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Legal Update December 2007

In our final Legal Update of the year, Nasa Consulting takes a look at the legal issues of 2007 that affected the recruitment industry, and a forward looking glance at the issues we expect to arise in 2008.

2007

Agency Workers Directive

This is legislation at the EU level. It is attempting to provide agency workers full employment rights with the end client and to remove the right for agencies to charge temp to perm fees.

The legislation was blocked by the UK and Germany in early December 2007. It is now on the back burner but there are moves afoot in the UK to bring in domestic legislation to support agency workers further. The Trade Unions are supporting full employment rights from day one, whilst recruitment businesses and end clients are against this and are nearer to supporting rights after 12 months of engagement of an agency worker.

IR35

Two court cases early in the year, including *James v Greenwich Borough Council 2007*, suggested IR35 was a difficult tax to fall into and possibly only to be paid by those not taking the right legal advice. However HMRC won an IR35 case against Island Consultants in July 2007 and *James v Greenwich* has been appealed, resulting in further confusion as to what constitutes an employment relationship with the end client.

Managed Service Company Legislation

The legislation was primarily introduced to end the tax benefits of composite umbrella companies, where freelancers and temps were paid dividends and salaries as dividends suffered less National Insurance deductions. Umbrella companies and the agencies that use them are liable for the additional taxes and National Insurance if temporary workers are now remunerated in this manner.

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The legislation was extended to allow only accountancy businesses to provide services to limited company freelancers.

The very good news is that genuine freelancers running their own limited companies are not affected by the legislation, and can continue to retain high amounts of the income they generate.

The alternate use of PAYE umbrella companies has been a factor attributing to the downturn in the temporary market as freelancers have less incentive to temp where they are losing much of their earnings.

Arctic Systems – S660A

The husband and wife were finally exonerated from paying back six years of tax by the House of Lords. This was after many years of winning their case against HMRC after the tax authorities said that Mr Jones was not able to provide some of the company earnings to his wife, which also had the affect of reducing his tax bill. HMRC dragged the case upwards through the High Court and Court of Appeal (losing both times) until finally the House of Lords put an end to them appealing it further.

Conduct of Agency Legislation 2003 – Opt Out's

Whilst the DTI (now aptly renamed the Department for Business, Enterprise and Regulatory Reform) carried out inspections on compliance with this legislation, most recruitment agencies have embedded an 'opt out' clause in their contract. Some agencies are providing two different contracts depending on the contractor status, but this is diminishing.

And so to 2008 – here is what we are expecting;

'Income Shifting' Regulations

The day that HMRC lost the above mentioned **Artic Systems** case they announced they would introduce rules to prevent a partner benefiting from the family's business. These rules are in draft form and we expect concrete regulations in the New Year. Contractors may or may not be affected by this, depending on the formal set up and shareholdings in their companies.

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IR35

We expect at anytime the ruling from the Court of Appeal (2nd highest UK court) on James v Greenwich Council. If Greenwich Council wins again, it re-enforces that temporary agency workers do not get automatic employment rights from the end client.

Accordingly, it means freelancers with their own companies have less of a concern from IR35 as there is no automatic relationship of employment with their end client.

A ruling for the temporary worker, James, will result in end clients being concerned with agency workers receiving full employment rights, which undermines the use of temps or changes the manner in which they must contract with agencies.

Nasa Consulting hopes that you have found our monthly legal updates useful, and appreciate any feedback. We will of course be at the forefront of our accountancy field in 2008 and keep you up to date with these issues as they arise.

We wish all of the recruitment sector a festive Christmas period and hope to get some more business from you in a prosperous 2008!

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