

Does your Professional Employer Organisation have an Employment Agency Licence?

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Many international companies use Professional Employment Organisations, or PEOs, as a means of easily and quickly hiring individuals in Ireland when they do not have an Irish branch or subsidiary. PEOs employ and pay the individuals directly on behalf of their clients. They often also provide various ancillary HR services, such as preparing employment contracts, managing HR processes and procedures and operating employee benefits plans for their clients.

Compliance with Irish employment law

How this arrangement is categorised for the purposes of Irish employment law will depend on the specific commercial arrangements in place between the parties. Critically, both PEOs and their clients need to be mindful of Irish employment agency legislation.

Under Irish law, it is a criminal offence for a company to carry on the business of an employment agency without an employment agency licence.

The Employment Agency Act 1971 provides that the “*business of an employment agency*” means:

“the business of seeking, whether for reward or otherwise, on behalf of others, persons who will give or accept employment, and includes the obtaining or supplying for reward of persons who will accept employment from or render services to others”.

This definition was amended by the Protection of Employees (Temporary Agency Work) Act 2012 (the 2012 Act) to also include:

“a person (including a temporary work agency) ... who employs an individual under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the first-mentioned person”.

Penalties for non-compliance

Where a PEO employs someone on this basis (as many do!), it will therefore require an employment agency licence. If a PEO operates without a licence, it will be liable to fines of up to €2,000 and in the case of a continuing offence, daily fines of up to €1,000. In addition, it is worth noting that where an offence is committed, personal liability may be imposed on directors, managers and other officers of the PEO.

Employees may be deemed an agency worker for the purposes of the 2012 Act. The 2012 Act places various legal obligations on *both* employment agencies and the hirers of agency workers, i.e. the PEO's clients. Importantly, for the purposes of any unfair dismissal claims and potential liability under health and safety legislation, the hirer is deemed the employer of any agency workers assigned to it. As such, agencies and hirers should take legal advice to understand their obligations and ensure the commercial arrangements in place appropriately address liabilities under the 2012 Act and other applicable legislation.

Comment

PEOs, and companies who use PEOs to hire employees in Ireland, should review their commercial arrangements to determine whether they have any obligations under employment agency legislation.

If your organisation offers, or uses, PEO services, it is important to ensure that your commercial contracts provide you with appropriate protection against potential liabilities under employment agency legislation.

Please contact a member of our [Employment Law & Benefits](#) team for further advice.

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