

To employ or not to employ ...that is the question



The lingering effects of the pandemic and Brexit have resulted in significant labour shortages in many sectors. As of October 2023, approximately 10% of businesses in the UK were still experiencing worker shortages. Such labour shortages are having a material impact on the ability of businesses to invest, respond to demand and grow.

As a result, more organisations than ever are reshaping their workforces by looking at alternative ways to staff their businesses without employing permanent employees, who can be expensive and hard to find.

We are seeing an increase in the use of freelance contractors, zero hours/casual workers and agency workers for specific projects.

In this article we look at some of the advantages of these types of arrangements when compared to employing somebody on a permanent basis.

Self- employed contractors

Somebody who is genuinely self-employed is in business on their own account where the organisation for whom they work is their client or customer. They are usually not obliged to provide personal service and/or there is no mutuality of obligation.

Pros

- It is easier to terminate an engagement than an employment relationship



- You only pay for time worked or projects completed and do not need to provide additional benefits or pay employer NICs.
- Contractors may bring specialist skills to an organisation which are only needed on a temporary basis

Cons

- You have less control over how the work is delivered
- You have no guarantee that they will be available and/or willing to do the work
- If the actual day to day work relationship does not align with the contractual relationship then there is an employment status risk i.e. individuals could be considered employees for tax purposes and employment rights purposes. PAYE obligations would rest with the company in that event.

When best to use

- For specific time limited projects where specialist skills are required that are not otherwise available in your workforce

Agency workers

These are workers who are supplied by a temporary work agency (also known as an “employment business”) to work temporarily for and under the supervision of a hirer. Ordinarily the agency worker has a contract with, and is paid by, the agency.

Pros

- Allows flexibility when there are peaks and troughs in your business’ workload
- You don’t need to deal with administrative issues such as operating PAYE or pension auto-enrolment
- Can avoid internal headcount restrictions
- The agency is generally responsible for management issues and also employment and tax related risks
- Often a low cost way to cover work

Cons

- There are regulatory obligations contained in the Agency Workers Regulations 2010 which give agency workers certain rights such as to be informed of relevant vacancies within the hirer and to be treated no less favourably than a comparable worker in relation to “collective facilities and amenities”.
- Agency workers can be less engaged in and committed to the business due to the temporary nature of their assignment.
- You, as the hirer, will have less direct control over the workers in respect of general management issues.

When best to use

- To provide short term cover for specific absences or temporary or seasonal increases in demand
- When internal headcount restrictions mean that you are unable to employ more staff
- When you don’t want to take on the legal and administrative responsibilities associated with directly employing somebody.

Zero hours/casual contracts

Businesses engage these individuals to perform work but there is no minimum level of work and pay is normally at an hourly rate.

Pros

- These types of contract can offer workers flexibility in relation to when and how much work to accept
- Can help manage fluctuating demand for work within a business.

Cons

- If workers refuse work when offered, this can result in gaps in staffing
- An individual's employment status needs to be clearly set out and managed. There is a risk that they will be classified as an employee rather than a worker if they carry out regular work for an organisation.
- Likely to be greater regulation of this type of arrangement going forward because of perceived misuse.

When best to use

- Where work regularly fluctuates
- To cover longer assignments where there may be a period of inactivity between

How we can help

The [employment team](#) is experienced in advising on alternative staffing arrangements and employment status issues. We can advise you about the type of staffing arrangement that would suit your business the best and we can draft the documentation you will need to govern that relationship properly and reduce your legal risk. Please get in touch for more information.



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