

Blake Laphorn Tarlo Lyons' nursery and childcare news

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more rights for agency workers

On 20 May 2008 the Government announced it had agreed a deal 'in principle' with unions and employer organisations about the rights of 'agency workers'. Although the details are not yet clear, the proposals are likely to affect many nursery operators as the use of agency staff can be essential for maintaining ratios.

The UK 'deal' is that after 12 weeks on an assignment an agency temp will be entitled to 'equal treatment'. Although the precise meaning of this is not yet clear it appears that agency workers will be entitled, from week 12, to the same basic pay as 'comparable' permanent employees of the user of the agency worker. The method for identifying an appropriate comparator is likely to present some challenges, as in many cases the comparator will be hard to identify.

'Equal treatment' may also give agency workers the same rights as comparable permanent employees to notice of termination, vocational training, 'amenities', the right to be notified about vacancies for permanent employment and grievance procedures (but not, it would seem, rights to join occupational pension schemes, sick pay or share option schemes).

The legislation will not suppress the supply of people who are attracted to temporary working for lifestyle and other reasons, nor will it suppress the need operators have for flexible workforces. However, there may be changes in the way nursery operators seek to use agency workers. Until the UK legislation is published it is not clear what the alternative approaches might be, but we can envisage:

- agencies employing and benefiting the agency workers and then seconding them on to the nursery operator
- employers reaching workplace agreements with employee representatives. (The deal seems to allow these agreements to override any rights the legislation may otherwise give agency workers working for those employers)

- operators only engaging agency workers for a maximum of 12 weeks at a time (which will affect efficiency and continuity of care, and push up the cost of doing business)
- treating some or all temps as 'trainees' for the purposes of establishing the pay level they should receive (which is a common approach in other countries) but which may not be feasible for nursery operators because of ratio requirements for qualified staff
- an operator employing its own bank of temporary workers

points to note:

- It is too early to make decisions about how to treat agency workers as the details have not been finalised but operators should monitor the proposals.
- The UK legislation (which is expected in 2010/2011) will be introduced as the UK implementation of the Temporary (Agency) Workers Directive, (Last month's deal in the UK effectively meant that the UK Government agreed with the Unions to withdraw opposition to the Directive.)
- It seems likely that the UK deal will be approved in Europe and therefore the Directive will probably allow the more 'user friendly' provisions forming part of that deal.



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