

## **SPECIAL CATEGORIES OF EMPLOYEES AND SERVICE PROVIDERS**

### **Fixed Term Employees**

A fixed term contract is one for a specified time, specified task or one which ends when a specified event does or does not take place. An example would be a retail business taking on extra staff coming up to Christmas. Unless special circumstances apply, employees on fixed term contracts must be treated the same as comparable permanent employees. This means they must get the same pay, terms, conditions and benefits package, the same or an equivalent pension scheme and the same opportunity to apply for vacancies for permanent positions in the business.

Where a fixed term employee has been on a fixed term contract for four or more years, he or she is classified as a permanent employee. The only exception is where employment on a further fixed term is objectively justified to achieve a legitimate aim e.g. a genuine business end that can be justified. This rule does not apply to apprentices, work experience employees or certain employees on training courses or temporary work schemes.

### **Independent Contractors**

An independent contractor or "freelance" worker is self employed and provides services. An advantage is that they will look after their own income tax and National However, it is critical that independent contractors are genuinely self employed. If the arrangement is really a disguised employment arrangement then there is a risk of liabilities for the employer. Certain contract workers will still be entitled to many rights equivalent to those enjoyed by employees. Health and safety discrimination obligations are the same.

### **Directors**

Directors play a specific role under company law in running a company. It is possible to have a director who is simply performing this role (non executive directors). There are also directors who are employees. In the case of executive directors there will

usually be a detailed employment contract. Certain company law issues and prohibitions arise in relation to benefits taken from the company.

Executive Directors of limited companies are classed as office holders. The earnings from an office are automatically chargeable to tax as employment income and there is also liability for Class 1 National Insurance Contributions. The majority of non-executive directors will also be regarded as employed by the company or self-employed under a Contract for Service depending on the terms and conditions. Directors have a number of different responsibilities under company law taxation rules and numerous other laws.

### **Agency Workers**

Under an agency arrangement, an agency is contracted to provide services. This may be appropriate for short time cover. It can also apply to longer term staff.

Agency workers have their contract with the agency. However, the contracting business still has responsibilities for agency workers under health and safety rules, and discrimination rules and certain other obligations.

### **Tax Deduction for certain Contractors**

In certain sectors there is an obligation to deduct tax on payments to sub-contractors even if they are not employees. There is a special tax scheme for self-employed contractors and sub-contractors in the construction industry. This is equivalent to relevant to contracts tax in Ireland.

### **Managed Service Companies**

There are special rules in relation to managed service companies which have no counterpart in Ireland. A managed service company is a company through which individual services are provided to clients. Payments received by individuals who provide a service to an MSC are subject to PAYE and NIC. Legislation ensures all

workers operating a managed service company pay tax and NIC at the same rate as employees. PAYE and NIC contributions are recoverable from the MSCs.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.