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Employee, Worker, Self Employed? Which?

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Introduction

Employment Tribunals have shown that they are increasingly looking at the true nature of working relationships despite what the contract may say. Last month, they ruled that Car Valeters engaged by Autoclenz as self-employed contractors were employees, despite a substitution clause embedded into the service agreement. This made Autoclenz liable to pay national insurance contributions, holiday pay and provided the Valeters with full employment rights.

So what options do employers have in engaging workers? This month's factsheets looks at the options.

Fixed Term Employees

Employees engaged on fixed term contracts provide organisations with the flexibility to bring in resource as it is needed and are very commonly used to cover fixed periods of leave (e.g. maternity absence) or a specific project that is less than one year in duration. Employees on fixed term contract are entitled to the same terms as permanent employees including:

- Equivalent pay, benefits and pension
- Access to permanent vacancies
- Protection against redundancy or dismissal
- Protection from discrimination.

The expiry of fixed term contracts count as dismissal, for unfair dismissal purposes, after one year of service. Employers should ensure that contracts not renewed are based on 'fair' reasons.

Contact HR Insight

Offices in Romford, London (City & West End), St Albans, Hayes and Redhill.



Casual Workers

Casual workers are not considered to be employees but they are paid through standard PAYE processes. They are commonly used where resource is needed on an irregular or flexible basis for very short periods of time. Critically, the employer is under no obligation to offer work to casual workers and they are under no obligation to accept any offers of work. These are defined as workers, rather than employees.

What are 'Worker' rights?

Unlike employees, workers do not have protection against unfair dismissal, protection under TUPE, the right to maternity or paternity pay or leave or statutory sick pay. They do however benefit from several basic rights:

- Rights to paid holiday leave, restrictions on working hours and the right to rest breaks
- Right to the national minimum wage
- Protection for whistle-blowing
- Health and safety protection
- Protection from some discrimination and unlawful deductions.

Agency Workers

Employing workers through agencies can be a simple way of sourcing and administering temporary workers. From 1 October, new Regulations require these workers to be provided with the same basic pay and working conditions (see August Factsheet) as permanent employees engaged in a comparable role after 12 weeks.

General Enquiries
enquiries@hrinsight.co.uk

Legal Support with HRi Legal
legal@hrinsight.co.uk



Freelancers & Contractors

This continues to be the area of focus by HMRC. Individuals who are genuinely self-employed do not enjoy statutory employment or worker rights. The relationship is largely governed by the contractual terms that have been agreed between the parties but, as we have seen from the Autoclenz case, the Tribunal will look at the true nature of the working relationship in the event of a claim by the individual or the HMRC.

PAY RATES

With the press reporting soaring rates of inflation, there is an increasing pressure on employers to review salaries. We can report however that average pay increases are running at 2.5% in the period to April 2011 with 20% of businesses still confirming pay freezes.

OPEN SEMINAR

HR Insight is hosting a number of free seminars about engaging employees and the new Agency Worker Regulations in September, October and November 2011. Please let Alex know on awebb@hrinsight.co.uk if you, or a colleague, would like to attend.

Can We Help?

If you have any queries about the status of your workers or any specific concerns about the processes to follow in dealing with a specific situation, please contact us on **01708 758 958** or visit us at www.hrinsight.co.uk.

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