TEAM

Response to Consultation on Measures to Increase Transparency in the UK Labour Market

15 May 2018

P1 Your name

Managing Director
TEAM

P2 Your E-mail address

P3 Are you: • An individual • An employer • Representing employers' or employees'/workers' interests • Legal profession • Other (please specify)
TEAM (The Employment Agents Movement Ltd) is the UK's largest network of independent employment and recruitment agencies. We have been trading for over 20 years and currently have a network of over 700 locations and a combined turnover of over £1.5 billion. By definition we are not a trade association, but endeavour to provide assistance and guidance to our membership and a trading platform to facilitate networking across all locations and sectors. Our membership has been advised of this consultation and the matters raised at various Member meetings and they have been urged to respond direct as appropriate. Our response is based on an overview of Member experiences and comments and as TEAM as an employer and of the author as an employee.

P4 If you are responding as an individual which best describes your employment status?
Not applicable

P5 If you are an employer, how would you classify your organisation? • Private sector organisation • Public sector • Charity/voluntary sector • Other (please specify below)
Private Sector Organisation

P6 If you are an employee or worker, what type of organisation do you work for? • Private sector organisation • Public sector • Charity/voluntary sector 35 • Other (please specify below)
Not applicable

P7 If you are an employer, how many employees work for your organisation? • Micro-business (0-9 employees) • Small business (10-49 employees) • Medium-sized business (50-249 employees) • Large-sized business (250+ employees)
0-9 employees

P8 If you are employed, how many people work for your organisation? • Micro-business (0-9 employees) • Small business (10-49 employees) • Medium-sized business (50-249 employees) • Large-sized business (250+ employees)
See P7

P9 If you represent employers or employees/workers, which best describes you • A trade union • An industry or employer association • An agency worker interest group • Other (please specify below)
See P3

P10 If you are an employer, what proportion of individuals undertaking paid work at your workplace are: a) Permanent employees 100%/ 80-90%/ 60 – 79%/ 40 – 59%/ 20 – 39%/ 1 – 19%/ 0% b) Non-permanent staff [To include non-permanent agency workers, non-permanent casual and seasonal workers, those working under a contract for a fixed period of fixed task, or other types of non-permanent staff] 100%/ 80-90%/ 60 – 79%/ 40 – 59%/ 20 – 39%/ 1 – 19%/ 0%
100% employees

36 Section A: Written Statements – Questions for employers

Q1 Question 1 - Have you provided a written statement of employment in the last 12 months to: a) Your permanent employees Yes/No/Don't know. b) Your non-permanent staff Yes/No/Don't know. If you answered yes to question 1b, approximately how many have you provided in the last 12 months? If you answered no to question 1b, please explain your reasons.

a) Yes
b) No – we do not have any non-permanent staff.

Q2 In general, when do individuals starting paid work at your organisation receive: a) A written statement Before paid work starts b) An employment contract or other employment particulars Before paid work starts

Q3 How long, on average, would it take a member of staff to produce a written statement for a new starter? Under half-an-hour/Between half-an-hour and an hour/Between one hour and half a day/Between half a day and a full working day/More than one working day.
Under half an hour as all personnel documents are pre-prepared in template format.

Q4 How often do you seek legal advice when producing a written statement? Always/Often/Sometimes/Rarely/Never.
All employment documents are in template format. All are reviewed annually by an employment lawyer.

Q5 Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of? Yes/No/Don't know. If yes, please provide details.
No.

Section A: Written Statements – Questions for individuals

Q6 If you are employed, have you received any of the following from your employer: a) A written statement? b) An employment contract or other employment particulars?

a) Yes
b) Yes

Q7 If yes, when did you receive the following in relation to starting paid work with your employer: a) A written statement b) An employment contract or other employment

a) Before paid work started.
b) Before paid work started.

Q8 If yes, was the information presented in a way that was easy to understand?
Yes, very easy to understand

38 Section A: Written Statements – Questions for all

Q9 To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?
Agree strongly

Q10 The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?
a) The business's name Yes
b) The employee's name, job title or a description of work and start date Yes
c) If a previous job counts towards a period of continuous employment, the date that period started Yes
d) How much, and how often, an employee will get paid Yes
e) Hours of work (and whether employees will have to work Sundays, nights or overtime) Yes
f) Holiday entitlement (and if that includes public holidays) Yes
g) Where an employee will be working and whether they might have to relocate Yes
h) If an employee works in different places, where these will be and what the employer's address is Yes

39 Q11 Do you agree that the following additional items should be included on a principal written statement:
a) How long a temporary job is expected to last, or the end date of a fixed term contract? Agree strongly
b) How much notice the employer and the worker are required to give to terminate the agreement? Agree strongly
c) Sick leave and pay entitlement? Agree strongly
d) The duration and conditions of any probationary period? Agree strongly
e) Training requirements and entitlement? Agree strongly
f) Remuneration beyond pay e.g. vouchers, lunch, uniform allowance? Agree strongly
g) Other types of paid leave e.g. maternity, paternity and bereavement leave? Agree strongly

Q12 To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?
Agree strongly.

Q13 To what extent do you agree that other parts of the written statement should be provided within two months of their start date?
Agree strongly

Section A: Written Statements – Questions for individuals

Q14 Have you ever worked for an organisation that has not provided you with a written statement of employment particulars within 2 months of starting your job?
No.

Q15 If you answered yes to question 14, did you: a) Consider lodging a complaint with an employment tribunal (even if you did not end up doing it)? Yes/No/Don't know. If no, please explain your reasons for this. b) Pursue compensation? Yes/No/Don't know/Not applicable. If no, please provide your reasons for this.
Not applicable

Q16 If you answered yes to question 15b, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job? Yes/No/Don't know/Not applicable. If no, please provide a reason for your answer.
Not applicable

41 Q17 If we introduced a standalone right for individuals to bring a claim for compensation where an employer has failed to provide a written statement, what impact do you think this would have? Please consider the impact on: a) Individuals b) Employers c) The Tribunal Service
We would agree there should be a stand alone right and not linked to another substantive claim.

Section A: Written Statements – Questions for all

Q18 Which of the following best describes your awareness of the Acas guidance on Written Statements?
I have a good knowledge of the Acas guidance

Q19 If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?
Have not used

Section B: Continuous Service

Q20 What do you think are the implications for business of the current rules on continuous service?
Current rules are satisfactory

Q21 If you are employed, or represent employees what are the implications for you or those you represent of the current rules on continuous service?
See Q20

Q22 Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period? Yes/No/Don't know.
No

Q23 Do the current rules on continuous service cause any issues in your sector? Yes/No.
No

Q24 We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be? 2 weeks/3 weeks/One month/6 weeks/Other - please specify. Please provide your reasoning.
We believe current period of one week is acceptable and no increase should apply

Q25 Do you believe the existing exemptions to the break in continuous service rules are sufficient? Yes/No/Don't know. If no, do you have views on additional circumstances that should be added?
Yes

Q26 We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance? (Select all that apply) Real examples from case law/Signposts to further information/Information on what to do if you feel your employer has not complied with the legislation/Other - please specify.
Information on what to do if you feel your employer has not complied with the legislation
As referenced in another consultation we believe all workers should receive clearer and more standardised information on their terms and rights prior to work commencing. If they are unaware of their rights, then there is more opportunity for employers to evade their responsibilities.

Section C: Holiday Pay

Q27 Do you think that the government should take action to change the length of the holiday pay reference period? Yes/No/Don't know. If no, explain your answer.
Yes

Q28 If you answered yes to Q27, should the government: a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review? Yes/No/Don't know. b) Set a 52-week default position but allow employees and workers to agree a shorter reference period? Yes/No/Don't know. c) Set a different reference period Yes/No/Don't know.

a) Yes
b) No
c) No

Q29 What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay? For example: a) Are they receiving and taking annual leave? Yes/No/Don't know. b) Are they receiving holiday pay but not taking annual leave? Yes/No/Don't know. c) Do you know of any other arrangements that are used? Please explain your answer.
In our experience, employment businesses in general honour current legislation by accruing and paying statutory holiday as appropriate. However, we are aware that there is growing evidence that there are still some employment businesses, intermediaries and employers who are abusing the legislation. As evidenced in another consultation, the statutory provision to not only supply better information to workers but to also supply specific information on payslips, e.g. days accrued and pay

accrued, would no doubt benefit workers. Increasing fines against compliant employers should be considered.

Q30 How might atypical workers be offered more choice in how they receive their holiday pay? Please provide examples including how worker's entitlement to annual leave could be safeguarded so they are not deterred from taking leave.
An option is to consider "rolled up" holiday pay included in workers' pay. Whilst the upside would be to suggest that the worker will actually receive their pay entitlement, the downsides are that many workers wouldn't take/or possibly be discouraged to take appropriate time off. Additionally, there may be concern that some employers may use rolled up pay to confuse a worker's rights to NMW/NLW. On balance we believe it preferable to seek to make the existing legislation work.

Section D: Right to Request

Overall response to Q31 to Q38.

Workers would normally be engaged to work on time defined assignments. Therefore, it may seem appropriate to consider that ongoing assignments (those without a finite end date) might in certain circumstances suggest the worker status is being used to disguise employment status. A simple solution would be to propose a time limit, e.g. 3/6/9/12 months, after which the worker would have the right to request the employer for employee status. (Obviously the employer can make an offer of employment at any prior time during the assignment.) Whilst the pay and tax structure would remain unchanged the worker would then receive full employment rights and protection. The employer could have the right to deny the request by providing appropriate reasons. However, the natural reaction from many employers may be to determine assignment lengths prior to any time limit imposed. Whilst there are already provisions within the AWR (anti-avoidance in the structuring of assignment lengths) to deter such actions from employers, we remain unconvinced they are policed or enforced. Any time limit would in our opinion create a "cliff edge" approach which in the main could adversely affect such workers particularly those in lower pay brackets. There are several factors that should also be considered:

- Although there may be many workers that would ideally seek to exchange their temporary assignment for employed status, there are also many who for "lifestyle" reasons <u>only</u> want to undertake work when it suits them.

- There are many examples of employers who rely on workers to complement their employed workforce. For example, seasonal agricultural work, events and hospitality, cover for sickness, known peaks in demand, etc, etc. It would be detrimental to both such workers and the economy to have any processes in place that affected such factual requirements.

- It should be recognised that outside of those employers who may "abuse" the use of workers, there are many instances (not measured but anecdotally believed to be between 15/20%) of workers who are voluntarily offered employment by the employer who has been impressed with the worker during the assignment.

Given the above, there is a fine line between the potential benefits and losses of the employer and worker and 3/6 months may not adequately cover many factual temporary assignments. Therefore, given the "cliff edge" effect, it may suggest that 12 months would on balance be an appropriate length

of service period. Some careful thought would be required as to how such a process should be operated in practice.

- For most businesses using temporary workers to cover real short-term assignments, a 12-month period would be more than adequate. Therefore, it could be anticipated that those businesses still using such workers after 12 months are doing so as part of their general business plan, whether for economic or administrative reasons.

- We believe a certain proportion of employers would still terminate assignments just prior to the due date to ensure there would no chance of employment rights being requested. However, 12 months would be preferable than 3/6/9 months and the volume of affected workers should be much lower. The system however couldn't allow the same worker to then recommence under a new contract without there being a realistic break in the contract, say 3 months. Otherwise the employer could terminate one day and then immediately re-engage with the worker and start a further 12-month period and so on.

  Therefore, it should be noted that any Length of Service solution will potentially mean the original worker could suffer a detriment as they will have lost employment, can't re-engage with the same employer and may have difficulty securing alternative employment in the same area.

- If the process is to be instigated by a worker request for employee status, then the concern could be that the employer, upon receiving that request, may then deem that worker to be "difficult". They may then utilise the lack of mutuality in a Contract for Services to dispense with that workers services, or, just as likely use it as a threat to make the worker reconsider making such a request. The request however may still be made and, given the employer has the right to refuse, it may be appropriate to provide extenuating circumstances that may be justifiable for the employer to use. It might also be sensible to consider a justifiable option of an agreed extension period to the assignment. Unfortunately, it may be necessary to consider penalties/fines if the employer is found to be operating anti avoidance measures.

- Consideration may also need to be given in the circumstances of employment requested and given as to whether the assignment period served should count towards continuous employment. We would suggest that as this may appear to be a deterrent from an employer's perspective and, given this proposal is all about encouraging employment, employee status should take effect from the date of the new employment contract.

- Some consideration may also need to be given to Regulation 10 of the Conduct Regulations which provides restrictions on charges to hirers. Having a potentially finite end within assignments could adversely affect employment businesses who may be debarred from charging any fee on transfer. (We had originally lobbied to the effect that this original legislation was intruding and interfering in a commercial arrangement between two parties. Market forces should be allowed to dictate what commercial arrangements suit the parties.) Some may suggest that the agency margin during the assignment should be increased to cover the decrease in transfer fees; however, others may suggest that a regular margin for 12 months is already sufficient recompense. Overall, we believe that custom and practice will determine how businesses will respond and, as such, the proposal shouldn't necessarily be affected by these concerns.

Section E: Information and Consultation of Employees Regulations (2004) (ICE)

Q39 Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?
No

Q40 For employees only Have you ever requested Information and Consultation of Employees (ICE) provisions in your workplace?
No. My workplace has less than 50 employees and so does not qualify for ICE regulations

Q41 to Q48
We have no practical working experience of the ICE Regulations therefore it would be inappropriate to comment.