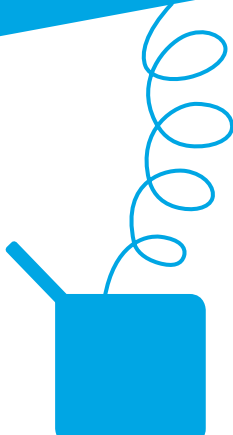


PayStream and the AWR

A quick guide to help you
avoid any unexpected...

surprises.



PayStream*
Makes PerfectSense...

What is AWR?

The introduction of the Agency Workers Regulations (AWR), taking effect on 1 October 2011, has been a hot topic of conversation over recent months but is now gaining even greater momentum as end clients, recruitment agencies and service providers consider the mechanics of how it will actually work in practise.

It is well documented that the intention of the AWR was to protect vulnerable temporary agency workers by ensuring that they benefit from the same pay and employment conditions as a comparable permanent employee. While the underlying objective is commendable, the reality is that the scope of the regulations is much broader and potentially affects all agency workers irrespective of rate, trade or qualification.

This document sets out our understanding of AWR, and how we intend to work with you to ensure that you receive the best support and advice through its implementation.

“...the reality is that the scope of the regulations is much broader and potentially affects all agency workers irrespective of rate, trade or qualification.”

The AWR and PayStream

PayStream has been a thought leader whenever there have been legislative changes affecting the recruitment and service provider sector, such as the introduction of the MSC legislation. Our approach to business is underpinned by knowledge, capability and a long term perspective, and our approach to the AWR is no different.

We believe that the right thing to do is to work within the framework of the AWR rather than try to find ways to work around it. Our business has always been about building sustainable relationships rather than focussing on “quick fix” solutions. It is our view that in time pay rates will adjust as intended and the supply chain will operate in a very similar manner to today.

PayStream support agency workers operating both through their own limited companies known as personal service companies (PSCs) and also through an umbrella service. Our view is that PSCs supported by PayStream will be outside the scope of AWR. As part of our existing joining process we review a contractor’s IR35 status and confirm that he / she is ‘in business’. We are already advanced in enhancing our umbrella offering to capture the relevant AWR information.

There is much ongoing debate around the Swedish derogation model. In simple terms within this model, the agency worker gives up his entitlement to equal pay in exchange for a permanent contract of employment with pay between assignments. We do acknowledge that there are certain scenarios, for example when there is no comparator data available, in which the Swedish derogation model may be appropriate. We will therefore add this offering to our suite of services but are mindful however that it is the traditional umbrella that we believe will have enduring value in the market. By further developing our service offering we remain one of the few providers able to offer the full suite of services required by agency workers whether limited company, traditional umbrella or derogation umbrella.

Assessing the risk

It is important to assess the inherent risk before settling on an AWR strategy. As part of our AWR planning meeting with an agency we prepare an impact analysis based on our knowledge of the contractors with that agency.

Step 1 – Identify the PSCs

Agency workers operating through their own Personal Service Company (PSC) are likely to be outside the scope since they are “in business”. As part of the joining process with PayStream the workers are asked to confirm that they are “in business” and that they have considered their IR35

status and are outside IR35. This would form the basis of any defence against a claim for equal pay. In our experience rates should be above £15 per hour before considering operating through a limited company.

“...PSC’s are likely to be outside the scope”

Step 2 – Identify the length of contract

A number of contractors have assignment lengths of less than 12 weeks and so do not qualify for equal treatment in respect of pay. Whilst the contractors will have day one rights in respect of access to facilities the risk to the agency is small. It is critical that contract lengths are tracked to ensure that this is indeed the case.

Step 3 – Identify the comparable rate

Agency worker rates are often higher than those of the comparable permanent employee based on a combination of skills, knowledge, experience and normal demand/supply considerations. If your client informs you that this is the case the risk to you is extremely low. You should maintain a record to prove that you asked the questions.

Step 4 – Identify if there is a comparable employee

There are certain specialist workers “brought-in” by the end client on the basis they possess a skill set not available within their permanent workforce and which is required perhaps for a limited period only, examples here may include certain IT project skills. In such instances, there is clearly no comparable permanent employee based on the unique role of the agency worker and therefore this population can also be ignored in respect of equal pay.

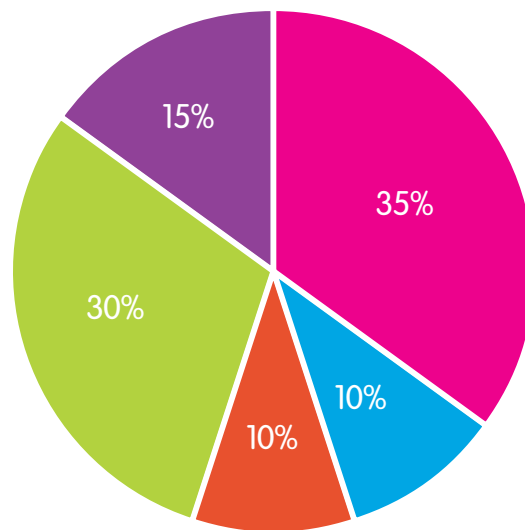
Step 5 – Those left fall under AWR

Finally this leaves the relevant population of agency workers with contract lengths in excess of 12 weeks and performing a role or function where the comparable permanent employee rate is above that of the agency worker. This is the area of the pie that must be addressed.

It is only through analysis, such as this, that the true impact of the AWR can be assessed, and measured actions determined. We have assisted several agencies in this process already.

“ It is only through analysis, such as this, that the true impact of the AWR can be assessed...”

- * PSC
- * No comparator
- * Pay rate above PAYE
- * < 12 weeks
- * AWR Relevant population



Our solutions

We envisage that following AWR we will provide the following services:

Option 1: Our PSC service

As explained above we believe that our PSC clients will be outside the scope of AWR. For contractors earning above £15 per hour, this continues to be the most tax efficient option. Our IR35 and 'in business' checks ensure that there is clear evidence that the contractor has considered his status.

Option 2: Our traditional umbrella, My Max

This will be suitable where a comparator rate has been provided by the client and pay is above the comparator pay rate. The advantage over the derogation model is that expenses will not be restricted. It is also likely to be better received by the contractor.

Data collection from the agency will be facilitated by a checklist to ensure that the appropriate information is collected on a timely basis. An analysis will then be carried out to confirm that pay is at least equal.

As with our agency interactions today, communication is facilitated through a "business rules engine" ensuring timely information is shared between PayStream and the recruitment agency, and PayStream and the contractor. This engine will be the driver to support AWR compliance and can be tailored based on certain parameters to ensure that the data provided to the agency is appropriate to its needs. After 10 weeks an automated email will remind the agency that the contractor is approaching 12 weeks and will confirm the full time equivalent rate based on what the contractor has earned in the past 10 weeks.

The AWR guidelines reference that pay includes wage plus expenses. Calculations of pay rate can vary week by week based on the level of expenses claimed by the agency worker and the number of hours worked.

Option 3: Our derogation umbrella service

This may be suitable when no comparator data is available or where pay is below the comparator. As noted earlier the agency worker gives up his entitlement to equal pay in exchange for a permanent contract of employment with pay between assignments. This affects pay but day 1 rights remain unchanged.

It is worth noting that the compliance requirements of the umbrella remain the same in that there must be an overarching contract of employment in place, a dispensation and supporting expenses policy and the calculations must adhere to minimum wage guidelines.

In this service, we would have to gain the worker's agreement to give up the right to equal pay in exchange for pay between assignments. The pay between assignments rate would be agreed up front through our New Business take on process as would the scope of future assignments considered to be appropriate for the agency worker.

The pay between assignments must be funded from the monies received from the agency.

In order for the model to work properly it is important to be transparent so that the right to equal pay does not apply. For this reason a contractor may prefer a traditional umbrella unless the agency mandates that a derogation model is used.

“ In order for the model to work properly it is important to be transparent so that the right to equal pay does not apply.”

The next steps

We would encourage you to complete your risk assessment and we can support you in this process if required. It is worth keeping in mind that assessing your risk is a critical first step before determining your AWR strategy.

We are close to finalising our employment contract for our derogation model with external lawyers and have process mapped our umbrella workflows under AWR. With an in-house Compliance team and our own internal IT development team we expect to be ready to test our solutions in early September and will be fully prepared to meet the new requirements on 1st October.

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