

Employment Agency Standards Inspectorate

Notice

Joint Employment models and compliance with the Employment Agencies Act 1973

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We understand that a joint employment model can allow a small- or mid-sized employment business, to set up a joint venture or collaboration with another business. Such a collaboration may well provide such employment businesses with HR and payroll compliance or support as well as management of cashflow.

In principle, our view is that a 'joint employment' arrangement is not contrary to the provisions of section 13(2) of the Employment Agencies Act 1973 (which defines employment agency activity) or section 13(3) of the 1973 act (which defines employment business activity).

It would seem that a joint employment arrangement can be used in general employment relationships and also where an employment business is involved in providing work-finding services.

A joint employment model can be set out in contracts and relationships to demonstrate that both 'employers' are equally (jointly and severally) liable in relation to providing employment rights and compliance (including the 1973 act and the Conduct of Employment Agencies and Employment Businesses Regulations 2003).

While the joint employment model, based on the evidence we have seen, is not contrary to the 1973 act, it does, in our view, appear to potentially provide a layer of confusion for work-seekers.

There are also concerns on how joint employment arrangements comply with the conduct regulations. In particular:

- regulation 13A: the requirement for employment businesses to issue Key Information Documents (KIDs) to work-seekers
- regulations 14 and 15: the requirement for employment businesses to agree terms with work-seekers

The process appears to be that a work-seeker might approach an employment business in order to be found work. The next steps appear to be:

1. The employment business would need to issue a KID and agree terms with the work-seeker before providing any work-finding services to that work-seeker.
2. The employment business finds the work-seeker a temporary job.
3. The employment business offers the work-seeker a 'joint employment' contract.
4. If the work-seeker agrees to the joint employment arrangement (joint responsibilities), both employers would be liable to comply with the employment business provisions of the act and conduct regulations. This

would include issuing a revised KID and revised terms and conditions and explaining why the earlier documents have been superseded.

There will need to be full transparency about the joint employment relationship, including the joint employment agreement with hirers, to whom work-seekers will be supplied.

Our role is to seek compliance with the Employment Agencies Act 1973. If a work-seeker complains to us about their employment arrangements and this indicates a lack of transparency or a breach of the 1973 act we would need to investigate further. Similarly, if we carry out a targeted operation of inspections we may need to inspect records of both employers to ensure compliance with the 1973 act.

This is our regulatory view of joint employment models and should not be considered as legal advice on the joint employment model. We will consider each case on its merits and whether there is compliance with the legislation that we seek compliance with.

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