

Recruitment Law: The Importance of Knowing the Regulations

As a recruitment consultant your days are generally spent focusing on making sales and dealing with client requirements. Getting roles, finding candidates, chasing feedback, organizing interviews, the list goes on, leaving little time to focus on the clients themselves. But with such focus on making a sale, are you inadvertently leaving your clients open to risks?

Over the past few years government legislation has tightened the regulations governing employment law, yet very few recruitment consultants are aware of the implications that these changes have for their clients. It is shocking to think that companies are using agencies to provide services that are potentially opening them up to law suits that may cost them millions of pounds.

There have been numerous instances over the past few years which have brought home the risks faced by employers today. The most notable of which was the case of Muscat vs. Cable & Wireless Plc. In this case, a temporary worker was able to successfully sue Cable & Wireless for wrongful dismissal because the contractor was able to prove that the working situation was one of "implied employment".

"Implied Employment" refers to a situation where a contractor working for a client through a Limited Company and a recruitment agency is treated by the client the same as a permanent employee. This includes having to organize annual leave, contract extensions and pay rises with the client directly. From a recruitment agency standpoint, this is unacceptable.

First and foremost, there is rarely a direct contract between a contractor and a client, the contract is between the contractor's Limited Company and the agency. The agency will then have a contract with the client to provide the services of the contractor's Limited Company, not the contractor specifically. Quite simply, any contractual negotiations, any annual leave, sick leave etc, all of this must go through the recruitment agency. Line managers who involve themselves in these conversations or behaviours are opening themselves and their companies up to some serious legal risks.

Yet many agencies do not train their consultants about these regulations or the risks that their clients face. It is understandable that managers within an organization would not be aware of the legal aspects of hiring contractors. Therefore it is the responsibility of the recruitment agency to ensure that the client is aware of the risks and that the consultant ensures that both the contractor and the managers work in such a way as to negate those risks.

Thankfully these lawsuits do not happen very often but this does not mean that recruitment consultants can continue to be complacent. These cases still happen, this behaviour still continues and clients are still put at risk because consultants are not trained sufficiently in the requirements of contract law.

By no means should recruitment consultants become employment law experts, but it is important if they are working within recruitment, to understand the simple things which can be done to minimize these risks.

Firstly, consultants should always read the contracts which go out to their contractors. If at any point a contract uses terms like "the employee" or "the team" this can be considered implied employment. The

contractor must always be referred to as “the Limited Company” or “the Company”. That is because the contract is with the Limited Company, not the individual contractor, hence the presence of the right of substitution clause.

It needs to be reinforced that any contractual negotiations or annual leave must go through the agency. As the contract is between the agency and the client, the contractor and the client have no legal grounds to make these negotiations, only the agency can negotiate with the client on behalf of the Limited Company.

It is recommended that recruitment consultants understand the basics of the IR35 regulations. These are all laws which govern the industry that you work in and can have a direct impact on your working life.

To learn more, speak to your agency’s legal team. They should be in a position to provide training and information about the regulations and give a deeper understanding about the nuances of contract law. For more information on the Muscat vs. Cable & Wireless Plc case visit : http://www.msi-network.com/Content/general/UK_employment_law_update_3.aspx

Look beyond the sales and understand your industry. Not only will you be protecting your clients and your contractors, you will be building trust with them making yourself a consultant they will want to work with again and again.