

COVID-19 Business actions and legal considerations - Additional staffing models

- UK businesses will be taking important actions to improve their Enterprise Resilience in the current COVID-19 pandemic
- As part of businesses' Operational Resilience actions, we believe certain businesses will consider additional staffing models to deal with fluctuations in supply and demand. We have identified 5 key issues for businesses when considering different options for staffing models, whether on an interim or longer-term basis
- We have seen this already in the retail sector, with fashion retailers loaning delivery drivers to food retailers. Changes to staffing arrangements are also occurring within organisations between group companies

	Staffing model	Costs	Liability	Contracts	Management and control
Summary of Issue	<p>What is the appropriate staffing model to meet the company's immediate resource needs? Possible options include:</p> <ul style="list-style-type: none"> — Short term secondments; — Direct employment; — An outsourced service; or — A less formal, flexible arrangement 	<p>Who is responsible for the costs, expenses and liabilities associated to the worker? In particular, who is responsible for paying the worker, providing any benefits and accounting for tax and NI? Who is responsible for employment rights such as holiday pay, sick pay, minimum levels of pay and other statutory rights?</p>	<p>Which party will be responsible for the actions and omissions of a worker during the relevant project, or any harm suffered by the worker? What increased risks apply as a result of the current environment?</p>	<p>How will the change be implemented lawfully and without causing employee relations issues?</p>	<p>Who should the worker take instructions from during the project period? Optimal operating conditions will need to be balanced against any wider tax implications of the proposed approach, particularly where multiple jurisdictions are involved</p>
What Should businesses do?	<ul style="list-style-type: none"> — Identify the nature of required resource and scope out key roles, responsibilities, experience and skills. Assess availability of resource pools from current partners — Check whether proposed workers can work under their current immigration status in the new staffing model 	<ul style="list-style-type: none"> — Ensure all parties reach agreement on which party will be the 'employer', what the other party's roles and responsibilities are and how financial liabilities will be allocated throughout the project — Document agreed terms 	<ul style="list-style-type: none"> — Identify if any additional measures need to be applied, to discharge the employer's responsibility for the worker's health and wellbeing — Assess whether appropriate employer's liability insurance is in place or needs to be obtained 	<ul style="list-style-type: none"> — Where existing employment contracts are relevant, the terms must be checked, and relevant amendments agreed with the worker, prior to commencement — The relationship should be documented clearly to set out the arrangement amongst all parties 	<ul style="list-style-type: none"> — Ensure it is clear to the workers who they should take instructions from and who will deal with any disciplinary, performance or grievance issues — Take advice as to the tax implications of any proposed arrangements

Key Contact:

Donna Sharp, Director & Solicitor, Employment Legal Services: donna.sharp@kpmg.co.uk



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