

## Chartergates Fact Sheet

### SUBJECT: THE AGENCY WORKERS REGULATION 2010

#### *Introduction:*

The Agency Workers Regulation 2010 (AWR) have had a significant impact on the way that employment agencies and umbrella companies operate. The AWR bestows significant rights and benefits on those that qualify as Agency Workers.

#### *Terms and conditions:*

The AWR requires that Agency Workers receive the same terms and conditions as they would have received if they were directly employed by the end-user. Terms and conditions refer to:

- ✓ Pay
- ✓ Working Time
- ✓ Night Work
- ✓ Rest Periods
- ✓ Rest Breaks
- ✓ Annual Leave

Therefore, for example; the agency or the umbrella company has to ensure that the Agency Worker is paid the same as they would have been paid if they were directly employed. This has potentially significant cost implications for agencies and umbrellas alike.

#### *Facilities and amenities:*

The AWR also requires that Agency Workers receive the same access to facilities and amenities that they would receive if they were directly employed. Facilities and amenities include:

- ✓ Canteen
- ✓ Childcare
- ✓ Transport facilities

The responsibility of ensuring access lies with the end-user (or 'Hirer' as defined by the legislation).

#### *Qualifying periods:*

Agency Workers are granted the right to access facilities and amenities from day one of their assignment. However, Agency Workers only receive the right to equal terms and conditions after they have worked 12 weeks on the same assignment with the same end-user (it does not have to be the same agency).

### *Agency Workers:*

The rights granted by the AWR apply to 'Agency Workers' as defined by the Regulations. This is a similar definition to the definition of a 'worker' (see our worker fact sheet). In addition to this the individual must be supplied by a Temporary Work Agency to work under the supervision and direction.

Given the similarity of the definition of an 'Agency Worker' with that of a 'Worker', if you engage self-employed subcontractors you will need to assess the contracts you have agreed with them to determine whether they qualify as 'Agency Workers' regardless of their tax status.

### *Umbrella Companies:*

The AWR does not only affect employment agencies but also umbrella companies. Whilst an umbrella company is not (if operated correctly) an employment agency they will likely fall under the definition of an 'Intermediary' under Regulation 3(5) and therefore within the grip of the legislation.

An umbrella company will also in some circumstances fall within the definition of a Temporary Work Agency (TWA) under the legislation. It is important that umbrella companies understand how being defined as a TWA does not mean the same as being an agency for the purposes of Section 44 ITEPA.

### *Summary:*

Given that the AWR has potential cost ramifications, includes umbrella companies as well as agencies it is essential that you take advice from advisers that are skilled in tax and employment law. If you require assistance, then contact Chartergates now.

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