



Guidance on Protection of Employees (Temporary Agency Work) Act 2012

The basis of the 2012 Act is to entitle agency workers to the same basic working and employment conditions as employees who are directly employed by the hirer.

The Department of Jobs, Enterprise and Innovation have published in August 2012 a guidance document on the 2012 Act. This is available from the Department. The 2012 Act does not apply to the following category of persons;

Persons who work as Independent Contractors, are in business on their own account and are placed by an employment agency where the hirer is a client or customer placement services. That is where the employment agency introduced a person to an employer for direct employment that is paid by the employer.

Managed service contracts. This is where persons who work under the supervision and direction of the company which employs them and not under the supervision or direction of the company where they work.

The concept of managed serviced contracts is the vehicle of choice for companies to avoid the provisions of the 2012 Act. By properly structuring such contract it is possible to negate completely the entitlements of what are effectively Agency Workers. Saying this, it does mean that the agency, if you can call it that, has to supervise and direct the individuals. In practice this is difficult though not impossible to structure.

The 2012 Act in Section 14 provides that a hirer shall in relation to collective facilities and amenities at work treat an agency worker the same and certainly no less favourably than an employee who is directly employed unless there are objective grounds for doing so.

These cannot be based on economic consideration such as cost. For example it would mean that the hirer could not for example exclude the agency workers from using the canteen where there would be subsidised meals. Saying this, practical and organisational considerations could be a factor amounting to objective justification.

The guidance notes are useful. The guidance notes expand on what might be considered collective facilities and amenities. In addition the canteen or other similar facilities, child care facilities and transport services are provided for in the 2012 Act. The guidance includes the following examples which may be onsite or offsite such as;

Toilet / shower facilities
Staff common room / kitchen facilities
Food and drink machines;
Car Parking.



The guidance also provides that transport services might include for example local pick up and drop off services or transfer between sites. It does not extend to benefit in kind entitlements. This would include contribution towards company cars or company laptops. It would not include benefits such as long time service or loyalty awards.

The Provision of Information

The 2012 Act is extremely strong on the area of the provision of information. The hirer must provide the agency staff with such information that they have to comply to enable the agency to comply with its obligations under the 2012 Act. This means that the hirer must provide the agency with up to date information with terms and conditions of employment and the hirer must inform the employment agency of the correct rate of pay, annual leave entitlements and other payments arrangements or allowances that the agency worker is entitled to under the 2012 Act.

This does mean that significant amount of commercially sensitive information can be required to be provided.

What does pay mean

Pay is specifically defined in Section 2 of the Act as basic pay and any pay in excess of basic pay such as shift work, peat work, overtime, unsocial hour's premium, Sunday premiums. Pay does not include importantly sick pay, payments under a pension scheme, financial participation schemes or Occupational Social Security Schemes.

Working out the rate of pay

The 2012 Act does not set out the rate of pay other than to require that the rate for agency workers be the same as if he / she were employed directly by the hirer to do the same or similar jobs under Section 6. However, regard must be had to establish pay scales, collective agreements and terms and conditions of employment.

It is becoming clear that some hirers to avoid equal pay claims are effectively making sure that the agency workers will work separate and distinct from full time workers doing different work. Again, with proper planning it is relatively easy to circumvent the legislation. This is a defect in same which some employers can attempt to use. Saying this, the Labour Court in a case this year has taken a proactive approach to implementing the spirit of the Act by using the Directive from which the Act originates a high level of importance.



Holidays / Annual Leave Entitlements

The Act of 2012 specifically provides that the agency worker will be entitled to the same holiday / annual leave entitlements.

Access to information and job vacancies

This is probably one of the most important provisions in the legislation. Section 11 of the 2012 Act provides that a hirer when informing his employees of any vacant positions must also inform any agency workers of the vacancy for the purposes of allowing the agency worker to apply for the position also. The guidance notes provides that the hirer can choose how they wish to publicise such vacancies but the agency worker should know when and where to access the relevant information.

If you are considering taking on agency workers or you are an agency then appropriate advice should be obtained.

Richard Grogan & Ruth Lynch in this firm are available to advise on the Act.

This is a Guide only and legal advice should be obtained before acting or refraining from acting on anything contained herein.