

Right to Request Flexible Working legislation needs a tailored approach

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The announcement today that millions of employees will be able to request flexible working from day one of their employment may ease some of the skills shortages, but more clarity is needed around the impact on agency workers. That's according to the Association of Professional Staffing Companies (APSCo).

Tania Bowers, Global Public Policy Director at APSCo commented:

“With skills shortages and worker discontent rife across the UK at the moment, any steps to help alleviate some of the pressure on the labour market are certainly welcome. APSCo has long advocated a more flexible approach to employment legislation that recognises the nuances in the range of employment contracts and ways of working that have become the norm in the modern world of work.

“This flexibility from day one for around 1.5 million more workers may help ease some of the resourcing challenges across the country. However, as we made clear in our submission to a BEIS consultation in 2021, these proposals could have serious ramifications for agency workers, particularly umbrella employees. There is the possibility that these changes could unintentionally lead umbrella workers – who are employed by the umbrella company – to access day one rights to flexible working due to their status as employees with overarching contracts.

“If umbrella companies, recruiters and clients have to consider an unexpected flexible working request on day one of an agency worker contract, it would have a financial and time impact on all parties and could potentially disincentive clients from using temporary workers. The concern of APSCo and its members is that this would result in a disorganised transfer of many hundreds of thousands of employed umbrella workers from employment into worker contracts, with the corresponding loss of employee benefits, to circumvent the effect of the legislation.

“While at the time of the consultation BEIS indicated that it did not intend to include agency workers who are by definition flexible in this consultation and did recognise our concerns on umbrella employed workers and their status, what specific measures have been put in place to address this may not be clear until we see the draft legislation. APSCo has suggested that workers under the protection of the Agency Workers Regulations 2010 (AWR) who are employees are given the right to request flexible working at 12 weeks at the same time as other rights given under AWR. We also believe there needs to be recognition as

to who is deemed the “employer” in this decision. If it is the umbrella company, then a flexible working request is unlikely to ever accord with the needs of the business as to when the work must be done.”

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