



HR Briefing

April 2007

EMPLOYMENT STATUS

The practice of taking on staff through their own service companies, or a specialist supplier, is becoming more widespread, as is the practice of hiring in workers from agencies. These arrangements are often seen as being more advantageous for both parties in terms of key issues like taxation, and flexibility.

However, as with most things in life, matters are not always as straightforward as they seem.....

Agency workers – who is the employer?

A key advantage of taking on agency staff is flexibility. Most businesses would consider that an individual supplied via an agency would in essence be dealt with by the agency. If the assignment is to terminate, the agency should take care of it.

However, employers may not be aware that in recent years the courts have found that a contract of employment can exist between the agency worker and the business to whom they are sent. This would mean that the worker could, for example, make a claim of unfair dismissal against the “end user” business upon the termination of the assignment. Although the most recent case law has cast some doubt on this, the risks remain and the issue is not expected to go away.

Managed Service Companies (MSC's)

An MSC is where the services of workers are provided to the client via an intermediary company. MSCs are companies which are normally set up with the express purpose of supplying the services of individual workers to businesses. The tax benefits to the worker are often heavily plugged.

The Government has recently voiced concern over the use of MSC's to avoid paying employed levels of tax and National Insurance (NICS) and is to introduce legislation to increase the enforcement powers of HMRC. In essence, where the definition

Key Recommendations

- Consider whether your organization uses staff supplied either by an agency or any other supplier
- If so, consider whether the continued engagement of staff through these routes is justified. Take advice on whether there could be any adverse tax or employment law consequences
- Pay particular attention to suppliers of staff who may fall into the definition of an MSC. Take advice on this since you may become liable for tax and NICs in certain circumstances.

of an “MSC” is met, monies paid to the worker must be taxed through PAYE. The traditional tax advantage of the MSC will therefore disappear. Further, and of perhaps more concern, is the so called “transfer of debt” provisions. There is a proposal that where HMRC cannot collect the tax from the MSC (perhaps because it has become insolvent) then other organizations involved can become liable for the debt, such as the client who has engaged the services of the worker, or anyone who has facilitated or promoted the arrangement.

In addition, case law has shown that the fact that a service company or an MSC has been involved does not necessarily mean that the worker has no recourse against the end user client. In appropriate circumstances, the worker could make a claim of unfair dismissal against the client.

A GENTLE REMINDER

Smoking Ban – 1 July 2007

The smoking ban comes into force in England on 1 July 2007. Employers will be liable for failing to prevent staff and others smoking and there is a duty to put up appropriate signs. The TUC have suggested that all employers should have a smoking policy which is drawn up following consultation with staff. The aim of the policy should be to stop smokers feeling victimised, offer help to smokers who want to give up smoking and implement a disciplinary procedure for employees who continually breach the policy.

New ACAS guidance – Flexible working

ACAS, Britain’s leading employment relations service has published a new booklet, Flexible working and work-life balance, to help employers and employees understand how flexible working can benefit their workplace.

There are around 1.6 million employees providing some kind of unpaid care to family members and others. From 6 April 2007 they were given the right to request flexible working in order to assist in accommodating those caring responsibilities.

If you have any queries on any of the above, or if you require any further information about implementing a pro-active consultation agreement, please contact either **Alison Loveday** at alisonl@berg.co.uk or **Lee Jecott** at leej@berg.co.uk to discuss further issues. Alternatively you contact either Alison or Lee on **0161 833 9211**.

Smoking

- Be aware of the smoking ban coming into effect in England on 1st July. Smoking on premises will no longer be permitted. This includes any current designated smoking rooms and possibly also shelters
- Ensure that you tell staff and visitors not to smoke, and ideally draw up a smoking policy, ensuring that all staff and visitors are aware of it.
- Put up the necessary signs.
- Consider helping staff to quit.