

GUIDANCE NOTE

The Conduct of Employment Agencies and Employment Businesses Regulations 2003

Introduced by the Department of Business, Innovation and Skill (BIS) in April 2004, regulations are in place to govern the conduct of the UK recruitment industry – they specifically detail the minimum standards that work-seekers and hirers are entitled to expect.

The regulations essentially provide protection for work-seekers looking to gain temporary and permanent employment. Any breach of the regulations is a criminal offence.

Regulations were updated in 2010 and again in 2016.

Work-seekers do have the option to 'opt out' of the regulations – this must be done before the start of an assignment.

If you would like to opt in to these regulation then please confirm by email to info@championcontractors.co.uk

Note – contractors who work with vulnerable people cannot opt out. The regulations confirm that a vulnerable person is any person, who by reason of age, infirmity, illness, disability or any other circumstances is in need of care or attention, and includes any person under 18 years of age.

If, within the scope of your assignment, you will be working with or alongside vulnerable people then please confirm this by email to info@championcontractors.co.uk

Definitions

Employment Agencies are companies who source permanent positions for work-seekers.

Workers enter into a direct contract relationship with their new end client employers and are paid by the employer on a PAYE basis.

Employment Businesses are companies who source temporary positions for work-seekers.

Workers enter into a contract relationship with Employment Businesses – they then provide their services as a temp to end client hiring organisations. Workers are paid directly by the Employment Business.

Under the regulations an Employment Agency or Business cannot undertake the following:

- Charge a fee to a work-seeker to find them work. They can charge for non-work finding services such as CV compilation, but the details of these ancillary services must be listed in a separate document and given to the work-seeker before the service is provided.
- Prevent the work-seeker from working somewhere else or ending their employment with the agency/business or working directly with another person.
- Subject a work-seeker to a 'detriment' if they decide to take up work with someone else.
- Withhold payments or wages due to temporary work-seekers, even if they themselves have not been paid by the end client hiring organisation or have no timesheet authorised by the end client hirer.

Note - This does not apply to employment agencies who are not responsible for paying a work-seeker after they have been introduced to the permanent end client hirer.

- Supply a temporary work-seeker to replace someone who is taking part in industrial action at the hiring company.
- Charge for a uniform without telling the worker-seeker in advance.
- Make any unlawful deductions from pay.

An **Employment Business** must make sure temporary workers are:

- Paid for all the work they do. This applies even if they have not received payment from the end-hirer; even if there is no timesheet authorised by the end client hirer, or if the worker has left their assignment.
- Paid holidays.
- Not forced to work than 48 hours per week.
- Paid at least the National Minimum Wage rate of pay.
- Protected under health and safety laws.
- Given written terms of employment before they start to find work for them.

Written terms should state:

- The type of work they will source for the work-seeker.
- If the work-seekers will be employed under a Contract of Service (employment with the Employment Business) or on a Contract for Service (Umbrella & PSC) and what terms will apply.
- The length of notice that the work-seeker needs to give and is entitled to receive for the assignment.
- The minimum rate of pay that the work-seeker can expect to receive along with how often and when the work-seeker will be paid.
- The amount of holidays and holiday pay details.

The Employment Agency or Employment Business must also:

- Carry out suitability checks prior to employment for all temporary work-seekers.
- Carry out suitability checks on permanent work-seekers when the work involves vulnerable people.
Vulnerable people are persons under 18 or those who by reason of their age, infirmity or other circumstances are in need of care.
- Advertise any vacancy/position with full details, confirming whether it is a temporary or permanent position.

- Provide terms and conditions to organisations hiring temporary workers. This must detail the fees they need to pay and what procedures are in place for dealing with unsatisfactory workers.

Since 2010, **Employment Agencies** supplying permanent workers do not legally need to agree terms with a work-seeker before seeking work for them, or agree terms with Clients before introducing them to the work-seeker.

What are the Advantages & Disadvantages of opting-out

- If work seekers do opt-out, there may be delays in payment, as an Employment Business can wait to be paid by the end client hirer or indeed not pay at all if they do not have a signed timesheet.
- Regulation 10 limits the ability of an Employment Business to restrict a work-seeker from making direct arrangements for future services with the end-client hirer.
If a work-seeker opts out, this condition does not apply and it is common then to have a six or 12 month 'restriction' clause in place.
If a work-seeker does not opt out, the maximum period during which a restriction can prevent direct dealings with an end-client hirer will be no longer than 18 weeks.
- Most Employment Businesses will prefer limited company workers (PSC & Umbrella) to opt-out as it puts less of an administrative burden on them.
- Regulations were designed to apply to work-seekers who are controlled by the end client hirer. The vast majority of contractors may not require the protection which the regulations bring as they do not wish to be 'controlled' for employment status/IR35 reasons.
- A work-seeker cannot choose which bits to opt-out of – an individual would have to opt-out of all the regulations or none at all.

Opting Out

The Regulations permit individuals to opt-out of the regulations if they are working through a limited/Umbrella company, and:

- Not working with people under the age of 18 or vulnerable persons.
- If the above conditions cannot be satisfied (i.e. for Social Workers), the Regulations will automatically apply to an assignment.

If a work-seeker chooses to opt-out of the regulations, they must agree to do so before they are introduced to their end client hirer. Both the work-seeker and their Limited/Umbrella company must opt-out of the regulations together. The opt-out is ineffective if only one party opts out or if the work-seeker opts out after they have been introduced to the end client hirer.

A worker can also choose to opt back into the regulations if they choose to do so at a later date but they must give notice to their Employment Business that it is their intention to do so.

Further information can be obtained by calling a Champion Advisor on 0161 703 2549.