



British
Chambers of
Commerce
The Ultimate Business Network

Agency Workers Directive Policy Brief

Updated: December 2009

The Agency Workers Directive threatens to damage the flexible UK labour market. It is crucial this Directive is not gold-plated by the Government when implemented in the UK.

Summary

The Agency Workers Directive (AWD) aims to give agency workers equal rights to their permanent counterparts to end the perceived exploitation of temporary workers. This law will introduce entirely new information and monitoring burdens, increase tribunal claims, and cause firms to experience increases in direct labour costs. The AWD will cost business in the UK approximately £1.6bn per year, according to the Government's Impact Assessment.

BCC did not support the Directive as there is a real danger it could damage the flexible labour market in the UK. However, now that it has passed through the legislative process in the EU, the focus must be on mitigating the costs to UK businesses as far as possible. The required implementation of the Directive, which must occur before 5th December 2011 must enshrine only the basic obligations the UK has under this Directive, without going further. 1 in 4 businesses use agency workers to deliver services, goods and economic growth; the implementation of the Directive must not undermine this.

Background

On the 22nd October 2008 the European Parliament adopted the Temporary Agency Workers Directive. Member states have three years to transpose this into national law. Following lobbying from the BCC and other business organisations, and in the face of pressure for immediate implementation from trade unions, the UK Government has chosen to implement on the last possible common commencement date. (October 2011).

The Government consulted on the policy in Summer 2009 and on the regulations during Q4 2009 (closing 11th December 2009).

In summary, the Directive includes clauses to:


- Give agency workers the same pay and holiday rights as a comparable worker after they have been in the role for twelve weeks;
- Agency workers also gain rights to access collective facilities and be made aware of permanent posts in the hirer's organisation;
- New maternity rights, including time off for pre-natal appointments and being suspended on full pay if the original role is not unsafe and a suitable alternative assignment cannot be found; and
- Primary liability will rest with the agency, but the end user (business) can be joined to the claim and may be instructed to pay a portion of compensation in the event of a tribunal judgment.

Issues for Business

Scope of the Directive

Those who are genuinely self-employed and are limited company contractors are not included in the scope of these regulations, in order to preserve the distinctions between different categories of worker.

¹ BCC Workforce
Survey April 2009



We believe this is the correct approach, as there are already anti-avoidance measures in place, which will prevent abuse of these exemptions. Sham arrangements are currently penalised in courts and tribunals, and any business found trying to circumvent AWD will be dealt with through those channels.

Holidays

The draft regulations give agency workers the right to receive the same amount of holiday as the permanent comparable worker - but state that anything in excess of the statutory minimum may be rolled up in pay. Our position is that agency workers should be entitled to the statutory minimum, as laid out in the Directive. The current approach proposed by Government gold-plates the original policy intention.

Pay

The Directive does not define what 'pay' is and BCC are strongly arguing that pay should be limited to basic pay and exclude everything else, such as unsocial hours premiums, overtime payments and bonuses. Currently, the proposed UK regulations state that only bonuses given for purely personal performance are covered by this legislation. However, most bonuses are not given purely for individual performance. Even when a bonus is based on individual performance, it is normally predicated on the company having a good year. We strongly believe that the definition of pay should be limited to basic pay, otherwise the risk is that the law will be uncertain and that hirers will 'level down' the benefit package for their permanent employees.

Protection for pregnant women

We support the thrust of the regulations in this area, but call for more clarity on their application to be included in the regulations, rather than leaving this to guidance. We agree that the agency is the most appropriate party to find alternative work if the role the worker plays in the end-user company becomes too risky. There are still questions regarding what the agency has to offer the worker; agencies need more clarity on what an 'appropriate alternative' is. Whilst it may be clear that the level of pay on offer must be similar, it is not clear how far away from the original assignment an 'appropriate distance' is, or whether rearrangement to a job in a different sector would be deemed inappropriate.

Liability

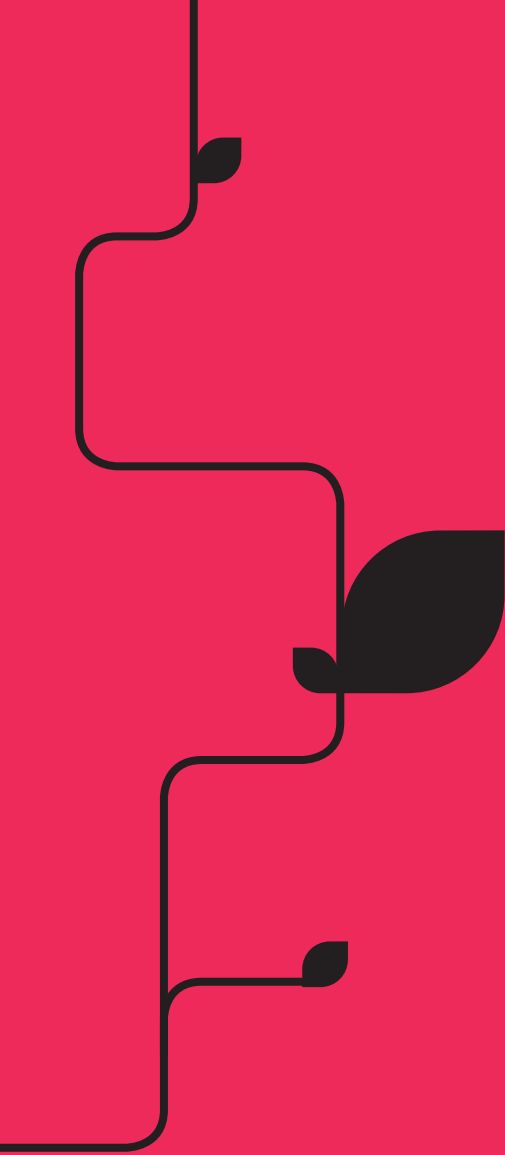
We believe the regulations on liability present the most practical solution and will make the system as simple as possible. In the event of a dispute where the worker believes they have not received the rights guaranteed under this Directive, primary liability will fall on the agency. However the hirer may be joined to the claim by the tribunal if they are found to be the party at fault, either wholly or in part.

Opposition Policy

The Conservatives have been very vocal in their opposition to this Directive. They joined the calls for it to be pushed back to 2011, which the Government has now committed to. If the Conservatives win the next election, there is a possibility that they will break open the regulations and change the legislation. It is also unclear as to whether, if the Conservatives did negotiate an opt-out from the EU social chapter, this law would disappear from the UK statute book altogether. BCC believes that the Conservatives should clarify their position on AWD at the earliest possible time, and once the regulations are laid, consider whether the uncertainty caused by changing them would be more damaging than the regulations themselves.

BCC Recommendations

- The spirit and aims of the European Directive must be closely followed when the UK implements through regulation. 'Gold-plating' that will impose additional costs on business must be avoided.
- Regulations and guidance must be used appropriately to ensure the SMEs have the certainty and advice that they require to fully comply and reduce the risk of tribunal action.
- Holiday and pay should be interpreted as the UK statutory minimum. Anything over this will add substantial direct cost, increase the administrative burden of the regulations, and encourage business to level down the benefits offered to permanent staff.



APPLICABILITY

UK wide.

Contacts

For further information, please contact Abigail Morris on 020 7654 5803 or a.morris@britishchambers.org.uk.