

Agency workers rights: how could contractors be affected?

Last week [a deal was announced](#) between the Government and unions that legislation could be introduced in the autumn that gives agency workers employment rights after 12 weeks. The move has been warmly welcomed by unions but described as "disastrous" by a business group. But how could this affect contractors?

We Don't Want Them, But We Might Get Them

Our own [survey results](#) released in April this year showed that nearly 100% of contractors didn't want employment rights and were happy with the current conditions, with 91% saying they earn more as contractors. Professional contractors are clearly not vulnerable and don't want this at all.

"But there is no guarantee that contractors who use agencies won't be included in these measures, " warns Adrian Marlowe, managing director of recruitment industry specialist legal consultancy [Lawspeed](#).

Chance of an Opt out for Contractors?

Since contractors don't want these measures, perhaps a solution would be to include some sort of opt out for workers who operate via [limited companies](#).

Marlowe agrees: "That could work, but is likely to result in further changes having to be made in the proposed legislation."

But what about contractors who provide their services via [contractor umbrella companies](#)?

Although we can only guess at what will be in the legislation, one might assume that umbrellas who are employment management companies would not be caught since their workers already get full rights. It could however affect those umbrellas that structure themselves more like payroll companies.

Rob Crossland, managing director of the Warrington-based [Parasol](#) points out that it could have the reverse effect for some umbrella contractors: "We are an professional employment company, and as such all our contract workers already get these rights proposed, and more. In a strange way if they bring these measures in it could result in them actually reducing the rights they have."

Crossland continues: "The Government still doesn't seem to acknowledge or understand the flexible work force. Hopefully someday they will understand it - we are tired of the continual amount of red tape put upon us: [MSC](#), [IR35](#), [Income Shifting](#), Agency Workers. When will it end?"

"There needs to be a test so that those vulnerable workers can be identified and covered by the newly proposed measures, but it needs to ensure that contractors are excluded, " says Crossland.

And Direct Contractors?

Contractors who deal directly with their clients won't be included, as this is a normal business to business relationship. But this could mean a decrease in firms using recruitment agencies if they are better off hiring directly. This would undoubtedly affect the bottom line of the £24.6 billion recruitment industry.

One potential bonus is that firms hiring contractors directly need to mitigate the risks that contractors become like employees and end up claiming employment rights. The starting point to prevent this is to ensure their contract workers are outside IR35, which is never a bad thing for contractors!

History of Red Tape

The red-tape burden and legislation appears to have come full circle. Do we get rights, or do we not? First it was no, not without a fight. Then the answer was definitely not. And now it seems the answer will be that we have them. Confused?!

It all started in 1999 with the [IR35 legislation](#) which classes some contractors who provide services through their own companies as 'disguised employees'. These workers then pay significantly more taxes, just as though they were employed directly by the client - but they don't automatically get any employment rights, like sick pay, holidays, etc.

However, some contractors who spent a long time with one client did manage to claim rights through employment tribunals, using the same case law that is used in IR35 cases. But this strategy was no longer viable after a Judge ruled during the [James versus Greenwich](#) case that a worker engaged via an agency cannot be entitled to employment rights.

“ There is no guarantee that contractors who use agencies won't be included in these measures. ”

Adrian Marlowe - Lawspeed

And now with these new agency workers proposals, it could mean that contractors are entitled to some employment rights. "The red-tape the Government has burdened our industry with over the last ten years may have finally got itself in a twist, " says Dave Chaplin, CEO of ContractorCalculator.

Taming the EU

The problem in all of this is the looming [EU Agency Workers Directive](#), whose effects on our flexible labour force would be far more draconian than the ones proposed last week. There is a lot of political play here. The theory is that by introducing these weaker proposals we might be able to fight off the EU directive.

Last week John Cridland [CBI](#) Deputy Director-General, described these measures as the "Least worst option". "There has been a major risk of damaging legislation coming from Brussels, and the CBI has judged that the government's proposals represent the least worst outcome available for British business, " added Cridland.

One thing is for sure, if the legislation goes through the cost of hiring temporary workers will increase, which will inevitably result in jobs being lost. Decreasing the effectiveness of our flexible labour force might not be a good move when the economy is already under strain.

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Dave Chaplin,
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Dave Chaplin is a former IT contractor in the City of London, and is founder and CEO of ContractorCalculator, and author of the Contractors' Handbook.

Started in 1999, ContractorCalculator (this site) is the leading independent website for the UK contracting industry – most of whom are highly skilled knowledge workers. [Read Full Profile...](#)

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