

Agency Workers Regulations: One Month On

Living with the regulations



And so the 1st October 2011 came and went and the world of agency working didn't stop spinning. For those of us that are heavily involved in the supply of temporary agency workers, 1st October 2011 was a date that we viewed with a mixture of fear and excitement. de Poel, procures the supply of over 30,000 temporary agency workers each week, to over 70 high-volume users of agency workers, from Sainsbury's to British Gas. As a business we have had the date circled in diaries and underlined on whiteboards for over a year; we even had a countdown clock on our website. But 1st October felt much the same as 30th September, although it probably helped that this magical day fell on a Saturday and so, by the time we returned to the office on the Monday, we were already 3 days into the new era. But what have we learnt in the month and a bit that we have lived with the regulations?

Learning

Well, firstly, the questions that were being asked before the 1st October are still being asked following the 1st October.

- What does "working time" mean?
- When can an agency ask a worker to sign a Swedish Derogation contract?
- Are limited company contractors outside of the regulations, etc, etc?

what interpretation the courts give to these grey areas when the first claims are, inevitably, brought next year.

Secondly, we have not yet witnessed an avalanche of requests for information about the "day one" rights in the regulations. As a business, we have established a dedicated team to address AWR queries from clients and agencies, and we viewed the period between 1st October and December, when we approach the end of the first 12 weeks' qualifying period, as a bedding-in period for that team and for our processes. However, although we have, of course, received many queries about day one rights and post-qualification rights, the numbers have been relatively small, when viewed in the context of the 30,000 agency workers we help supply. Why is that? It might be that hirers fully understand the regulations and are complying; it might be that agency workers are not interested in accessing crèches and canteens and are waiting for the bigger win when they accrue their 12 weeks; or it may be that, despite the hype, AWR will be the damp squib that some have predicted.

I guess the first thing we have learnt is that the implementation of the regulations has not brought with it the answers to the questions that many of us have toiled over for the past 12 months. By now, most of us have a view, but we should no longer expect any further guidance from the Department for Business, Innovation and Skills, and we must wait to see



de Poel's view is that we will not see the full impact of the regulations until we get into December and January and the first group of qualifying temps request information and make claims. I suspect the date that we should have been circling in calendars and underlining on whiteboards was December 2011 rather than 1st October 2011. We have spent much of the past 12 months trying to take the sting out of that initial post-qualification period by helping our clients understand what the relevant "comparator" rates would be and collecting that information from them, so that, where a temp qualifies, and there is another rate they should be moved onto, it can be done with the minimum of fuss.

We've also learnt that the media love to whip up a storm and won't let the facts get in the way. There has been much publicity about the regulations and about, in particular, Swedish Derogation contracts, some of it mentioning de Poel clients. If a few of the broadsheets are to be believed, Swedish Derogation employment contracts are a "loophole" and a way of "avoiding" the regulations. This is absolutely untrue and we have been reassuring some of our clients that such a method of supply is expressly provided for in the regulations and actually offers the agency worker the

real benefit of pay when the employing agency cannot find them work (which probably means that they have the comfort of knowing that their agency will make every effort to ensure that they always have work to offer). To be fair, most of our clients now have a good understanding of the regulations and are savvy enough to know the game that the press is playing.

And, finally, we've learnt that, even when it comes to complying with the law, it's human nature (for some, at least) to leave things to the last minute. Many de Poel clients have been engaging with us for over a year about how the regulations work and how they should implement them. Others resisted our attempts to help them prepare for 1st October, but started returning our calls in August, September and October. With hindsight, those who started speaking to us more recently have had the advantage of not having to suffer a year of debate about the meaning of regulations 5, 10 or 3(2) and are receiving advice that is as firm and as formed as it's going to get. In fact, we have a couple of clients who told us early on that they planned to do little to prepare for the regulations and would revisit their approach in 2012 when, they expect, there will be a clearer view on how the regulations are supposed to work. There's a fair bit of wisdom in that approach.

It's not too late

However, what we say to all of our clients, new and old, is that you haven't missed the AWR boat. Despite government whispers that the regulations will face an early review, I suspect we will all have to live with them for some years. Therefore, even if you haven't got your AWR house in order for 1st October, or even December, 2011, you should be looking now at how best to work with the regulations in 2012, 2013 and beyond. And when making that analysis you should do the following:

- 1 Understand the profile of your spend on agency workers.** How long do they stay in particular roles at particular locations? It may be that, as a hirer, you typically offer short assignments of less than 12 weeks, in which case your exposure to the regulations is relatively limited. de Poel offers a system that instantly tells its clients how long a worker has been supplied and, for those clients who have been with us for a while, how long workers tend to stay in a job. I'm always surprised when we talk to a hirer and they don't have this very basic piece of information, which is now fundamental to understanding the regulations.
- 2 Get the best advice.** This is a niche area of the law and one that is so far untested in the courts. There are a limited number of advisers who have lived through the debates on how the grey areas should be interpreted. Seek them out and don't necessarily think that the advisers who have served you well previously will be the best one to interpret these regulations.
- 3 Manage your agencies well.** AWR has forced agencies and hirers to communicate and work together in a way that was never necessary pre 1st October. Whatever your approach to AWR, hirers must now have a good and joined up relationship with their agency panel, so speak to your agencies or bring in somebody who can manage those relationships for you.