee. Where the agency worker is paid more, then the costs impact of the Regulations will not be substantial, although there will still in most cases be an increase in non-pay entitlements, such as holiday (remember that holiday pay is included in the

definition of pay under the Regulations). Where an agency worker is paid less, the increase in costs will be more substantial, although there will still be savings in respect of pension and in some cases sick pay.

This being said, it is important to ensure that the comparable hourly rate of pay is carefully calculated, including factors such as whether a comparable employee or worker is paid during lunch breaks. It is **not** safe to assume that simply because highly paid contractors earn more than a comparable employee or worker that the Regulations will not have an impact.

19. What do authorities need to do to prepare for implementation of the Regulations?

It is important for clients using agency workers to work out now what the potential impact of the Regulations will be on their company.

Apex Customers/Hirers should carry out an assessment of their agency worker use, looking at factors such as the normal length of assignments to see how often the 12-week qualifying period will be met. Customers/Hirers should also review their agency workers' roles to see if there are comparable employee posts, and work out whether the agency worker is paid a lower rate than the comparable employee or directly engaged worker, taking into account not only basic pay but other payments such as overtime.

Having done this exercise, it may be that any increase in costs arising from the Regulations may be less than anticipated, as in certain cases agency workers are paid more than comparable employees. However, where services are outsourced, our customers should consider whether the Regulations could increase the wage bill in their service providers, which could have a knock on effect on the costs of those services.

Hirers should also agree with Apex on the agencies systems that can be set up for providing us with the appropriate information on terms and conditions that are in place in the hirer's company for all agency worker types that they intend to use, so that workers' entitlements can be met, compared etc. The parties should also agree processes for checking whether a worker has or will soon meet the 12-week qualifying period.

20. Where does liability lie when it comes to having appropriate and sufficient indemnity insurance and similar?

The new Regulations do not change the employment status of agency workers - they continue to be employed by the agency, rather than the hirer, provided that appropriate agreements or arrangements are in place confirming this. This means there is no change arising from the new regime in respect of insurance. Hirers are not required to take out employers' liability insurance in respect of agency workers as they do not employ them. But they must ensure the relevant insurance cover is in place. (Please see attached)

21. What rights will agency workers have to paternity leave?

The agency worker must accrue 26 weeks of service ending 14 weeks before the week of childbirth before exercising the right to paternity leave under existing legislation (paternity rights are provided for under the Employment Rights Act 1996) if employed by the agency or hirer. However, paternity pay is excluded from the definition of pay under the AWR.

22. Tribunal claims against Apex / Apex Customers potential:

Agency workers will also have the right not to suffer a detriment as a result of asserting their rights under the regulations or where they are believed or suspected to be asserting such rights. Agency workers that are employees of an agency or umbrella company will also have some limited unfair dismissal rights. Basically, these unfair dismissal rights apply when an agency worker can show that he or she was dismissed for reasons connected to the AWR. Agency workers can bring

claims against the agency and/or hirer for failure to pay him or her on the same basis as an employee or worker engaged directly by the hirer (you our client), and/or claim breach of contract. Alternatively, if assignments are structured in a way to prevent the agency worker from accruing 12 weeks' service a claim can be brought on this basis against the agency or the client the agency is supplying. From research we have seen guidance that compensation will be calculated upon a just and equitable basis and shall not be less than two weeks' pay.. Where the structuring of assignments is found to breach the Regulations, the tribunal may make an additional award of compensation of up to £5,000 for each instance of breach.

It's important to note that the AWR do not give agency workers employee status. If there is some argument over what is meant by equal treatment, agency workers will be able to compare their rights to those of directly engaged workers doing similar or broadly similar work.

23. How this affects our customers:

If you hire labour through an agency you should provide your agency with up to date information on your terms and conditions, so that they can ensure that an agency worker receives the correct equal treatment, as if they have been recruited directly after 12 weeks in the same job. You are responsible for ensuring that all agency workers can access your facilities and are able to view information on your job vacancies from the first day of their assignment with you.

Apex can confirm that the model being used for the AWR for agency workers being paid by Apex will be generally on a comparable model (this is for agency workers being engaged/paid via a PAYE or PAYE Umbrella engagement).

24. If you are an agency worker:

From 1st October 2011, after you have worked in the same job for 12 weeks, you will qualify for equal treatment in respect of pay and basic working conditions. Agency workers currently on assignment will also be entitled to the day one rights from 1st October. Your agency is likely to ask for details of your work history to help to establish when you are entitled to equal treatment and whether there is a comparator directly employed working on the same project (a comparator is an employee or directly engaged worker of the hirer completing the same or broadly similar duties as you).

25. Where can I find further guidance on the Regulations?

The Department for Business, Innovation & Skills has produced guidance on the Regulations, available on its website.

Myth Busters Q&A

Q) An agency worker will become the clients' employee after 12 weeks?

A) **False**

Q) AWR will mean that the flexibility of using temporary resource will be lost, clients will not be able to terminate assignments when they need to?

A) **False**

Q) Clients can hire agency workers through different agencies to avoid AWR?

A) **False**

Q) Only agencies have liability?

A) **False**

Q) Employed Staff can claim the same rights as agency workers under AWR?

A) **False**

Q) If my agency uses the 'Swedish Derogation' all of the the AWR won't apply?

A) **False**

Q) We can get round the Regulations by moving agency workers every eleven weeks?

A) **True and False.** Where it is a genuine requirement that an agency worker works for less than 12 weeks this will not breach the Regulations. However, it is important to be aware of the anti-avoidance provisions under Regulation 9 which aim to stop assignments being structured in such a way to avoid being caught by the Regulations.

Our Responsibilities as of 1st October 2011:

It is the responsibility of everyone to 'ask' the question if there is a 'comparator'. It is then the responsibility of the one who has been asked to then either ask the next in line to fulfil their responsibility or answer the question.

Directors and HR departments should be readying themselves with the agencies they use, especially if they regularly use agency workers to determine how long you currently need to use agency workers for at a time, what are your agency labour needs and do you directly employ workers that are on a higher pay rate than the agency workers being supplied to you. Do not think this applies only to bodies supplied by temp agencies. The AWR cover direct employed PAYE temps, workers who supply their services through an umbrella company and those who are supplied by a temp agency.

Businesses that have traditionally relied on employing large numbers of temporary staff should review contracts and business processes relating to agency workers. From October, any changes made to the terms and conditions of permanent employees must be replicated in the contracts of temporary staff who have achieved the 12-week service requirement.

Apex will confirm that agency workers supplied from the first day of work also have access to all facilities that workers employed directly by our clients have, such as canteen and childcare facilities and notified of internal client vacancies.

Subsequently Apex will confirm that after 12 weeks continuous work or once the 12 week qualifying period is reached by an agency worker with a particular client we are supplying the agency worker(s) to, that these agency workers will then qualify for the AWR – and will remind you that they should now get the equal treatment entitlements extended i.e. pay rates and other basic working conditions including annual leave & rest breaks. We will ask you for any information needed that you have not already provided in respect of the comparable employee.

To try and give everyone as much notice to prepare for any potential for the agency workers qualifying for the AWR, Apex will be also be asking our clients about the expected duration at the time of order and throughout if it looks likely for a worker to qualify.

Apex will also be asking about the pay and basic working conditions of your own staff in a similar role, at the start of any assignment and again when it is clear that they will be in the same job for more than the 12 week qualifying period, so we can pass on this information to the agency worker- so they know they are being treated fairly from day one and from when / if they qualify for the AWR.

Apex have various types of worker employment engagements, usually set and agreed at the beginning of any assignment. If wanted/asked we can confirm whether we have engaged the agency worker with one of the following:

- PAYE
- PAYE Umbrella
- Self Employed
- Gross for the Self Employed this suits

Depending on the engagement of employment through the employment business who supply you the agency worker, depends on exactly which AWR model you will need to manage this process.

You need to be informed of the agency workers' engaged employment arrangement and if they have entered into a formal employment relationship with agency workers. For instance, by knowing the employment engagement of the temporary agency worker, you can better determine the instances where a particular agency worker is not obliged to all the benefits of the AWR as they do not have to agree to provide personal service or to accept work if it is offered, and so are not integrated into the end-user's organisation to the same extent as its direct employees.

The two AWR models are the Swedish Derogation Model and the PAYE Umbrella model:

Complying with AWR using the Swedish Derogation Model

Essentially, the Swedish Derogation is an arrangement whereby the agency workers' right to equal pay does not apply. The Swedish Derogation is a model which many umbrella companies may be offering. In this situation, individuals must be engaged on a permanent contract of employment with the umbrella company (or temporary work agency) under various terms and conditions laid down by Regulation 10. Where the correct contract exists, and the correct terms and conditions are in place, the agency worker will be unable to claim equal pay rights.

When should you consider putting candidates through a Swedish Derogation umbrella structure?
> When no comparator data is available
> No pay scales are in operation
> Pay appears to be below that of the comparator
> Longer contracts of around 12 months (why? - It would commercially be unsound to pay a temporary worker a minimum of 4 weeks pay once they complete a 3 month contract. It is much more cost effective to distribute this cost over a period of 12 months)

When should you NOT consider putting a candidate through a Swedish Derogation umbrella structure?
> When their rate is below £7.75.
> When they are on a temp to perm contract
> When they have no intention of carrying out multiple assignments

It is important that the temporary worker confirms that they are happy to be removed from the entitlement to equal pay. As compensation for this, under the Swedish Derogation model they will receive pay in periods under the contract when they are not working but are available to work. Since the amendment of the Regulations, the obligation to pay and seek suitable work does not take effect until after the end of the first assignment.

It is important to point out that even though the Swedish Derogation Model removes the need to meet comparable pay, all other rights under AWR must be complied with.

There are some expectations when pay between assignments is not required to be paid. These are:

> If the worker is not available for work
> When the worker resigns
> If the worker refuses acceptable work

Complying with AWR using the Traditional Umbrella Company Model

>This model continues to work perfectly well where it can be shown that the worker is receiving equal pay from their umbrella employer.

Note: This includes PAYE workers, Umbrella workers & some Limited Company workers.

When should Apex consider putting candidates through a traditional umbrella structure?

> When your candidates pay is equal to or greater than that of a comparable employees.

When should you NOT consider putting a candidate through a traditional umbrella structure?

> When their rate is below £7.75.
> When they are on a temp to perm contract
> When they have no intention of carrying out multiple assignments

What is the main AWR risk associated with a traditional umbrella?

>The main risk is where the workers pay falls below pay scale rates of the comparable worker's pay.
>Where a worker is unable to claim expenses, and therefore cannot benefit from the additional tax relief, it is possible that their overall remuneration could fall below that of a comparator or pay scales for their role.
>Another risk for recruitment agencies and umbrella companies is annual pay awards. Where a hirer operates across the board pay awards for its workers, the recruitment agency must also give the temporary worker an equivalent rise hence would have to charge the client more to achieve this.

Swedish Derogation

The AWR exemption from equal treatment provisions on pay for the 'Swedish derogation' model has attracted a lot of interest from umbrellas saying that this exemption removes the worker from AWR. This model involves an umbrella company engaging a worker on a permanent contract of employment and paying the agency worker between assignments for a period of no less than 4 weeks. However, all workers, including those on 'Swedish derogation' contracts of employment, are entitled to equal treatment in relation to the duration of working time, night work, rest periods and rest breaks and entitlement for holiday (although not holiday pay). Further, under the Swedish Derogation model, because there has to be a contract of employment with the worker, the umbrella (or temporary work agency) will have to take on all the normal responsibilities of the employer e.g. be responsible for statutory employment rights etc.

What happens if a worker brings a claim?

Any claims of non-compliance under the AWR will be heard by the Employment Tribunals. A worker has to bring a case within 3 months of becoming aware of the issue or 3 months from the end of the contract or assignment.
The guidance makes it clear that all parties should attempt to resolve any disputes before bringing a case to the tribunal.

Cases brought for non-compliance to equal treatment rights after the 12 week qualifying period will be able to include all parties as potentially liable. The minimum award will be equal to two weeks pay with no maximum. Additionally, the tribunal also has the ability to award penalties where they feel anti-avoidance tactics or intentional abuse has occurred.

Our Approach

Is to ensure that the payroll companies we work with are compliant and offer both a traditional umbrella model together with a "Swedish derogation" umbrella model.

Information from Hirers and Agencies

To enable the payroll providers to assess which model will be appropriate they will be asking for the following information:

- Information on comparable employees and directly engaged workers (including pay, benefits, holiday, bonus and commission).
- Details of past employment
- Details and clarity from section "What rights will the Regulators give agency workers"
- Length and scope of the assignment including start date (to assess the 12 week start date) this maybe with a past agency also.

The AWR apply to Great Britain. Northern Ireland has a separate set of regulations in line with their national law.

1. http://www.rec.uk.com/press/news/1549 (Recruitment Employment Federation link in relation to the AWR)
2. To view the guidance, go to: http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-905-agency-workers-regulations-guidance.pdf

Thank you for taking the time to read this document. We hope that this document has helped you better understand the legislation coming into effect and all of our responsibilities to ensure compliance at all times.

Please note, that if you have a question that you wish us to look into and get back to you, email: AWR@apexresources.net

Apex Resources Ltd