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New rules set to transform agency worker law

If your business relies on agency workers – either permanently or at peak times - it is high time you got familiar with new rules which will change the way agency and temporary workers are paid and employed.

It is vital that employers understand and prepare for the regulations, as the new regulations establish new rights for these workers.

The Agency Worker Regulations, which came into force on October 1, affect agency workers who have spent 12 weeks with the same business doing broadly similar duties.

The new laws mean they are now entitled to the same basic hourly rate as if they had been recruited directly.

After these 12 weeks, employees could also be entitled to overtime, shift allowances, unsocial hours premiums or bonuses, payments for difficult or dangerous duties and commission payments.

However, benefits such as occupational pensions, occupational sick pay and

company car allowances or health insurance are exempt, as are redundancy pay, maternity, paternity and adoption pay.

Agency workers are now entitled to the same rest breaks and annual leave as the hirer's employees.

Pregnant agency workers are also entitled to paid time off for antenatal appointments during working hours.

Moreover, the new regulations give agency workers some additional rights from day one of their assignment. They should be given the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer, and should also be informed of any internal job opportunities.

Furthermore, the 12 week period which features in the regulations does not have to be worked in one block. Even if there are breaks in assignments, then as long as the breaks are for less than six weeks and the worker comes back to the same role, the meter is still ticking.

Breaks which last for six weeks or longer will usually 'reset' the accrual of the 12 week period.

Similarly, the 12 weeks are also paused during sickness or jury service for up to 28 weeks, as well as for annual leave, shut downs and industrial action.

Even if an employee moves to a new role, this qualifying period will continue, providing that the new position is not 'substantively different' from the previous one. To qualify as substantively different, there would need to be clear differences in key areas such as working hours, rate of pay, location, skills required and level of responsibility. The employer must also notify the agency that the worker's job duties have changed, which must then be relayed to the agency worker.

The genuinely self-employed and those providing services through a Managed Service Company are not covered by the new regulations.

Avoiding costly fines over new agency worker rules

No employer wants to end up at a tribunal – but that's the risk if firms do not comply with the new agency worker regulations which came into effect on October 1, 2011.

Tribunals have the power to impose fines of up to £5,000 if they find an employer has tried to avoid following the new Agency Worker Regulations.

If the tribunal finds in favour of the worker, the minimum award is two weeks' pay, any financial loss suffered by the worker and any 'reasonable' expenses.

To avoid falling foul of the new rules, employers should:

- Consider the use of temporary agency workers in the business and compare the terms and conditions offered to permanent employees who do the same work
- Review access to facilities and information about vacancies in the company for agency workers
- Examine the contractual arrangements already in place with providers of agency workers and any arrangements for liability

- Keep an eye on the duration of agency assignments and the terms issued to agency workers who have reached the 12 week qualifying period
- Notify any changes to an agency worker's role to the agency and to the worker
- Respond to any requests for information received by agencies or agency workers in relation to terms and conditions

An agency worker who feels they are not being treated in the same way as a recruited employee can complain to an Employment Tribunal for compensation - to be paid by the agency or the hirer.

For failure to provide basic work and employment conditions after 12 weeks, liability can rest with either the agency and/or the hirer depending on the level that each party is actually responsible for the failure.

Payroll



National Minimum Wage rates

October 1, 2011, also saw the adult minimum wage rate increase by 15p to £6.08 an hour, a rise of 2.5%.

In addition to the increased adult rate, the following increases were also made:

- The rate for 18- to 20-year-olds increased by 6p to £4.98 an hour;
- The rate for 16- to 17-year-olds increased by 4p to £3.68 an hour; and
- The rate for apprentices aged under 19, or in the first year of their apprenticeship, increased by 10p to £2.60 an hour.

Employers should ensure that they write to workers to inform them of their new rate of pay.

Who is entitled to the National Minimum Wage?

Almost everyone who works in the UK is legally entitled to be paid the National Minimum Wage. This is the case even if a worker or employee signs a contract that says they are entitled to a lower rate of pay. It isn't necessary, for example, to be in full-time employment or to work at an employer's premises.

However, you are not entitled to receive the National Minimum Wage if you're:

- A worker under school leaving age
- Genuinely self employed
- An au pair
- In the armed services
- A voluntary worker

Getting the minimum wage wrong can also be very expensive.

As with the regulations around agency workers, employees may put a claim into an Employment Tribunal for unlawful deductions from wages, based on the fact that the right to receive the National Minimum Wage is implied into all employees' contracts of employment.

Alternatively, they may also make a complaint to the Pay and Work Rights Helpline who can then put a complaint into the HMRC. Following a full investigation, the HMRC can bring a case to an Employment Tribunal or civil court on the employee's behalf to recover any arrears – which are then payable at the current NMW rate, even if that is higher than the rate in force at the time.

Absence Assist cuts sickies in half during trial



Our new absence management system for SMEs has helped businesses reduce staff absences and save money.

On average, businesses using ELAS Absence Assist managed to cut the number of sick days taken by 47.5 per cent, with some experiencing a reduction of as much as 76 per cent.

Rather than simply calling in sick by phoning or texting their boss, staff are asked to ring ELAS's absence reporting hotline, speaking to a trained absence manager who will explore the reason for absence and agree a return to work date. Their initial call is then followed up at a

mutually agreed time to confirm the return to work date.

All information is streamlined directly into our Employersafe software notifying the employer of any absence and highlighting any absence patterns.

Annabel Dawkins, marketing manager, explained: "Unfortunately, familiarity can breed contempt and when a company has no formal way of reporting absence, people take advantage of this.

"We set up an absence reporting hotline, connected it to Employersafe and set up a three month trial to see how effective it would be. The results were staggering.

"As soon as employees realised that to call in sick they were going to have to speak to someone they'd never met and who would ask them specific questions about being ill, it was a massive deterrent.

"Meanwhile, those who were genuinely sick found that they were given useful advice about whether they should see a doctor or how long they should stay off work."

ELAS is now rolling out Absence Assist nationwide from October. For further advice, or to arrange an appointment with one of its consultants, call 0161 785 2000.

Most businesses unprepared for ageing workforce, survey finds

More than half of small businesses are unprepared for having employees working beyond the traditional retirement age of 65, our latest survey has found.

The default retirement age has now been abolished, meaning companies will no longer be able to force staff to retire on their 65th birthday due to age alone.

But most small businesses we surveyed were unaware of the practical impact the new law will have on many of their working practices.

Of those firms which currently offer death in service benefits or private health cover, 57 per cent did not realise the cost of providing these would probably soar for those employees aged over 65.

And 54 per cent said they would no longer honour those benefits if costs rose, leaving staff reaching 65 having to accept potentially worse pay and conditions in order to stay in work.

Peter Mooney, our head of employment law, said: "Most businesses we speak to are now aware that they cannot force staff to retire due to age alone, but it seems

many businesses haven't actually thought through how the new law will affect them in practice.

"Expensive death in service and healthcare benefits are just two examples of how employing older workers will affect businesses - risk assessments, access requirements and adjustments for disability may also need revision as workforces grow older."

Manufacturer fined £20,000 for product loading error

A renowned UK-based glass manufacturer has been fined £20,000 for failing to turn a risk assessment into clear instructions for those on the shop floor.

The fine came after an overloaded trolley used to load panes of glass collapsed and tipped its load onto two employees at a Bristol-based factory, causing serious injuries to both.

Glass had been loaded onto the trolley on one side, causing it to become overloaded and unevenly distributed. When staff tried to move it, its welds failed and collapsed.

HSE inspections found that although the maximum safe loading weight and the need for equal distribution was set out in the company's risk assessment for moving glass, this information had not been included into the operating procedures of the company documentation.

In view of the HSE findings, the company pleaded guilty of failing to ensure employee safety and were therefore in breach of Section (1) of the Health and Safety at Work Act. It was fined £20,000 and ordered to pay costs of £5,646.

Bullying in the workplace increases

Research has shown that bullying statistics have increased in the last six months with one in three now claiming to have been bullied at work.

A survey of 6,000 public sector workers by union, Unison, found that as well as a third claiming to have been bullied, more than a quarter claimed to have seen or experienced more bullying since the reduction in staff numbers.

In London, more than half of workers claimed to have been bullied, whereas the rate was lowest, at 29%, in Wales.

Half of those who had been bullied said they had begun looking for alternative employment.

Under health and safety management regulations, employers are supposed to carry out a risk assessment for bullying in the workplace.

£100,000 fine to care home in breach of manual handling requirements

A care home has been heavily fined after an elderly resident died after falling out of a hoist while being lifted out of bed.

The resident was being lifted in a new hoist by two carers when she slipped out of the sling and fell to the floor. She later died in hospital as a result of her injuries.

HSE investigations found that staff at the home had not been given sufficient equipment and Manual Handling Training and therefore the owners of the care home proved to be in breach of Section 3 (1) of the Health and Safety at Work Act.

It was ordered to implement correct training procedures and was fined £100,000 plus £50,000 costs.

FOR INFORMATION ON MANUAL HANDLING & HEALTH & SAFETY TRAINING COURSES – Please contact ELAS on 0161 785 2000

Steel production firm and directors face manslaughter charges

A North West manufacturer appeared in court charged over the death of an employee who fell through a fragile roof at work.

The employee who died fell through a very fragile roof while working at the steel company in 2008 and later died as a result of his injuries in hospital.

The directors of the company were recently summonsed to appear before magistrates on charges of gross negligence manslaughter, while the company has also been charged with corporate manslaughter. Both the directors and the company have also been charged with failing to ensure the safety at the workplace of employees.

The trial is scheduled to take place next summer.



Saving 15% on your Christmas Shopping is easy as 1, 2, 3

With Christmas on the horizon, now is a perfect time to register with ELAS Rewards and start saving money on your festive shopping.

In addition to offering exclusive discounts, such as 40% off purchases from Ebay, ELAS Rewards also offers you cashback on your purchases from high street stores such as Debenhams (10%), Boots (10%) and House of Fraser (10%).

The scheme also offers cashback on food shopping from Asda (5%) and Sainsburys (5%) and shopping for the kids' toys at Toys R Us (7.5%) and Argos (8%).

The scheme works by enabling you to order a store-specific 'reloadable card'. The card works like a debit card but every time you use it, you get cashback on your purchases.

To get started all you need to do is:

1. Order your card: Simply log in to your ELAS Rewards account, select the reloadable card/s you want, insert your details and press confirm
2. Activate the card/s: Once you have received your card through the post, log into your ELAS Rewards account, click on My Cards, enter the card details and click Activate.
3. Load the card: Once activated, click on Load, enter the amount you would like the card credited with and click Confirm. Follow the instructions to finalise the payment, then you're ready to go!

For more information, call ELAS on 0161 785 2000.



Brewery wins 'extra hours' pub manager case

A brewery has won a landmark Employment Tribunal over paying pub managers for the time they spend off-duty living in the pub in a case which could have proved a "death knell" to the already struggling industry.

J.W.Lees & Co. (Brewers) Ltd was fighting a case brought by the temporary manager of a pub in Tameside, Greater Manchester, who claimed she should have been paid for providing extra security, supervision and cleaning while off-duty and through the night.

The manager lost the original tribunal but appealed. Mr Justice Underhill, the President of the Employment Appeal Tribunal which heard the appeal, said that once the pub had closed for the evening

and the attendant duties were completed, there was no contractual requirement from J.W.Lees for her to undertake any further duties until the pub reopened the following day.

In terms of security, there was no difference between the manager of a pub living on the premises or anyone else living in a house or flat, and having to be vigilant about security to protect the property they lived in.

Unlike nursing or care homes or in situations where employees are required to sleep at their place of work or be on call, there was no such requirement in this case or any such obligation on any pub manager, he added.

Peter Mooney of ELAS, which represented the brewery, said: "This was a hugely important case which, had the appeal been successful, could have become a death knell for hundreds of pubs across the country.

"The claimant said she was working additional hours, over and above those covered by her salary, which meant she was earning less than the National Minimum Wage.

"Because her job description from the brewery required her to live at the pub, she said she should receive additional payment for providing a 24 hour on-hand security, supervisory, and cleaning service but Mr Justice Underhill quite rightly ruled against this."

I have a member of staff who I need to discipline, but I can't remember all the procedures I need to go through to do this safely. What do I need to do first?

Answer:

It has long been the case that to hold an effective disciplinary hearing, an employer has to invite an employee in writing to a disciplinary hearing specifying the date time and place of the hearing.

In this, you should also notify the employee of the case that he or she has to meet and provide evidence upon which you will be relying to back up your allegations.

The invitation should also state that the employee is entitled to be accompanied at the hearing by either a colleague, or their union representative, and if you are contemplating dismissal, then you should also warn the employee that this is the case at the outset.

Before the hearing, you must arrange for the employee to see any evidence you intend to use, whether that is a witness statements, a document or even CCTV footage.

When it comes to the hearing itself, there are rules as to what the employee's companion can and can't do. While they are entitled to address the hearing in order to put the employee's case, or sum it up, and to respond on the employee's behalf, they are not allowed to answer questions on behalf of the employee or address the hearing if the employee indicates that he or she does not wish them to.

Over the last few years, a question has arisen as to whether employees are allowed a legal representative to act as their companion. This is yet to be fully settled, and so care must be taken, particularly in situations which could result in an employee losing not only their job, but also their career. If this is the case, then it is safer to seek advice on the disciplinary process before you begin.

How long should Accident Record Books be retained for?

Answer:

Once an accident has been recorded, the employer must retain that record for three years following the last date of entry.

In practice therefore, the employer must keep a completed accident book for three years following the date of the last entry. This applies to every workplace; from construction sites and offices to schools, public venues and shops.

An up to date accident book must be kept in an easily accessible place. However all slips containing personal information should be detached and kept in safe storage.

In order to comply with the Data Protection Act 1998, personal details entered in accident books must now be kept confidential

As well as keeping records in the accident book, the law says you must notify and report some injuries and deaths arising from accidents at work under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). These records must also be kept for three years. The method of reporting is through the Incident Contact Centre (ICC).

I have a pregnant employee working in my factory and wondered what risks I need to assess?

Answer:

There is legislation specific to pregnant workers, under the Management of Health and Safety at Work Regulations 1999. Section 16 states that every employer must assess the risks that a new or expectant mother may be subject to while carrying out their duties.

In view of this, you are required to carry out an individual specific risk assessment of the work that your employee does for the company to determine any risks to her and her unborn baby that may arise from the work activities.

Wherever there is a hazard or risk – which could be an activity, process, the use of machinery or equipment, a computer or even a substance – then this has to be assessed.

Where a significant risk arises from these hazards, various controls have to be put in place and documented as evidence for or in the event of an issue.

You should also bear in mind the new or expectant mothers' health and characteristics.



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