

EMPLOYMENT ALERT

Don't Be Casual About Casual Labour

When someone is engaged to work 'Casually', it normally means that their work will be on an irregular or short term basis. The need to engage casual labour can arise in a variety of circumstances. While such labour can often serve a useful purpose, employers should be aware of the employment rights of Casual workers, which include rights under the National Minimum Wage Regulations and Working Time Regulations, as well as protection against discrimination and inequality on grounds of sex, race, disability and part time working.

Certain rights do not require any minimum amount of continuous employment to apply, such as the ones mentioned above. Whereas other rights, such as maternity and redundancy pay entitlements, do require continuous service of varying amounts.

Employment legislation provides a number of grounds on which periods of engagement can be linked together so as to be treated as continuous employment, for example, where breaks between engagements are by 'custom and practice', or, where they are due to a 'temporary cessation of work'.

This could lead to situation where casual workers are able to accrue continuous service and claim the same rights and entitlements as permanently employed members of staff, which would potentially negate the advantages of engaging them on a casual basis.

Where casual labour is being used frequently and/or for long term engagements, employers should ensure that a suitably drafted contract or work agreement is put into place, which clarifies the terms on which the worker is being engaged, and crucially, which expressly excludes any mutuality of obligations and continuity of employment between engagements. This could potentially protect the employer from incurring employment liabilities that were not intended or planned for.

Agricultural Wages Order Update

The Agricultural Wages Board has issued its proposal for the new Wages Order due to be implemented in October 2008. The proposal includes the following:-

- An increase to the minimum wage rate for Grade 1 workers to £5.74 per hour
- An increase to the minimum wage rate for Grade 2-6 workers £6.26 per hour
- An increase to Dog Allowance rate to £6.86 per week
- An increase to the Accommodation Offset to £4.46 per day
- An increase in the holiday entitlement for part time workers working four days or less per week
- A revised maximum number of days that can be bought out in any leave year
- A change in the provisions relating to the timing of when holiday leave can be taken
- An increase to the maximum amount of Bereavement Leave, and, the circumstances in which this leave can be taken
- A revised definition for the purposes of Agricultural Wages Sick Pay so that this Pay can be received for time spent in recovering from an operation arising from a work related injury or illness



New Liabilities In Force For Employing Illegal Foreign Workers

The Immigration, Asylum and Nationality Act 2006 introduced new liabilities where an individual that does not have permission to work in the UK, which came into force on 29 February 2008.

An employer that negligently employs someone who is not entitled to work in the UK is now liable to a civil penalty (a fine of up to £10,000 in respect of each individual). The employer will have a defence if it obtained and took copies of certain document(s) from the employee before employing them, however, the employer will not be able to rely on this defence if it carried out the checks but knew that the individual was working illegally.

Where the individual's right to enter or stay in the UK is limited in time, the employer will only be able to rely on the defence if it has carried out the same checks at least every 12 months during employment, has kept a record of the dates on which it carried out the checks, and, has taken reasonable steps to check the validity of the documents. The code of practice suggests that employers should examine any photographs and personal details and compare them with the individual, in order to detect any irregularities.

An employer that knowingly employs someone who is not entitled to work in the UK will be committing a criminal offence and could be liable to a custodial sentence of up to two years and/or an unlimited fine.

All employers are therefore advised to carry out eligibility checks on all new employees as a standard part of their recruitment process, and, to make any offers of employment conditional upon the individual establishing their entitlement to legally work in the UK.

If you need any advice or assistance on any of the above issues or on any other employment related matter, please contact Sally Morris on 0845 555321

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