



Clarity over employment terms more important than ever for both employers and recruitment companies

# Changing workforces

As temporary workers become a larger part of the workforce, employers and recruitment agencies must pay more attention to the process and contractual terms to minimise the risks. By **Andrew Don**

**M**any companies' recruitment models are changing. As some economies draw out of the recession, many companies are increasing their number of temporary workers – often sourced through recruitment agencies.

The temporary worker sector was traditionally associated with secretarial and other office jobs, but today temps work in highly skilled areas, including oil and gas, pharmaceutical, healthcare and medical, among many other sectors.

In the UK for example, temporary and contract vacancies across the professional staffing sector rose 9 per cent between May 2014 and May 2015. And in 2014 one in two new jobs were temporary, shows the latest Professional Recruitment Trends report by the Association for Professional Staffing Companies.

"Employers are taking a shorter-term view of their staffing needs at all skill and complexity levels, opting for contractors to give them more flexibility and the specialist resource they need," says Paul Baker, Partner at JLT Specialty.

## Going global

The labour market's increasingly global nature means it is more and more commonplace for global recruitment companies to source specialist labour globally and place the workers outside their country of domicile.

This makes clarity over employment terms more important than ever for both employers and recruitment companies, says Steve Hornbuckle, Company Secretary of SThree, the global recruitment company. "The principle of ensuring that all parties, the employer, recruiter and the contractor, are engaged on a clear basis from the very start of the relationship is now of paramount importance."

For recruitment companies, it is vitally

important to consider the employer's business culture, the suitability of the potential candidate, and all applicable local laws or other requirements when making cross-border placements, says Hornbuckle.

Conversely, employers must have a global understanding of service contracts because standard terms and conditions vary considerably between countries (see box), says Graham Terrell, Technical Advisor at JLT Specialty.

Standards also vary between sectors. "Some sectors, such as oil and gas, have their own standard forms of indemnity requirements that may differ significantly from other sectors," adds Terrell.

## Partnering up

Before partnering with a recruitment agency, employers should consider the agency's global presence, sector expertise, quality of labour supply and overall ability to manage the recruitment process.

## How obligations can vary between countries

An overview of the most typical requirements in service contract insurance clauses and whether or not insurance policies in two example territories can reasonably be expected to include them. Clients can then take an informed position as to whether the requirements of the clause are reasonable depending upon the territory in which the services will be provided.\*

INSURANCE CLAUSE	FRANCE	BRAZIL
Waiver of Subrogation	Yes	No
Additional insured (customer)	Yes	Yes
Employer's liability	Legal recourse now possible by the WC insurer or victim in cases of 'inexcusable negligence' (faute inexcusable) on the part of the employer. Most insurers will include this coverage in the GL policy.	Yes
Contractual liability	Generally excluded if this exceeds statutory legal liability or common law (so liabilities specifically assumed under contract).	No
Cross liability	Yes	Yes
30 days' notice of cancellation	Policies can only be cancelled at anniversary date and 1–3 months' notice is required.	Yes
Primary and non-contributory	Available but only if the policy itself expressly states this to be the case.	Subject to specific individual review by the insurer.

\*BASED ON JLT SPECIALTY'S MATRIX OF INSURANCE COVERAGE AVAILABILITY IN KEY OVERSEAS TERRITORIES

For example, it is important to know how a recruitment agency receives legal advice, advises Paul Baker, Partner at JLT Specialty. "Even recruitment agencies of a similar size might have greatly varying degrees of in-house legal counsel, which can have a significant impact on when and how contractual issues are addressed.

"If an agency has limited access to in-house legal counsel, it is more likely to rely on the legal expertise of its broker and insurer. This approach can work very well, but it can mean that more of the legal input comes towards the end of the recruitment process."

Where a recruitment agency has in-house legal counsel, Baker recommends the agency's in-house lawyers meet their insurers early on in the process to explain how they manage their risk management processes.

When working together, it's important for both employers and recruitment companies to establish their respective contractual responsibilities, and the potential consequences of different scenarios and their effect on the insurance programmes of both parties – in particular professional indemnity and public liability policies.

Recruitment agencies have a vicarious liability when they provide someone who is not fit for the role, adds Baker. "Agencies are increasingly expected to assume more responsibility in the labour supply chain, as if they were the employer."

For example, the onus is on recruitment agencies to provide adequate background investigations, including criminal record checks

employer's expectations."

### Finding cover

Both the employer and recruitment agency can benefit from seeking expert advice on contracts' indemnities and insurance sections to identify any policy gaps that need plugging, as well understanding different territories' insurance requirements, Baker says.

indemnity) of the temporary worker provided, notes Gary Chambers, who runs the JLT Thistle scheme for approximately 1,100 UK recruitment agency clients.

"Consequently, policies have been adapted to ensure that these insurance requirements can be met automatically, providing the vital protection required by the recruitment agency," says Chambers.

Both parties benefit from using an insurer that is familiar with the recruitment sector, says Baker. "If they know the sector well they will know which aspects of a contract are and are not reasonable and will generally be able to respond to any issues quickly."

The insurance market's continuing soft conditions have enabled both employers and recruitment agencies to make extra cost savings in recent years, but this shouldn't be their main focus, says Baker. "It's even more important for employers and recruitment agencies to optimise their policy's flexibility and to understand it properly." **RS**

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**Paul Baker, Partner at JLT Specialty**

where appropriate, and to corroborate qualifications and suitability for the job.

"Employers will not necessarily conduct their own independent checks and will rely solely on the recruitment agency," says Baker.

"There can be repercussions if this part of the process is not robust – for example, we've seen issues where employers have asked recruitment agencies to evidence the checks that have been carried out and these have not met the

Insurance tends to be one of the final parts of the negotiation process when a placement is made, so employers and recruitment agencies often require access to brokers that can react quickly to queries regarding these issues, often within 24 hours.

Employers can insist that recruitment agencies carry insurance that covers employer's liability and public liability, as well as the negligent acts, errors and omissions (professional

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