

Employment practices review

From:
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To: Employment practices review
Subject: Zero hours contracts

Follow Up Flag: Follow up
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Dear Sir,

Staffing Industry Analysts is the global advisor on staffing and workforce solutions. Our proprietary research covers all categories of employed and non-employed work including temporary staffing, independent contracting and other types of contingent labour.

We would be happy to contribute our knowledge and experience of providing workforce solutions to the review. In the meantime, I wish to offer the following personal observation.

I have been struck by the lack of clarity and denunciation of so-called zero hours contracts and the false impression given by the media and others that banning these will cure the problems facing today's workers in the gig and flexible work economy. There needs to be a distinction between the zero hours contract of employment (which has already been banned in 2015) and the contract for services, which is a legitimate form of employment for many and does not automatically equal exploitation.

The zero hours contract of employment became an issue when employers started to use contracts of employment offering no guaranteed hours in greater numbers as a solution to the need for flexibility and the increasing cost of employment, or put another way the decreasing value of people as a cost of doing business.

I started working as a lawyer specialising in the recruitment and temporary staffing sector in 1998, when contracts for services (as opposed to contracts of employment) were the predominant form of contract used for the engagement of casual workers. These were the norm for temporary staffing firms. At that time, I worked for the Recruitment and Employment Confederation and our template contract for the engagement of a temporary worker's services was widely used within the industry.

Such contracts were highly effective as although they gave no guarantees of work, they also permitted the worker to refuse work and to leave an assignment at will with no penalty if they obtained work elsewhere or decided to stop work for personal reasons. With light but effective regulation of the industry prior to 2003 (the Conduct of Employment Agencies and Employment Businesses Regulations 1976 revised 2003; and Chapter 7 Income and Corporation Taxes Act) the staffing sector grew from £3bn to £23bn in the decade from 1993. Growth in the UK economy was assisted by the availability of flexible skilled labour provided by temporary staffing firms.

However, the desire for cheaper labour led to a rise in the "inventive" use of models to drive down the cost of workers. This led to the exploitation of the travel and expenses dispensation established in 1998 by some staffing firms to reduce the cost for employers. This involved employing workers on contracts of employment, many of which were bogus and offered no guaranteed hours. This 'loophole' spawned a whole new sector of umbrella companies employing such workers to make a profit through these schemes. In the process, many staffing firms avoided payrolling their own staff and preferred to engage workers through umbrella companies as they could supply staff more cheaply.

Umbrella companies still exist, although I suspect in fewer numbers since the travel and subsistence dispensation was removed. In that respect, some of the government's actions in relation to closing tax loopholes have had a spectacular effect – another example was the Managed Company tax legislation in 2007.

Whilst there will always be loopholes I would like to defend the model of a contract for services particularly where it is used by a staffing firm. Such contracts give workers the ability to choose whether or not they work and under existing tax legislation (Chapter 7 ICTA), the staffing firm is required to account for tax and NI. This model worked well when there was less emphasis on the cost of labour and more emphasis on the need to obtain flexible labour.

In speaking to many of our members who are both staffing firms and multi-national companies using large numbers of contingent workers, it seems that the cost of labour is gradually being overtaken as the most important consideration for employers using flexible labour, by the desire for quality candidates and compliance with legislation by suppliers. In these circumstances, it would be counter-productive to ban or limit the use of contracts for services, as this will hamper companies wishing to obtain flexible labour in future.

Kind regards,

Staffing Industry Analysts

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Executive Forum Europe October 9-10, 2017 | The Grange St. Pauls, London www.siexecutiveforum.eu

Healthcare Staffing Summit November 13-15, 2017 | The Fairmont, Dallas, TX www.healthcarestaffingsummit.com

Executive Forum North America February 26-March 1, 2018 | Fontainebleau Hotel, Miami, FL www.siexecutiveforum.com

CWS Summit Europe April 24-25, 2018 | Royal Lancaster Hotel, London www.cwssummitwe.eu

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