

## Questions and Answers on the REC's Webinar on the Good Work Plan

March 2019

Thank you for your comments and questions during the webinar on the 5<sup>th</sup> March 2019. As agreed we have prepared answers to your questions which we hope you will find useful.

**1. *Will the REC's model documents be updated to reflect the requirements in the Good Work Plan?***

We have been informed that government will produce a template document together with guidance to assist employment businesses with complying with their statutory obligations. In addition, the REC will review our model documents to see if further amendments are required.

**2. *Is the 'Key Information Document' the same as the terms agreed with a work seeker?***

No. It is an entirely separate document and a different requirement under Regulation 13A of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('the Conduct Regulations 2003'). The document must be provided to the work seeker before the terms are agreed with the work seeker. During the webinar it was noted that there is some duplication between the information required in the Key Information Document and the information required in the terms with the work seeker (under Regulations 14 & 15 of the Conduct Regulations 2003). However as noted above, they are separate documents presented to the work seeker at different stages.

**3. *If the conduct regulations require the employment business to agree terms with a work seeker before providing any work finding services - but the key information document has to be provided to the work seeker before the terms are agreed - how will an employment business know what the possible deductions etc... will be?***

In the event that the work seeker is being supplied via an intermediary such as an umbrella company and the employment business does not have all the information required under Regulation 13 A, the employment business should provide the information it is privy to. The employment business should update the Key Information Document after the additional information is obtained and provide it to the work seeker at an appropriate time. In addition, there is a requirement to produce a representative statement which could be in the same format as a draft payslip giving examples of gross pay, deductions and net pay.

**4. *What happens if the person paying the worker changes depending on the type of contract?***

It is possible for the identity of the work seeker to change i.e. the work seeker may be a PAYE worker or an intermediary such as an umbrella company. If there is a change in the identity of the work seeker then the entire process must change to reflect the correct contractual relationship between the parties. This means that all the documents have to be reissued to the work seeker.

**5. What does it mean by how they are connected? (Employment Business, Worker and client)?**

Regulation 3 of the Conduct Regulations 2003, defines “connected” as the circumstances in which one person is connected with another. A person for the purposes of this definition could mean an individual, firm or corporate body. A person will be connected to another person who is his/her spouse, minor child or stepchild, his/her employer, employee or business partner. A person (A) will also be connected to a person which is a company, (B), if A is a director or other officer of B. A will also be connected to any company (C) which is in turn connected to B. C and B will be connected if the same person is a director or other officer of both or has control of both or if C is a subsidiary or holding company of B. A will also be connected to a director, other officer or employee of such a subsidiary or holding company.

**6. It is possible that both PAYE and PSC options are offered by the employment business, but the choice is unknown until the contract is confirmed?**

If the employment business does not know how the individual will be engaged i.e. PAYE or via an intermediary, if the individual has registered with you, as a PAYE worker, you must provide the information required in the Key Information Document. However, if the individual subsequently chooses to provide their services via an intermediary such as an umbrella company, their identity changes so you need to reissue the documents reflecting who the work seeker is. (Please see the response to question 4).

**7. With regards to the itemised pay slip information - does this include limited company contractors?**

The employer for employment rights purposes defined under s.230 ERA 1996 is the one who has the responsibility to provide itemised payslips. If the limited company is the employer of the worker for employment rights purposes, it would be the limited company who has to provide a payslip. However for the sake of certainty it will be beneficial for the employment business and the limited company to agree to share information in respect of the hours so that the limited company knows that it has the correct information to provide an accurate itemised payslip.

**8. How can Limited Company day rate workers receive an hourly payslip when they charge daily?**

A “day rate” worker would fall within the scope of the payslip changes and the information about the hours worked would need to be included on the payslip. The details must be broken down to separate figures for different types of work or different rates of pay and it must be clear which pay period they were worked in. Under the Conduct Regulations 2003, Regulation 18 specifically requires the employment business to confirm the hours the work seeker would be required to work before the assignment commences. That information can be used when breaking down the numbers of hours worked before processing the time sheet or the invoice. In addition, setting out the hours worked will minimise the risk of breaching the National Minimum Wage Regulations 2015.

**9. What will happen to employees on Regulation 10 contracts under the Agency Workers Regulations 2010- how will they be transferred to new contracts?**

We are aware that some employment businesses are considering terminating Swedish Derogation contracts before 6<sup>th</sup> April 2020. Unfortunately, the process is not straight forward and depending on how the contract is terminated there could be an element of risk. The employment business that employs its agency workers on Regulation 10 contracts will have specific additional obligations to those workers:

- *(c) during any period under the contract in which the agency worker is not working temporarily for and under the supervision and direction of a hirer but is available to do so—*
  - *the temporary work agency takes reasonable steps to seek suitable work for the agency worker,*
  - *if suitable work is available, the temporary work agency offers the agency worker to be proposed to a hirer who is offering such work, and*
  - *the temporary work agency pays the agency worker a minimum amount of remuneration in respect of that period (“the minimum amount”); and*
- *(d) the temporary work agency does not terminate the contract of employment until it has complied with its obligations in sub-paragraph (c) for an aggregate of not less than four calendar weeks during the contract.*

As stated in paragraph **d** above, all the requirements in paragraph **c** have to be met before the contract is terminated. However, there will be circumstances where the first requirement to find work and offer it to the agency worker cannot be complied with (i.e. when there is continuous work) and therefore simply paying the 4 weeks’ pay will not suffice as the employment business must comply with all the requirements. The REC is still considering this issue and has raised it with government. There will be some guidance for members soon.

**10. If you opt out of the conduct regulations, does that mean that you opt out of IR35?**

No. they are separate pieces of legislation and there is technically no opt out of IR35 as the limited companies for tax purposes will either be inside IR35 (employed) or outside IR35 (self-employed).