

# AWR: Clearing the confusion

The Agency Workers Regulations 2010 (AWR) will implement the 2008 EU Directive on Temporary Agency Work in Britain when they come into force on 1st October 2011. The British implementation of this European regulation has been a long time coming and the new regulation has the power to transform organisations that rely heavily on the flexibility of temporary workers.

**T**he biggest issue around AWR at the moment is the general lack of understanding of the detail of the regulations and a rather pessimistic view of what they actually mean," commented Andy Smith, Adecco Group's Head of Regulation and Employment. "We've been running a large number of seminars on the topic and I've been quite shocked by how little some employers and agencies know about AWR when we're less than a year away from full implementation.

"There has been a degree of 'wait and see' from British business. But any hope of changes to the regulations were stamped out on 19 October when the Coalition Government announced that it had no plans to do so. Finally, people are waking up to the fact that they may need to review their workforce strategies if they're not to risk falling foul of AWR."

"The big misconception is that the equal treatment of agency workers should be approached in the same way as other discrimination legislation such as age or disability, and that organisations need to make direct pay and benefit comparisons with identified members of their permanent workforce. But the regulation is actually something rather different and what an agency worker will become entitled to after 12 weeks will be only what relevant terms and conditions they would have been entitled to as a direct hire on day one in the role, the point of reference being any in-scope terms that you 'ordinarily include' in direct hires' contracts."

## Scaremongering

Andy suggested that all the scare stories bandied about in

the trade press about the skyrocketing costs of employing agency workers and how the Directive would mark the end of recruitment agencies actually showed a lack of understanding of the issues in the media. "It certainly won't be the end of the recruitment industry, and many organisations actually won't be affected by AWR at all," he told *Connections*. "For those businesses that just use short-term assignments on an ad-hoc

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basis, very little will change since they tend not to have any agency workers on assignments of twelve weeks or longer.

"Frankly, in most senior roles in the professional staffing sectors, the regulations are unlikely to apply either. Professional contractors tend to work through limited companies and where there is genuine self-employment these are outside AWR's scope. Also, many senior and specialist agency workers brought in for expert roles are paid more than the direct-hire equivalent anyway, so they won't be looking for any equalisation of pay and benefits.

"Where we may see a real impact is in parts of the public sector where direct hire rates, often negotiated in conjunction



## The 30 second guide to AWR

### What are the regulations all about?

Equal treatment: agency workers who have worked for 12 weeks on the same assignment gain the right to the same basic working and employment conditions that they would have been entitled to if they had been recruited directly by the client for the same job.

### Who's defined as an agency worker?

It's easier to say who isn't: that's generally contractors and service providers working through their own limited company.

### When does the right to equal treatment kick in?

Only after an agency worker has completed 12 weeks in a particular role. However, employers won't be able to 'break' an assignment after 11 weeks and reemploy the temporary worker into the same role with anything less than a six week break in the assignment.



with the relevant unions, are significantly higher than agency pay scales. Certainly public sector recruiters should be carrying out the necessary analysis now to ensure there are no surprises next October – especially in this age of public finance austerity.”

#### Get planning now

Commenting on who should be putting most into their AWR planning and how, Andy's conclusion was two-fold. “It's

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up to HRDs to ensure they really understand what AWR is all about,” he said. “It's very different from any other anti-discrimination legislation. The key is not to make assumptions. Start planning now. Be proactive with the staffing agencies you use: make sure you're all on the same page and plan what will be different for your organisation after 2011 – and how you'll deal with any different recruitment imperatives.

“Finally, the Government has to recognise that there's a high level of confusion among organisations at the moment. There's a high degree of awareness of AWR, but a real lack of clarity. The Government must get its guidance right soon and get it to an audience eager for information.”

“I actually think there's greater onus on agencies than on employers to get their houses

in order on this,” added the CIPD's employment adviser, Mike Emmott. “Those that don't take planning for the AWR seriously must have a death wish. When AWR comes into force getting its operation right will be at the heart of what a lot of agencies do. If they're not prepared and fall foul of the Regulations, they can hardly expect to stay in business.

“The positives that I'm seeing are that our members are becoming far more switched on to the Directive. While they may still require clarity around issues such as bonus entitlements and some of the nitty-gritty that's yet to be fully resolved by Government, most organisations are finding the right help and working with their agencies to ensure they're not caught out next year.

“Agencies need to be putting processes in place to take their clients' headaches away. While AWR may bring more checks, bureaucracy and a little more cost for agencies, they need to ensure that the client sees only a user-friendly process that will actually benefit the agency-client relationship.

“Based on what has happened in other parts of Europe where AWR has already been implemented, workforce patterns tend to stabilise over two to three years and while there may be a reduction in long-term agency roles in the short-term, the pendulum may swing again further down the line.

“It is time the Government got off the fence though. We believe the Regulations are good enough as they are. The next year should be about guidance and clarity – not uncertainty.”