



THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESS REGULATIONS

Opt in or Opt out?

New regulations came into effect on 6 April 2004, with some provisions being held back till 6 July 2004.

The regulations seek to protect temporary staff, whilst changing the way that agencies can charge their client, should the client retain the temporary worker in permanent employment.

With effect from 6 July 2004, temporary staff (including interim managers working through their own service company) will be deemed to be 'agency' workers. However, it is possible for those interim managers to opt out of the regulations (unless providing services to young, aged or ill people). The opt out must be signed by both the Limited Company and by the individual carrying out the services. The opt out agreement covers current and future assignments. All providers are likely to be contacting their interim managers before July. So what are the pros and cons of opting out?

Many businesses will prefer to take on service companies that have opted out of the regulations, as the potential for confusion over the taxation of payments to the contractor may increase if they are treated as a normal 'agency worker'.

Providers have stated that they will regard those who opt out as career interim managers (and therefore give them preferential treatment?) as against those who are 'temping' between permanent work.

Providers have also stated that if interim managers have a chosen career path working from assignment to assignment, they will be judged always by the last assignment and are therefore likely to be focused on a quality solution for the client.

Providers can no longer insist that interim managers operate through a Limited Company, although most strongly state that they still prefer it.

If opting in, the provider must pay the interim's fees even if the client has not paid the provider (unless due to defective work).

If opting in, the provider must satisfy itself as to the contractor's identity, background and suitability for each assignment, and must check on qualifications and previous assignments.

For those working outside IR35, opting out may strengthen their case because they are taking the business risks. Furthermore, in the regulations, there is an assumption that by opting in, the client will retain full control and supervision of the interim manager and this also has implications for IR35.

Providers may offer an increased rate to a contractor who opts out, in lieu of reduced administration imposed by other parts of this new legislation.

In making your decision, you may well consider that the more favourable treatment you could receive from both the provider and the client if you opt out, outweighs the slight risk of a client going bankrupt. You may also feel that a provider is more likely to give continuity of assignments to those who opt out.