

Employment Law Briefing 30 June 2010

The Agency Workers Regulations 2010

Implications for your recruitment practices

Speakers

Anne Corder, Anne Corder Recruitment

Martin Bloom, Hegarty LLP Solicitors

Tom Hadley, Recruitment & Employment
Confederation



Anne Corder Recruitment

The logo for Hegarty is the word 'Hegarty' in a bold, red, sans-serif font. To the right of the text is a large, abstract graphic consisting of several overlapping, curved lines in shades of blue and red, resembling a stylized 'C' or a circular path.

Employment Law at Hegarty LLP

Hegarty LLP Solicitors has a prominent reputation for providing practical first-class employment law advice to its clients in this fast moving area of law. The Employment lawyers understand the challenges facing human resources professionals, and are proactive in developing close working relationships with clients. The team is well known throughout Peterborough and Stamford, but the calibre of our lawyers has meant we have been highly successful at attracting national clients.

Speaker Profile

Martin Bloom – Head of Employment, Partner



Martin became a Partner at Hegarty LLP in 1983, is Head of the Employment Law department and has been with the firm since 1979.

Expertise. Employment law, from drafting employment contracts and consultancy agreements to representation at employment tribunals across the country.

Experience. Martin has over 30 years' employment law experience and is an accomplished presenter undertaking a large number of seminars and courses each year, including national conferences, in-house training and breakfast updates. He holds regular employment law updates with the local CIPD group and has published a book addressing the issue of bullying and stress in the workplace. For a number of days a year Martin sits as a Part Time Employment Tribunal Judge in the East Midlands region. He is a member of the Industrial Law Society and the Employment Lawyers Association.

Clients. Martin advises a very wide range of businesses and individuals on all matters relating to employment law. His clients range from individuals to large multinational organisations and 'high street' names employing thousands of people in the UK and beyond.

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Anne Corder Recruitment

ACR: Perfectly placed to work for you



Anne Corder Recruitment is a hand-picked team, numbering a dozen. Hand-picked isn't a word we use lightly. Just as when we source candidates for clients we don't play the numbers game so, when we're recruiting for our own business, we strive for quality over quantity. Only by carefully considering each candidate, their background and their suitability can we ensure a perfect fit.

A perfect fit for ACR is someone who is happy to work within our ethos of being an extension of our clients' in-house HR team. We work with our clients, understanding not only their requirements but also their company culture and longer term expectations. It's because of the way we work that our team is shaped as it is. Two thirds of our recruitment partners and client account managers have worked in HR departments. They understand exactly what ACR needs to provide because they've been on the other side of the fence. Their experience and knowledge is invaluable not only to ACR but to the clients they work with.

Of course, having worked in HR, they are also perfectly placed to help HR departments recruit new members of staff. They understand more than anyone else the qualities that make a good HR director, manager or executive. Anne Corder herself started the agency after spending 15 years working for a number of HR departments for regional and national companies which obviously provided the foundation for the company she has built up today – and is continuing to build.

The past year has seen Anne Corder Recruitment receive the gold standard of accreditation from the industry regulator, the Recruitment and Employment Confederation, an achievement of which everyone was incredibly proud. Anne has become an accomplished blogger, regularly 'speaking out' via her blog page about everything from the Agency Workers Directive to the agency's charity efforts – Anne's Midnight Cowgirls raised £2,000 for Sue Ryder Care at Thorpe Hall in Peterborough taking part in the Midnight Walk.

After securing a Green Apple Award for the Paperless Office Project, ACR continues to lead the way in reducing, reusing and recycling. Many clients are looking to ACR for advice and guidance about introducing new working practices to lower paper usage.

We've been on Twitter.com for almost a year now, with more and more candidates following us to keep abreast of new vacancies – it's immediate, it's quick and it's effective. Of course, just because things are moving on, doesn't mean we're not holding on to the values that have shaped us.

We continue to work with an increasing number and range of companies in different sectors across the region, providing permanent contract, interim and temporary staff for a wide cross-section of roles. We provide the very best service for our clients and candidates, offering them tailored packages and consistently providing the kind of added value that makes life, for them, that bit easier.

You'll find a number of ACR staff present today so please feel free to stop and chat. And when you get back to the office look us up on Google!

Anne Corder Recruitment
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Agency Workers Directive Seminar

30 June 2010

DeafBlind UK, Peterborough



Anne Corder Recruitment

Welcome

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Agency Workers Regulations 2010

Martin Bloom

**Partner & Head of Employment Law,
Hegarty LLP Solicitors**



Introduction

- The EC Temporary Agency Workers Directive 2008/104
- The Agency Workers Regulations 2010
- In Force 1st October 2011



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Who are covered?



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The Principle of Equal Treatment

- Basic working and employment conditions
- Relevant Terms and Conditions
- Comparable Employees



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Relevant Terms and Conditions

- Included items
- Excluded items

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Annual Leave



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Qualifying Period



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Day One Rights



Rights to Access to Employment

History

Governance

Industry Standards

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Annual Reports

Media Zone

Internal Vacancies

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INTERNAL VACANCIES



The following vacancies are currently available



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Managing the development and delivery of ABTA's strategic Plan

closing date: 27 Jun 2010



[Head of Communications](#)

Senior management leadership of the communications strategy and team.

closing date: 04 Jul 2010



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Liability of Agency and Hirer



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Right to Receive Information



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Claims to Unemployment Tribunals



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THE AGENCY WORKERS REGULATIONS 2010

1. Introduction

- 1.1 The EC Temporary Agency Workers Directive (2008/104) was passed by the European Parliament in October 2008. EU Member States became obliged to transpose the Directive into national law by 5th December 2011. The Agency Workers Regulations 2010 come into force on 1st October 2011.
- 1.2 The European Directive provides for Equal Treatment between temporary agency workers and permanent employees or workers in terms of basic working and employment conditions covering such matters as working time, overtime, breaks, night work, holidays and, of course, pay.
- 1.3 After a considerable amount of debate and public consultation involving both Unions and Employer's organisations the Regulations have now reached the statute book. It is estimated that the additional cost to both public and private businesses will be in the region of £1.8 billion and will involve HR professionals in spending about 1½ hours per agency worker in dealing with administration issues arising from the Regulations.

2. Who are covered?

- 2.1 Workers supplied by a temporary work agency to work “temporarily for and under the supervision and direction of a hirer” will be covered. The Regulations do not apply to Employment Agencies who seek to provide permanent positions for workers. In essence the Regulations cover “temps”. – Regulation 3(1).
- 2.2 Temporary workers who are supplied to the Hirer through intermediary companies will be covered – Regulation 3 (3).
- 2.3 Genuinely self employed workers i.e. those who work for a Hirer or Temporary Work Agency in a client / customer capacity are not covered – Regulation 3 (2).
- 2.4 The definition of “Agency Worker” has the same impact as the definition of “worker” in the Working Time Regulations 1998.
- 2.5 The use of loopholes such as Intermediaries and Umbrella Companies to avoid the Regulations is specifically excluded – Regulations 3 (4) and 3 (5).

3. Equal Treatment

- 3.1 The Regulations provide Agency Workers with an entitlement to the same “basic working and employment conditions” as they would be entitled to for doing the same job had they been recruited by the Hirer – Regulation 5 (1).
- 3.2 The “basic working and employment conditions” are further defined as “the relevant terms and conditions that are ordinarily included in the contracts of workers of the Hirer” – whether by Collective Agreement or otherwise – Regulation 5 (2).
- 3.3 The Regulations introduce the concept of “comparable employees”. – Regulation 5 (3).

- 3.4 An employee is a comparable employee in relation to an Agency worker if, at the time of any alleged breach of the Regulations, the employee and the Agency worker are working for and under the supervision and direction of the Hirer and are engaged in the same or broadly similar work (and where relevant having regard to any similar level of qualification and skill) and where they are based at the same establishment or if a comparable employee is based at a different establishment. – Regulation 5 (4).
- 3.5 The Regulations deal with the comparison between an Agency worker and an employee of the Hirer on an “as if” approach. An Employment Tribunal will be able to construct, hypothetically, how the Agency worker would have been treated in comparison to the employee. The Agency worker will need to produce some evidence of how comparable employees are treated.
- 3.6 An Agency worker cannot use a comparable employee whose employment has ceased – Regulation 5 (5).

4. Relevant Terms and Conditions

- 4.1 These include terms and conditions relating to: -
- Pay
 - The duration of working time
 - Night work
 - Rest periods
 - Rest breaks
 - Annual leave
- Regulation 6 (1).
- 4.2 “Pay” includes fee, bonus, commission, holiday pay or other emolument referable to the employment – Regulation 6 (2).
- 4.3 Items excluded from the definition include:-
- Occupational sick pay
 - Pension
 - Maternity, paternity or adoption pay
 - Redundancy payments
 - Share option schemes or profit share schemes
 - Any bonus, incentive payment or reward which is not directly attributable to the amount of quality of work done by the worker – Regulation 6 (3).
- 4.4 Some benefits of a fixed monetary value will be included such as luncheon vouchers but there is doubt over whether such items as staff discounts are covered.

5. Annual Leave

- 5.1 Agency workers are entitled to the same statutory entitlement to holidays as all other employees and workers i.e. 5.6 weeks paid leave.
- 5.2 If a Hirer provides its employees with more than the statutory minimum the Agency worker will be able to claim the same amount as a comparable employee.

6. Qualifying Period

- 6.1 Agency workers are not entitled, however, to equality in respect of basic working and employment conditions from “day one”.
- 6.2 An Agency worker must work for the Hirer for a continuous period of 12 weeks or more. – Regulation 7 (2).
- 6.3 The Agency worker must complete the “same role” for a continuous period of 12 weeks or more.
- 6.4 Any part of a week will count as a week e.g. if an Agency worker only works on Mondays each week 12 continuous Mondays will constitute the qualifying period.
- 6.5 To constitute a new role the work undertaken by the Agency worker must be “substantively” different to the work or duties of the previous role – Regulation 7 (3) (b).
- 6.6 These provisions will prevent a Hirer from simply changing the Agency workers job title every 11 weeks. But an Agency worker who undertakes cleaning for six weeks and then undertakes the role of a driver for six weeks would clearly not qualify.
- 6.7 There are further continuity provisions which prevent Hirers ending an assignment and then within days renewing it.
- 6.8 The following breaks or gaps will not bring to an end the “relationship” for the purposes of “qualifying”:-
- Breaks of 6 weeks or less.
 - Sickness or injury absences of less than 28 weeks.
 - Pregnancy and maternity leave.
 - Statutory or contractual time off (e.g. holidays).
 - Jury service of less than 28 weeks – Regulation 7 (8) and 7 (9).
- 6.9 Time spent working by the Agency Worker prior to 1st October 2011 does not count. – Regulation 7 (12).

7. Day One Rights

- 7.1 From Day One Agency workers are entitled to access to collective facilities and amenities – Regulation 12.
- 7.2 These include:-
- Canteen or other similar facilities
 - Child care facilities
 - Transport services
- 7.3 Hirers will be able to prevent access to such facilities if they can justify their objection on objective grounds. – Regulation 12 (2).

8. Rights to Access to Employment

- 8.1 An Agency worker has the right to be informed by the Hirer of any relevant vacant posts and to have the same opportunity as a comparable employee or worker to find permanent employment. – Regulation 13 (1).
- 8.2 Information about any vacancies may be by way of general announcement e.g. intranet or notice board – Regulation 13 (4).

9. Liability of Temporary Work Agency and Hirer

- 9.1 Hirers will be liable for any breach.
- 9.2 The Temporary Work Agency will not be liable if it can show it took reasonable steps to ensure the Hirer complied with its obligations under the Regulations. – Regulation 14 (1) (2) and (3).

10. Right to Receive Information

- 10.1 Agency Workers may make a written request to the Temporary Work Agency for a written statement asking for details of any alleged breach of Regulation 5.
- 10.2 The Temporary Work Agency must respond in 28 days providing any relevant information to basic working and employment conditions.
- 10.3 If the Agency does not reply the Agency worker can then submit a written request to the Hirer.
- 10.4 The Hirer must then reply in 28 days.
- 10.5 Agency workers are also able to submit written requests (i.e. without going first through the Agency) and the Hirer must reply within 28 days to that request.
- 10.6 Employment Tribunals can draw adverse inferences from a failure to respond or adequately to respond to such requests. – Regulation 16.

11. Unfair Dismissals and The Right not to Suffer a Detriment

- 11.1 Agency workers who are employees who are dismissed as a result of enforcing any of their rights under the Regulations shall be regarded as automatically dismissed.
- 11.2 Agency workers have the right not to be subjected to any detriment as a result of enforcing their rights under the Regulations.
- 11.3 It is a requirement that the Agency worker seeks to enforce their rights “in good faith”. – Regulation 17 (1) (2) (3) (4) and (5).

12. Claims to Employment Tribunals

- 12.1 Claims must be brought within 3 months of the act complained of or the last of a series of acts complained of.
- 12.2 Claims may be allowed out of time if just and equitable to do so.
- 12.3 Tribunals shall, if it considers it just and equitable:-

- Make a declaration as to the rights of the Agency worker
- Order compensation which is just and equitable (there is no limit on the amount)
- Order the Hirer or Agency to take action to stop or reduce the adverse effect complained of.
- There will be no awards for injury to feelings

12.4 For any breach of Regulation 5 (equal treatment in respect of basic working and employment conditions) the award must not be less than two weeks pay. – Regulation 18.



Agency Worker Regulations Update

Tom Hadley, Director of External Relations

Recruitment &
Employment
Confederation

- › Background
- › A brief history of the AWD
- › AWR – What does it say, what does it mean?
- › Next steps and context



Background - who we are

- › The REC is the trade association representing the whole of the UK recruitment industry
- › We have over 3,700 Corporate Members
- › Over 700 professional permanent recruiters
- › Representing 75% of the Interim Market
- › Over 500 business dealing within contracting market place
- › We have over 6,600 individual Members
- › The REC and predecessor companies have represented the industry for 80 years

Association of
Executive
Recruiters

Three small teal dots.

Benefits to HR & clients

- › Risk management
- › Code of Professional Practice (Best Practice)
- › Four inspectors – 35 inspectors per month
- › Yearly self assessment process
- › Complaints Procedure – Standards
- › Committee (CBI & TUC)
- › Institute of Recruitment Professionals –
- › Code of Ethics and Professional Conduct



SERIOUS ABOUT STANDARDS?
START
TELL YOUR CLIENTS



10
TOP
ways to....



Report on Jobs

UK labour market 7th April 2010

The most up-to-date source of monthly UK labour market data and analysis

Report on Jobs

KPMG
REC

The Report on Jobs is a monthly publication of the Recruitment and Employment Confederation and KPMG LLP.

The report features original survey data which provide the most up-to-date monthly picture of vacancies, appointments, staff availability and employee wage and price trends.

- Executive summary
- Appointments
- Vacancies
- Sectoral demand
- Staff availability
- Pay pressures
- Special features

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Fastest rise in permanent placements for over twelve years.

Staff Appointments via Recruitment Consultancies

Key points from March survey:

- Strongest growth of permanent placements since October 1997.
- Temporary/contract staff billings rose at slowest rate for thirty-four months.
- Growth of vacancies eased but remained marked.
- Further rise in candidate availability.
- Wages and salaries increased again.

Commenting on the latest survey results, Bernard Brown, Partner and Head of Business Services at KPMG said:

"The UK jobs market seems to be going from strength to strength with permanent job placements growing at the fastest rate for 12 years. These figures show that private sector confidence is returning and that the UK is ending its recession at a pace. However, a lot of the current hiring activity is going on in the public sector. The public sector recession which clearly is on the cards hasn't hit the jobs market yet but when it does, the upside trends we have seen over the last couple of months may cease to last."

- Contracted from Apr 08 – July 09
- 8 months of improvements in temp/perman jobs
- Vacancies starting to rise

Jobs Outlook

REC
Industry Research Unit

Jobs Outlook

REC Monthly Employer Tracking Survey March 2010

Summary

- The REC's Confidence Barometer fell in February in spite of improving business confidence.
- Consumer confidence rose to its highest level in the last year, despite low savings growth.
- Unemployment is up but is expected to increase over the next few months.
- Redundancies and headcount freeze levels are up but employers still predict slight growth in permanent staffing over 2010.
- Overall temporary worker staffing levels almost certainly stable.
- Most employers (58%) are unsure which political party will win the sector jobs after the election.

The REC Confidence Barometer

The Barometer stood at 10 in February, falling back two points from the previous month's figure as employers became more cautious about outlook for jobs.

In the next 2 months, do you think that your organisation's use of permanent and agency workers will increase or decrease?

Response	Percentage
Increase greatly	2%
Increase slightly	12%
Stay the same	38%
Decrease slightly	38%
Decrease greatly	10%

Notes: The confidence barometer is calculated from the answers to the questions relating to future expectations, responses are weighted on the basis of confidence and the results combined to show the balance of opinion among employers.

Index

- The REC Confidence Barometer
- Labour Dashboard
- Permanent Hires
- Temporary Agency Workforce
- Talent Management
- Agency Workers Directive

1 Call 0207 009 2188 for more information

Recruitment & Employment Confederation

- Employers confidence increasing
- Recruitment freezes being lifted
- Predict more hiring of perms in next 3–12 months

AWR – Our campaign



Leading the debate through the Agency Work Commission

Our campaign – Building a coalition



AWR – A brief history



The 'agreement'...

- The deal allows for 12 weeks of placement before equal treatment kicks in
- Equal treatment will be on the grounds of pay and working time
- Pay will not include contractual sick pay and occupational pensions schemes
- All other areas were up for grabs..

The latest...

- › Regulations published last January
- › Official guidance put on hold
- › Pre-election, shadow business team were keen on a review
- › Initial soundings from the coalition Government
- › What are the political drivers?

“The Directive must be implemented quickly and should cover redundancy pay for temps. We are seeing agency workers picked off as the cheapest and easiest to get rid of”.

Brendan Barber
TUC General Secretary

AGENCY WORKERS

Agency workers' coalition sets out how to implement EU law

A coalition of employer groups, unions and legal experts has presented recommendations to the government on how best to implement the controversial Agency Workers Directive (AWD).

The Agency Work Commission – made up of representatives from the Chartered Institute of Personnel and Development, CBI, TUC and the Recruitment and Employment Confederation (REC) – handed its final report to employment relations minister Pat McFadden last week.

The report details a series of recommendations on how the AWD, which aims to give equal workplace rights between temp and permanent staff, can be brought into UK law at minimum disruption to employers.

These include limiting the scope of equal treatment between agency and permanent staff to basic salary and

other basic statutory rights; and making it easy for employers to establish the principle of equal treatment within an organisation.

Kevin Green, commission chairman and REC chief executive, told *Personnel Today*: "Trying to apply bonuses, gym membership or free lunches to someone only employed for 13 weeks will be impossible to administer for HR departments and recruitment agencies."

Green said McFadden was won over by the case made by previously divided representative groups. "It's quite unique that we all came together to offer recommendations on a piece of legislation when it easily could have gone the other way," he said. "It could have been quite fractious between employers and agencies and unions, but [McFadden] was delighted with the various organisations coming together and speaking with one voice."



Some Practical implications

- › Scope of who equal treatment applies to
Self-employed workers, LCCs etc..
- › What does equal treatment cover?
Definition of pay, holiday entitlements ...
- › 'Flagging' the 12 week qualifying period
Specific issues for 'repeat assignments'
- › Liability issues
some onus of end-users and intermediaries
- › Establishing Equal treatment
Specific issues where there are no formal pay-bands
- › Implementation date
October 2011

Some Practical implications

What is Pay?

Definition of pay INCLUDES:

- › Any fee,
- › Bonus;
- › Commission;
- › Holiday pay; or
- › Other emolument referable to the employment

EXCLUDES:

- › Pension;
- › Occupational sick;
- › Maternity, paternity and adoption pay;
- › Redundancy payment;
- › Financial participation schemes;
- › Bonuses to awarded pursuant to an appraisal system aimed at long-term management, motivation and retention of staff

The employer perspective

“From the standpoint of employers, it is vital to have clarity both about what equal treatment means in practice and about the process for implementing it. It is also important that the regulations are clear about the responsibilities of the end-user.”

Chartered Institute of Personnel and Development (CIPD)

“Agencies and end-users are united in their desire to see the UK Regulations maintain important flexibilities in the UK labour market and that they clearly define the responsibilities of all parties”.

Confederation of British Industry (CBI)

The employer perspective

“ Hiring activity is not always HR, it is often done by line managers who will extend an assignment week by week so are unlikely to know or follow a specific process”

“There will be a rocky period during implementation, but temporary workers are there to fulfill a need which wont go away”

“Some industries and sectors wont have pay scales and formal salary bandings”

The employer perspective

- › Reviewing internal procedures
Who decides on use of temporary workers
- › Need to share data on pay
Positive feedback on need to co-operate with agencies
- › Evaluate current pay rates for temporary staff
Planning ahead in terms of direct impact on salary
- › Being clear the 12 week derogation period
Who will 'flag it up'
- › Obligation to highlight permanent jobs
Also concerns of collective facilities etc..
- › Possible new models
Churn factor, 'Swedish' derogation etc..Need to work closely with recruitment partners to prepare and implement

Next steps and wider context



REC Manifesto: Creating opportunity and jobs

- › Three themes
 - › Creating the right economic climate
 - › Removing barriers to growth
 - › Delivering opportunity and jobs





Recruitment 2020

Intermediaries
have become
hugely important
to us. They tell
us where to shop,
who to do business
with – and who
to **hire...**

DEMOS



Recruitment 2020

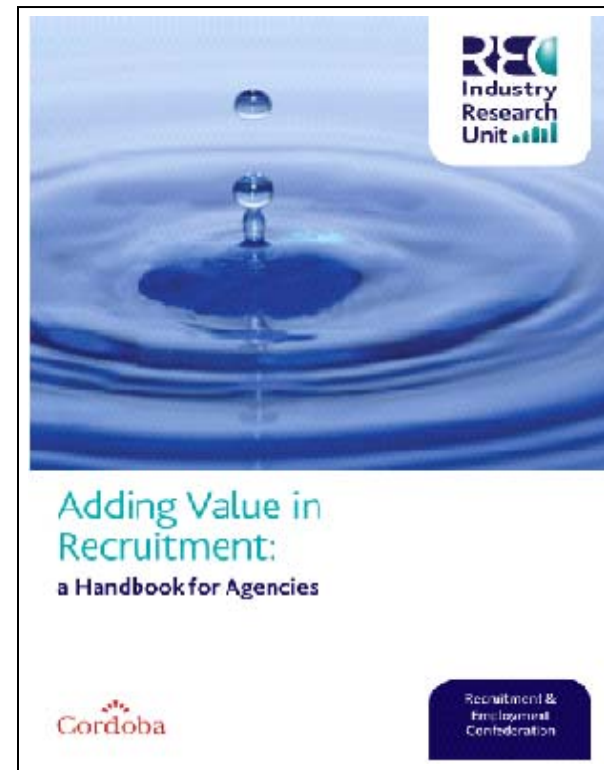
How recruitment is changing
and why it matters

Niamh Gallagher
Duncan O'Leary

New research



- ▶ Social Media
Launched last month



- ▶ CIPD added value

Immediate priorities

1. Still scope to influence
2. Look at ongoing guidance and support procedures
3. Work with recruitment partners to review potential implications
4. Impact assessments – first stage of the planning process
5. Look out for regular updates and official guidance
6. Work on best practice approach together – Different models?

Questions and feedback..



Questions And Answers



Feedback Form

Employment Law Briefing: Agency Workers Directive – 30 June 2010

We value your feedback as it helps us to plan future events. Please tick one box for each of the following categories:

		Excellent	Very Good	Average	Poor
Venue	Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Atmosphere	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Food	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Briefing	Length	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Format	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Topics	Level of detail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Usefulness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speakers	Martin Bloom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Tom Hadley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What made the briefing worth attending?

How could the briefing have been improved?

Which subject(s) would you like to see covered at future briefings?

Any further comments on any aspect of the briefing:

Your name and organisation:

Please hand in your completed form as you leave.

Hegarty LLP Solicitors and Anne Corder Recruitment will use your feedback form to look at ways in which we can improve our presentations and our services, and for the purposes of administration, statistical analysis and future marketing of our services. By providing us with your feedback or suggestions, you agree that we may (but are not obliged to) use them (at our discretion) without restrictions and free of charge.



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