

Agency Workers: Current NHS Issues, the Gig Economy and Brexit - a Few Thoughts from a Lawyer

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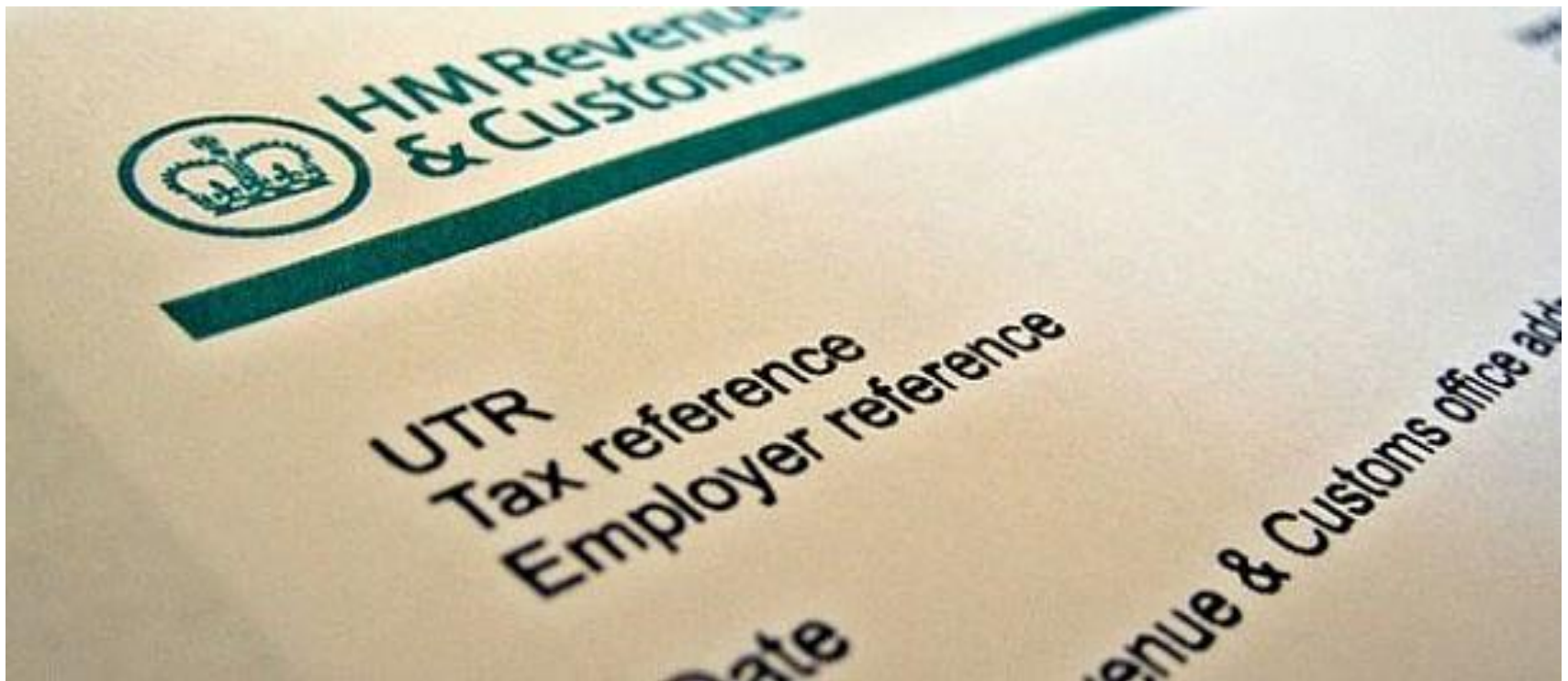
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Current NHS Issues (1) – legal issues arising from bank and agency initiatives



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- Consolidated Bank Work arrangements across Trusts
 - Contractual clauses obliging employees to offer services through bank
 - Sharing information across Trusts
 - The Jim Mackey 27th February letter and existing agency arrangements in the run up to April

Current NSH Issues (2) – Legal Issues arising from IR35



The new rules and your relationship with agencies (1)



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- Where the public sector client engages the worker through third party
 - It is still the client (NOT the agency/third party) who has to decide if the rules apply and inform the worker and the agency/third party
 - Agency/third party must calculate the PAYE and NI deductions, report them and make them
 - Liability will pass to the public sector client if it fails to confirm the employment status decision

Potential employment problems if you decide IR35 applies



The contractor might say:

- “If you’re taxing me as an employee, make me an employee – I want full employment rights”
- “I’m not an employee so why are you taxing me as an employee” and/or
- “I’ll receive less in my pocket if you deduct tax at source - you need to increase my pay to compensate me for the shortfall” and/or
- “I’m not working as an employee, I’m leaving and going to work in the private sector”

Potential solutions if IR35 applies



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- Consider what type of contract is appropriate
 - If person working as an independent contractor, review the contract and working practices to ensure no employment relationship
 - If person actually working as an employee, consider offering direct employment contract (and/or increasing pay?)

The Gig Economy – Why Might It Be Relevant to Agency Arrangements?



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- The Uber, Deliveroo and Pimlico Plumbers decisions...
 - The Current NICs controversy
 - ... and IR35 again
 - “Independent Review of Employment Practices in the Modern Economy” – currently taking evidence – could it blur the employee / worker distinction further?

BREXIT



Employment Rights May Depend on the Brexit Model...



The Post-Brexit Landscape



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- The Great Repeal Bill
 - Stated intention is to preserve all EU employment law (and ECJ case law) within UK law on Brexit date
 - Then a gradual amendment/repeal of legislation
 - Will require Parliamentary scrutiny to become the Great Repeal ACT
 - And then..?

What could change? EU Employment Law Most Under Scrutiny



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- Discrimination law
 - TUPE
 - Agency Worker Regulations
 - Working time and holiday pay

What is likely to stay the same? Areas that have developed in the UK as domestic law



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- Unfair dismissal legislation and wrongful dismissal
 - Minimum/living wage
 - Statutory redundancy pay
 - Discrimination law (underlying principles of equality)
 - Core maternity rights
 - Union-related legislation

Any questions?

