

**CIVIL LITIGATION DEPARTMENT
EMPLOYMENT LAW
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FIRE-STARTERS, EXHIBITIONISTS AND BODY-PIERCINGS

The new Equality Act will be the legislation that provides protection from discrimination for disabled people in the future. A person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The Equality Act 2010 (Disability) Regulations 2010 help define “disability”. The following are not ‘impairments’ for the purposes of the definition: nicotine, alcohol or drug dependency; a tendency to set fires, steal, physically or sexually to abuse others, exhibitionism, voyeurism or hay fever. In addition, a disfigurement from a tattoo (which has not been removed) or a body-piercing cannot have a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities and will not constitute a disability for the purposes of the Act.

AGENCY WORKERS

From **1 October 2011**, once they have been hired for **12 weeks**, agency workers will be entitled to the same basic working and employment conditions as their colleagues as if they had been recruited by the hirer directly. This will include certain terms attributable to pay (any fee, bonus, commission or holiday pay) and the same terms relating to the duration of working time, night work, rest periods, rest breaks and annual leave.

WORKER OR SELF-EMPLOYED?

It is often difficult to determine whether the people working for (or with) you are workers or self-employed. A **worker** is a person who works for an employer, not under a contract of employment, but under a ‘contract for services’. Workers do not qualify for all statutory employment rights, but they do have some statutory protection (e.g. the right not to be discriminated against on a protected ground, the right to the national minimum wage and the right to statutory holidays).

The relationship between an employer and a genuinely **self-employed** person (i.e. they can send other people to do the work for the employer) is generally governed by the contract (although independent contractors do have some limited statutory employment rights, e.g. the right not to be discriminated against on one of the protected grounds).

The Employment Appeal Tribunal in *Community Dental Centres Ltd v Sultan-Darmon* have now clarified that **a person is not a ‘worker’ if they do not undertake to do or perform personally any work or services**, i.e. if they are contractually and genuinely entitled to delegate their duties to someone else.

**If you require any advice or assistance about an employment matter,
please contact Julie Granger or Daniel Crook in our Civil Litigation
Department.**

Disclaimer

The content of this article is intended for general information purposes only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2010 and it may be affected by subsequent changes in the law. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of this article.