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Agency Workers: An explanation

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But remember we will want to sign your company up as a customer so be prepared for a phone call off one of us trying to get some business out of you.

'Just being honest that's all'

Agency Workers: An Explanation

Agency Workers are a good source of staff when your organisation needs to plug labour shortages during challenging times. This may be because of seasonal demands for your goods or services, or periods where you have an excess number of staff who have taken annual leave or are on sick leave, or it may be because your industry sector is going through a down period and you do not want to commit your business to the additional costs and risks associated with employing people.

Usually, an Agency Worker has a contract with an agency and you ask that agency to supply you with temporary labour. It is the agency's job then to find a suitable person and send that person to your company. When that person is working with you they are usually on a temporary assignment with you, however, you can choose their hours, what job they do and you can supervise them. The worker, however, is not your employee and are usually employed by the agency (you have probably noticed the word 'usually' being used a lot in this paper, the reason is that the employment status of an Agency Worker is sometimes really complex with such things as triangular relations in place. As a result at times, it can be difficult to establish who the real employer of the Agency Worker is: even the courts have struggled with this).

An agency may sometimes be referred to as a temporary work agency, recruitment agency, staffing company or employment business, they come in all guises. Admittedly for the worker, it is often not the ideal employment situation because with different types of businesses involved in the way they are recruited, paid and sent on an assignment they are left confused about their employment rights.

There are three main types of employment status for an Agency Worker, employees, workers, or self-employed. The differences can be established in the contracts that they are asked to sign. Most Agency Workers are as the name suggests are workers. Workers do enjoy some basic employment rights such as paid holiday and the National Minimum Wage.

They are usually free to decide when and where they want to work and can refuse assignments if they do not want them

Some agency workers are classed as employees of the agency and have a Contract of Employment with the agency. As employees, they will enjoy all of the employment rights that any other employee would enjoy that is employed under a contract. However, as employees, they will also have to work normal set hours and cannot refuse work that is offered to them by the agency or the end user.

Some agencies can arrange a person to come and work for you as Contractors, under a contract for service. Usually, these workers are classed as self-employed. They do not enjoy much in the way of employment rights and have fewer obligations to the agency than an employee or a worker. For example, they'll usually be able to send someone else in their place if they do not want to go to the job themselves.

Generally, all Agency Workers have some protection under 'The Conduct of Employment Agencies and Employment Businesses Regulations 2003, for example, the right to be paid even if the agency has not been paid by the hiring organisation.

They also enjoy protection under Agency Workers Regulations 2010. This gives them two types of rights day 1 rights and rights after a 12-week working period. Day 1 rights include being given a Statement of Employment Particulars and rights not to be discriminated against, they have to be given access to your facilities, such as toilets and canteen and they have to be made aware about any job vacancies that your company has.

12-week rights give them further rights around working time, breaks, holiday and pay. Basically, they will enjoy the same benefits that employed people enjoy, doing the same job, at your organisation. To protect yourself make sure you have told the agency that you are planning on using for labour about all of the benefits your regular employees have. The agency will then ensure that after the qualifying period they get the same.

There are obvious dangers with agency staff and your relationship with them, for example, make sure they are not discriminated against, harassed or bullied while they are at work for you and make sure you give them access to job vacancies and your facilities.

There are many advantages for a business in the use of Agency Workers as well, for example, it is a quick way of recruiting staff at short notice, and agencies will normally have a good supply of people waiting. It is also possible to see how an individual performs and fits into your organisation and if they fit you can go on to offer that person a permanent position in your company.

Another advantage is that if the person does not perform well or their conduct is not up to scratch or is problematic in some other way, for example coming to work late, absenteeism, or just does not get on with people around them in your company then that person is not your problem because they do not work for you. Simply ask the agency not to send that person to you in the future and let the agency deal with them.

It is always a good idea if you do want to use Agency workers to have clauses in the contract that you sign with the agency stating that if problems with the person arise then you are not that person's employer. That way you are getting the labour you require without the responsibilities and legal requirements associated with employment.

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