

employment update



Agency Worker Regulations effect in 2011 - radical changes for businesses using agency staff

- How reliant is your organisation on agency temps?
- Are you aware of the changes due in October affecting agency temps?
- Is your company at risk?
- How much is this going to cost you?
- Are you ready?

With effect from the 1st October 2011 the long awaited Agency Worker Regulations come into force. They are designed to protect those in our labour force who work temporarily from being treated unfairly.

The regulations have two levels - from day one and after 12 weeks.

So from 1st October you will need to provide access to collective facilities and amenities to both permanent and agency staff - such as car parking or a canteen - if you have this in place for your permanent staff. You will also need to provide access to internal vacancies to all temporary staff.

After a 12 week period of working with you, the hiring organisation (you) must ensure that the temporary worker is provided with the same basic working and employment conditions as those recruited directly by you - this includes pay rate, annual leave and rest periods.

The 12 week period is not straightforward, it can be stopped and re-started in a number of ways, and there are anti-avoidance penalties for companies that try to get round the 12 week period.

Companies are strongly advised to review the control mechanisms they have in place and to work closely with the supplying agencies to understand the implications.

Outset recommends that any company that uses temporary agency staff review their current practices and considers the risks that they currently run against these new regulations. The liability is shared by the agency and the hirer (your organisation).

These changes are radical and will impact the way many companies choose to manage their temporary workforce.

We ask again...are you ready?

Outplacement support from ACT

According to a study by Reed Consulting

66%

of employers feel outplacement support improves staff morale

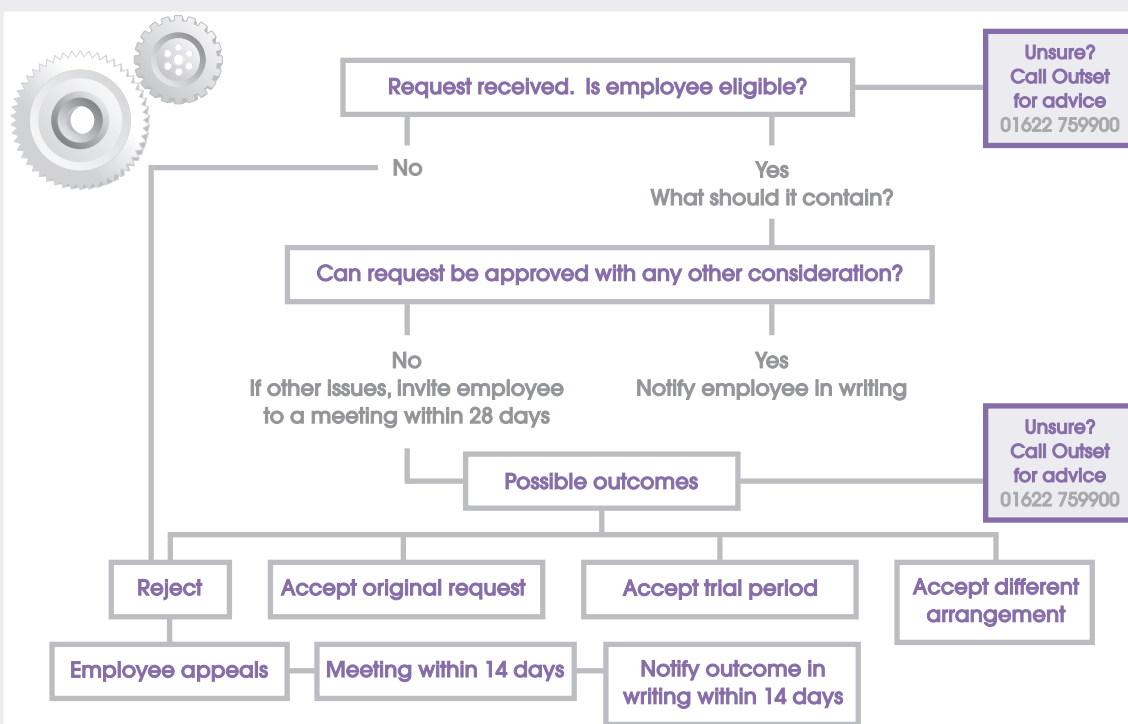
87%

believe that offering outplacement eased the pressure on line managers

Outset's Active Career Transition team takes a holistic approach to career outplacement support, placing the individual at the centre, aiding them to foster a positive and robust approach to career transition.

Call ACT now on 01622 759900 to discuss the outplacement needs of your organisation.

Best practice: The flexible working application process



Government review of employment red tape: What are the targeted areas?



Do you think the balance on employment legislation has tipped too far in the favour of the employee?

The Coalition Government clearly does. In May this year the Government announced that it was considering reforming Employment Law. It is looking to create the right environment for businesses to thrive and minimise the red tape employers face.

The areas under consideration include:

- Compensation for discrimination
- Collective redundancy rules and
- TUPE

Why is the Government considering looking at these areas?

The Government "expressed concern" about the high level of compensatory awards made in discrimination cases. Some view such high awards as encouraging weak or speculative claims.

With regard to collective redundancies, the Government stated that employers were confused as to

when consultation on redundancies should start and end. Furthermore, employers felt that the 90 day consultation period was too long.

The Government stated in relation to TUPE that some businesses have raised the issue that the UK went further than required by European Law - effectively the UK TUPE provisions are "gold-plated".

Just how the Government intends to, or indeed will be able to, make any proposed changes is unknown. As two of the areas under consideration (discrimination and TUPE) are heavily regulated by EU Law if the UK did look to amend the legislation the European Court of Justice is likely to have something to say!

Annual leave 2012 policy and procedure alert!



Call our expert Interact team on 01622 606424 for advice

Recent employment tribunal decisions...

Date	Decision
27 May 2011	Termination of Employment - An employee who refused to accept a pay cut was unfairly dismissed by the Employment Tribunal (ET) in the case of Garside and Laycock Ltd v Booth. The Employment Appeals Tribunal (EAT) however held that the ET had made incorrect findings and the question whether a dismissal is fair is whether it was reasonable for the employer to dismiss rather than whether it was reasonable for the employee to accept the pay cut. Other considerations should include the financial status of the business, and its size and resources. This case has been remitted to a fresh ET for them to decide.
28 July 2011	Ex-gratia payments - Publicis Consultants v O'Farrell - The employee was entitled to three months' notice but dismissed with four days' notice. The letter of dismissal stated that she would receive an ex-gratia payment equivalent to three months' salary. The Employee brought a claim of breach of contract for notice not being paid. The Employer argued that the ex-gratia payment was made in respect of notice. The Tribunal disagreed and held that the payment was truly ex-gratia and that the employer was in breach of contract. The EAT stated that the construction of the words used in the letter was a matter of law and found that if the letter had been ambiguously worded it would have been appropriate to construe the wording against the party who drafted the letter, in this case the employer.
29 July 2011	Equal Pay - 5 female workers sought to claim equal pay based on the terms in their contract in the case of St Helens & Knowsley Hospitals NHS Trust & Brownbill & Others. The females received higher basic pay than their male colleagues however they received less pay per hour for weekend work and unsocial hours. The Court of Appeal held that a specific term within a female's contract can be less favourable compared to the same specific term in a male's contract despite the female's contract being more favourable as a whole.
10 August 2011	Notice Period and Summary Dismissal - The EAT has handed down its judgment in the case of M-Choice UK Ltd v Alders - where an employee is dismissed with notice expiring after a year's service, but is then summarily dismissed before a year's service, the employee's right to claim "ordinary" unfair dismissal is extinguished as the summarily dismissal displaces the first.

Free HR Audit

To help you understand how Outset can support your organisation we would like to offer you a free HR audit with report & recommendations.

Call Outset today on 01622 759900 to arrange your FREE HR audit

Offer available to organisations that have not utilised any of Outset's services in the past 12 months. For full terms and conditions of the offer please visit www.outsetuk.com/offer

Staff profile



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Fiona has experience working in both corporate and charitable organisations. She is a generalist HR professional with particular expertise in training, performance management and TUPE.

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The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking, or refraining from taking any action.