



de Poel



# Mitigating the risk of legal exposure

de Poel  
Expert procurers of  
temporary agency labour



# Key steps to managing your agency supply

In any recession, the recruitment industry is one of the most exposed sectors of the economy, as it depends on a healthy level of employment.

The current UK recession is no exception. Whilst the temporary and contract staffing sector saw demand fall in both 2008 and 2009, sales volumes dropped by 12.5% in the year ending March 2009 compared with the same period the previous year. The market continued to decline until at least September, though some signs of stabilisation were felt in October.

According to the Recruitment and Employment Confederation (REC), in the year ending March 2009 the market for temporary and contract recruitment was worth £19.88bn – a fall of almost £3Bn. With the exception of the nursing and medical profession, all sectors of the industry have been affected, the hardest-hit categories including construction; hotel and catering; education; and computing and IT.

As we progress into 2010, the market will continue to experience difficulties as unemployment remains high. A lagging factor in any recession, it will continue to affect the country even after other aspects of the economy have recovered. And although the latest unemployment figures released 19th January 2010 highlighted drop of 70,000 to 24.6million, they show that the country still has a growing army of eight million “economically inactive” people, with the size of the labour market declining to 28.92 million. The rate of employment is now at its lowest level since the winter of 1996-97.

**Recruitment agencies are like every other organisation, in that they must continue to cut costs in order to improve profit. That said, some organisations have felt the brunt of their cost cutting exercises, with increased margins and lower levels of service.**

**This brief overview provides an insight which should enable you to maximise your agency relationship, ensure you receive value for money and most importantly, be aware of where your responsibilities lie.**



# Managing your agency suppliers

Whilst the recruitment industry remains unregulated, supply of temporary agency labour tends to be provided by a multiple of different agencies with varying terms of business and wide-ranging quality standards across a number of geographical locations. The results for the organisation using temporary agency labour are typically poor-quality staff, a high yearly spend, legal exposure and limited control over ongoing agency performance.

The best way to overcome these problems is to put together a managed panel of optimal suppliers who, based on their strengths to supply specific skills to specific locations, can add maximum value to the business as a whole and to the different depots and business divisions they supply through a robust supply chain.

Ensure you involve the appropriate departments in selecting the preferred agency panel. All too often preferred agency lists are established with no operational input, or a master vendor solution is put in place to channel all agency placements. Neither approach allows adequately for operational requirements, cost control and legislative compliance, and thus, we recommend input from operations, procurement, finance and HR.

To ensure your organisation continues to perform well during periods of temporary agency labour usage, particularly important during a recession, it becomes necessary to keep ongoing tabs on your preferred agency list – irrespective of the fact that they have been chosen as preferred suppliers in the first place.

Sales-driven agencies can sometimes focus on getting through the door, rather than staying through it, causing quality standards to slip once contracts have been signed.

This should not deter organisations from using temporary agency labour, but encourage an active involvement in agency usage bearing in mind that temporary agency labour, when managed properly, can be extremely effective in allowing your business to remain flexible and responsive to changes in the market.

You can keep on top of performance by implementing formal service level agreements containing key performance indicators which agencies can be measured against. Often we identify that a number of preferred measurements are in place, but never measured against, or if they are, at best, suppliers are not managed in or out of the process based on their performance. Be clear who is responsible for measuring KPIs and when they are to be measured, don't wait until a serious incident occurs to realise an agency has been under-performing or cutting corners.

Another important thing to remember (and make sure your supplying agencies remember as well) is that there are more than 17,000 recruitment agencies operating in the UK at any one time, making competition fierce and no agency indispensable. Incidentally, standardising charge rates can also be beneficial in compelling agencies to compete on service rather than on price.

Most importantly be aware of cartels, whereby agencies collectively price-fix their pay and charge rates so as to ensure a maximum amount of payment from vulnerable, unknowing, businesses. On the contrary, such action can only ever result in millions of pounds worth of fines, the Office of Fair Trading taking strong action against unscrupulous agencies and viewing all such meddling as against fair competition laws.



# Standards of service

As the name suggests, recruitment agencies are responsible for ensuring your temporary or permanent recruitment needs are met with the most appropriate candidate for the job. But this is where many organisations come unstuck. The fact that the recruitment industry is unregulated means that the responsibilities of the client and those of the agency are very hazy indeed. They find themselves asking: what does the process of sourcing and placing a candidate actually involve? And what counts as agency going that extra mile?

Quite the opposite occurs when agencies are working to formal terms of business. Here their responsibilities are clear and the client is able to keep a check on whether they are 'doing their bit'. Their tasks include:

1. Appointing a dedicated account manager with overall responsibility for the supply of temporary or permanent resource to the client.
2. Confirming to the client prior to the commencement of each assignment:
  - The identity of the candidate.
  - That the candidate has necessary experience, training, qualifications and any else which the client thinks is necessary, or which anything that is legally required (such as CRB checks).
3. Conducting all the necessary checks to confirm that each temporary worker is legally allowed to work in the UK.
4. Providing certified copies of the temporary worker's:
  - Passport, national identity card any necessary visa.
  - CRB checks.
  - Relevant licenses.
  - Any other compliance documents.
5. Letting the candidate know who they have to report to when they start work.
6. Ensuring the temporary agency worker:
  - Complies with the client's day-to-day requirements, regulations, policies and protocols, including health and safety policies, and any legal requirements.
  - Uses reasonable care and skill in their work.
7. When the candidate is doing care work:
  - Obtaining and providing the client with candidate references and any relevant qualifications or certificates (such as CRB checks) which are required by law (if the client requests them).
8. When the candidate is a night worker:
  - Ensuring that the temporary agency worker is provided with an opportunity for a health assessment before they start work.
9. Providing opportunities for further health assessments at regular intervals of their placement as may be appropriate (these should be provided by the agency and at no extra charge to the client).



# Standards of service

10. Where the work involves operating a fork lift vehicle:
  - Ensuring that the temporary worker holds an appropriate certificate approved by the RTITB or ITSA (or equivalent organisation).
  
11. Where the work involves a driving:
  - Ensuring that the temporary agency workers holds a valid UK driving licence which is suitable and appropriate for the job, that they have held this license for at least 12 month and that they do not have any unspent driving convictions or more than 9 points on their license. (They should then check the candidate's driving license every six months).
  
  - Drawing the candidate's attention to the main requirements and provisions of the Road Transport Regulations.
  
  - Informing the candidate that they need to use the client's numbered tachographs and to leave a copy of the tachograph at the relevant location at the end of each round trip.
  
12. Holding an assignment review meeting with the temporary agency worker and advising the Client of its outcome.
  
13. Notifying the client in writing whenever a temporary agency worker has been assigned to a cposition for a cumulative period of ten months or more.



# Mitigating the risk of legal exposure

The recruitment industry is both highly fragmented and unregulated. Legislative compliance is becoming increasingly important as the Government focuses on legislative conformity as concerns the use of temporary agency labour.

Indeed, legislation relating to temporary agency workers is constantly being updated and reviewed. And although the immigration points based system has increased administrative burden associated with employing temporary labour, ensuring temporary agency workers have the right to work in the UK has become an important focus for the Government. In fact, during 2009, the UK Border Agency fined over 1,351 companies on this issue and is set to increase resource during 2010. Similarly, the introduction of CRB checks has affected both the care and construction industry, not only increasing administration but adding costs directed at temporary agency workers.

Perhaps the most important of all legislative changes concerning temporary agency labour, the Agency Workers Directive (AWD) is due to be implemented in 2011 and will have a massive affect on the process of recruiting temporary agency workers.

It is therefore important to know that agencies are not cutting corners and perhaps more importantly that they themselves are aware of legislative compliance. We strongly recommended organisations audit and check their preferred agency panel, verifying:

- Full agency compliance with all legislation which affects your industry sector, and awareness of current and future legal processes
- Thorough agency-internal processes, including reference checks and proper obtaining of documents
- Correct and full agency insurance cover, which can often be a grey area and may affect organisations in the unfortunate case of accidents. Insurance policies should include Employer's Liability, Public Liability, Professional Indemnity and Drivers' Negligence where drivers are supplied.
- Detailed agency policy on carrying out proper inductions - this is particularly important where health and safety is involved.
- Agency best practice examples including the provision of specific client support where applicable.

It is only through an understanding of legislation that companies can protect themselves against any unexpected costs arising from litigation, especially where terms of business are unclear. And even where terms are unclear, clients are in a much better position to keep tabs on their suppliers if they are up-to-date on the rules and regulations themselves. We produce regular updates and reports for all our clients to ensure they are up to date with current legislation.

# Mitigating the risk of legal exposure

For more information on the following, please go to our legislation section.

**National Minimum Wage**

**Agency Workers directive (AWD)**

**Immigration Points System**

**Driver Certificate of Professional Competence (CPC)**

**Independent Safeguarding Authority checks (ISA)**

**The Removal of VAT Concessions**

**Equality Bill**

The Employment Agency Standards latest report highlighted the recovery of £163,341 for temporary agency workers, which was being illegally withheld by recruitment agencies and uncovered

**2,393 infringements of the law.**