

Temporary recruitment contract terms

This guide will provide you with a brief overview of standard and non-standard contracts from the perspective of insurance and risk management.

Overview

The main clause in any contractual agreement of interest to an insurer will be the liability clause as it enables them to work out the likelihood of a claim and possible claims costs.

Insurers will typically ask you if you use “standard or non-standard terms of business / contracts”, where standard contracts use a liability clause which passes all responsibility for any liabilities to the hirer.

Your own terms of business e.g. standard contracts

If a temporary worker is injured on the hirers site or causes damage or injury to something or someone, the hirer’s Employers’ or Public Liability insurers will be responsible for settling the claim.

Likewise, should the temporary worker act negligently or make an error or omission while working at the hirers site, the hirer’s Professional Indemnity insurers will be responsible for any financial loss caused to a third party.

Recruitment agencies should look to use their own Terms of Business as a preference, which shall ensure that the liabilities of each party are clear and fit the services provided.

Hirers / clients contracts e.g. non-standard contracts

If your recruitment agency signs the hirer’s contract (a non-standard contract), it is hard to know where the responsibility lies and thus what claims may come back on the recruitment agency, rather than the hirer.

Each Non-Standard Contract a recruiter signs will vary; most push the responsibility for liability claims back to the recruiter (and, therefore, their insurer), so the insurer charges slightly higher premiums for these contracts.

Principles of liability

The risk of liability assumed by a recruitment agency will be diminished, provided that the contract used states three

key principles, which transfers responsibility to the hirer, or the contractor. The key principles are:

- Direction, supervision and control
- Health and Safety
- Liability Insurance

What does this mean?

Should an agency supply PAYE workers (either temporary or under a contract of employment), then the responsibility for these three principles should rest with the hirer. The liability insurance required by the hirer will need to include Employers Liability, and Public Liability.

Should an agency supply self-employed / limited company contractors, then the responsibilities of these three principles will vary between the hirer and the contractor.

An agency’s responsibilities

Using standard contracts does reduce risk to the agency, but you will not be risk-free. The agency will still have legal obligations which shall include:

- Search and selection of suitable and eligible candidates or workers
- Advising workers of any health and safety risks that the hirer has made them aware of
- Compliance with regulations which relate to temporary workers (i.e. Working Time Directive, Agency Worker Regulations)
- Training of workers to be provided, if specified by the hirer
- Provision of PPE (Personal Protective Equipment), if specified by the hirer

To protect the agency from these risks, the insurance policy that they will need, should include cover for:

- Employers Liability
- Public and Products Liability
- Professional Indemnity
- Legal Expenses

Other considerations

The Services

Should the agency not be engaged as an Employment Business, then they will need to consider the services that they are being contracted to provide, and whether it is suitable for them to agree to provide such services.

For example, the contract may state that the agency will be providing “engineering services” which will mean that they

will be relied upon as a professional engineer and expected to know and understand the engineering project required to be fulfilled. Any error made by the worker supplied, will be expected to be rectified by the agency which they will most likely be unqualified to do – after all, the agency’s expertise lies solely with recruitment activities. If the agency cannot rectify the error made, then they will be expected to indemnify the hirer for the costs involved to rectify such error, and compensation for the loss.

Also, this may mean that the agency will be responsible for the direction, supervision and control of the worker (see comments below).

The agency’s insurance policy will note their services specifically and will probably be “recruitment agency services” or similar. Should the agency accept to provide any services which fall outside of their services noted on their policy, then insurers will need to be notified to approve these additional services.

Acts, Errors or Omissions

The agency may be made responsible for the acts of the worker supplied, regardless of whether they have supplied a suitable worker or not. In other words, the agency will be deemed to be “vicariously liable” for the acts of the worker.

Should the agency not have the “control” of the worker, then the responsibility for these acts will not always attach to the agency, despite such contractual requirement.

The agency will need to ensure that their insurance policy includes cover for the vicarious acts of the worker supplied. This should be noted under the Public Liability section, and where the worker is deemed to be providing a professional service, under the Professional Indemnity section.

If the worker supplied is a self-employed / limited company contractor, then the agency should ensure that their contract with the contractor is clear that they are responsible for:

- their own acts, errors or omissions
- provision of public liability
- provision of professional indemnity where the contractor is providing a professional service

The Works or Work Product

If the agency is made responsible for specified works or the work product, then the agency will be deemed responsible for any defects in the works, and for remediation of such defects (similar to where the agency agrees to the services being changed from an Employment Business – see comments above).

The agency may also be contracted to forfeit additional payments, or to receive penalties for late completion of the works which will not usually be insured.

The agency will need to consider whether they are insured for these activities, and if not, they will need to arrange cover for the specified works which could be covered by a Professional Indemnity, Products Liability or a Contractor All Risks policy.

Direction, supervision and control

Should the agency be made responsible for the day to day direction, supervision and control of the worker supplied, they will be deemed to be the employer, and this will most likely mean that the agency will be responsible for the duty of care owed to the worker, and for the vicarious acts of that worker.

Should the “control” principle be tested, it will probably state that it is the agency that has the control. This will be in contrast to the Employment Agencies Act 1973.

The agency will need to ensure that their insurance policy includes cover for all workers that they control on a primary basis, and that the services noted under their policy includes the additional activities of the worker.

Waiver of Subrogation

Insurers rely on their right of subrogation to act on your behalf to recover claims payments from a third party that is responsible. Removing your insurers right to do this means that your business could end up paying out all claims without any ability to recover funds from the party responsible.

Vicarious liability

An agency can be made responsible for the acts of the worker supplied, regardless of whether they have supplied a suitable worker or not. Read more about this in our Vicarious Liability RecruiterGuide.

Contract vetting

Whilst we are not able to provide legal advice on a contract wording, aQmen Underwriting, providers of RecruiterCover, provides a vetting service to review contracts from an insurance perspective.

It is always recommended that businesses should seek the advice of a legal professional on any business contracts

Need help?

If you need help with insurance or risk management, speak to your insurance broker.