

The Association of Professional Staffing Companies (Global) Ltd (APSCo): Retained EU employment law reforms

Introduction to APSCo

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is an international trade body offering global services with local delivery to the international professional recruitment sector through its presence in Australia, Germany, Southeast Asia and the UK.

APSCo helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for Recruitment Outsourcing Providers.

APSCo members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing, and media in addition to highly regulated sectors such as qualified social work, teaching and clinical healthcare.

Should you wish to discuss this response in further detail, please contact Tania Bowers, APSCo's Global Public Policy Director - tania.bowers@apsco.org

Reducing the administrative burden of the Working Time Regulations

1. Do you agree or disagree that the Government should legislate to clarify that employers do not have to record daily working hours of their workers?

Agree.

Please explain your answer, including consideration of the costs and benefits that may affect employers and/or workers

APSCo agree that simplifying the legislation is positive.

For our members who interact with agency workers directly, they will record daily working hours as that is the charging mechanism, they also need to record daily working hours to fulfil their responsibilities. Even without an obligation to record working hours, the employer still has to ensure that Working Time Regulations are met.

It will not make much difference to the cost for umbrella companies who already process timesheets for agency workers for billing purposes. They are not going to change the costs for doing this, but there is less administration for running a contract.

2. How important is record keeping under the Working Time Regulations to either enforcing rights (for workers) or for preventing or defending disputes (for employers)?

Neither important nor unimportant.

3. What is your experience of record keeping under the Working Time Regulations?

N/A

4. Do you keep records to specifically meet the requirements set out in the Working Time Regulations?

N/A

5. Do you keep working time records that go beyond the existing requirements set out in the Working Time Regulations?

N/A

6. Do you currently have a system in place that records the daily working hours of all your staff?

N/A

7. Are you: paid hourly; paid by task; or paid a salary or fixed amount, for example for each day, week or month regardless of the hours you work?

N/A

8. Does your employer keep records of your daily working hours?

N/A

Holiday pay and entitlement reform

9. Would you agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses?

Agree.

Please explain your answer:

Whilst APSCo agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses, we would like to see greater clarity on how this would apply to normal pay.

10. (For employers): What rate do you currently pay holiday pay at?

Other.

Please explain your answer:

Amongst our members there is variety for how holiday pay is currently calculated. Some members include types of overtime and benefits in their holiday pay calculation, other members pay basic pay on the basis that they don't consider that their commission scheme payments fall within the definition of normal pay.

Therefore, in any change in the law it is important to be very clear on what constitutes 'normal pay' and it is important that existing case law is also taken into account.

11. (For workers): What rate do you currently receive holiday pay at?

N/A

12. What rate do you think holiday pay should be paid at?

5.6 weeks of statutory annual leave at basic pay.

Please explain briefly in your answer what you think should be included as part of the holiday pay rate you have selected

In the professional recruitment sector, during any weeks taken as annual leave in addition to basic pay, employees will continue to accrue commission payments during this time.

13. Would you agree that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period?

Strongly agree.

14. Are there any unintended consequences of removing the Working Time Coronavirus Amendment Regulations 2020 that allow workers to carry over up to 4 weeks of leave due to the effects of Covid?

No.

15. Do you think rolled up holiday pay should be introduced?

Yes

Yes, rolled-up holiday pay should be introduced as an option for employers in relation to all workers. It is particularly critical that rolled up holiday pay is permitted for agency workers and those workers employed by umbrella companies and any flexible contract. It negates any concern that workers are not receiving or aware of their holiday pay entitlement. However, it must be put in place with clear guidance and an obligation on employers to bring holiday leave to the individual's attention on a regular basis if they're at risk of losing entitlement.

In any future guidance there should also be guidance for agency workers and for end hirers to be reminded of agency workers' rights to take holiday leave.

16. Would your existing payroll system be able to calculate holiday pay using the rolled up holiday pay calculation as well as the 52 week holiday pay reference period?

Yes.

Please explain your answer

Yes our members' systems would be able to calculate holiday pay using the rolled up holiday pay calculation as well as the 52 week holiday pay reference period.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

17. Do you agree that the Government should allow all small businesses to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

Yes.

18. Do you agree that the Government should allow businesses of any size involved with small transfers of employees to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

Yes.

19. What impact would changing the TUPE consultation requirements have on businesses and employees?

It would reduce the cost and make it easier for business to comply without causing any negative impact on employees.

20. What is your experience of the TUPE regulations?

N/A