Agency workers loophole

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The Employment Appeal Tribunal has said that agency workers on open ended contracts with companies are not covered by the Agency Workers Regulations 2010 because they are not 'temporary'.

Under the regulations, organisations are obliged to provide agency workers with the same basic working and employments rights as permanent employees once they have met the qualifying period of 12 weeks' service. However, the case of Morgan v Ideal Cleaning Services Ltd has now opened a loophole

for employers in that only agency workers with contracts of a definite duration (whether short term or not) are covered. Any agency workers who have contracts with no fixed end dates will not qualify for protection on the basis that they are quasi-permanent, not temporary.

Whilst this is good news for employers facing challenges over agency worker status, pay and conditions or who want flexible staff with no risk attached, there is some uncertainty in that there will be instances where agency workers assignments blur the lines between temporary and permanent/open ended. To manage this problem, employers should ensure that assignments are not formally time limited. Although, Tribunals will likely look at the reality of the situation rather than what the contractual documents say, this safeguard will hopefully add credibility to an employer's case and help resolve the matter without going to Tribunal. In any event, it is likely Parliament will step in to fill this loophole as it leaves some agency workers unprotected.

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