DRIVER REQUIRE

IR35 ACTION PLAN

BE PREPARED FOR IR35 WITH OUR 7 STEP ACTION PLAN

With the rollout of IR35 to the Private Sector looming, hauliers need to take immediate action to ensure they're properly prepared for the changes in legislation come April 2020 — this Action Plan is designed to help you understand the steps required.

Our hope is that this process will create greater transparency across the sector, bringing hauliers and agencies towards closer partnerships.

1

Hauliers must determine if they are a "Small Company". If so, they will be exempt from the IR35 legislation, but they will still be impacted by the repeal of AWR Swedish Derogation and the need to determine Parity Pay Rates:

- ☑ We recommend hauliers work with their company accountants to formally determine their company size.
- ☑ The haulier is obliged under the IR35 Regulations to formally communicate their Company Size status to their agencies so that they are officially made aware of whether the haulier falls within or outside of the scope of the IR35 Regulations.

2

If a haulier is a larger company, i.e. not a "Small Company", they will be subject to the IR35 legislation. In this case they must:

- ☑ Work with their HR team and employment law advisers to determine the employment status of each category of agency temporary worker they engage.
- ☑ For each category of agency worker, they must produce a Status Determination Statement "SDS". The SDS is a formal and legally enforceable declaration.

3

IMPORTANT: While the IR35 legislation remains under "review" we strongly recommend that hauliers continue as though the legislation will still be implemented in April 2020, BUT that they do not publicise or formally communicate their SDS decisions pending the outcome of the review. This way they will be ready to act should the implementation of IR35 go ahead, while maintaining flexibility should it be delayed or changed.

4

Meanwhile, ALL hauliers, regardless of "Small Company" or not, should ensure they are prepared for the repeal of AWR Swedish Derogation, which will enforce Parity Pay Rates for all PAYE agency workers after 12 weeks on assignment. The process for determining Parity Pay Rates is as follows:

- ✓ At the request of the agency, the haulier must complete an "AWR Comparator Information Request Form" for each Comparator Role. A Comparator Role is a distinct agency worker role that is substantially different from other agency worker roles for the same customer in terms of work performed and remuneration received. For example, it is easy to separate agency LGV drivers into class of vehicle driven, i.e. C+E, C, C1 and van, but comparator roles may be determined at a more granular level, e.g. for C+E Night Trunking, as distinct from C+E Day Delivery Work or C+E Multi-Drop etc.
- ✓ For each Comparator Role the haulier completes full remuneration and benefits information such as: basic pay, night, weekend and overtime rates, shift premiums, bonuses, holiday entitlement and other tangible benefits.
- ✓ Now the agency and the haulier need to work together to agree the Parity Pay Rates for parity agency workers. There is no clear-cut way of doing this, as most agencies use pay rate schemes that differ from those used by their customers. The objective is to ensure that, for a typical bundle of shifts in a given week, the agency worker will earn approximately the same income, inclusive of holiday pay, as a permanent worker for the same shifts.

5

Now the agency can establish the cost of employment for its temporary workers. The governing principles are that, for each of the categories below, it must pay:

- ✓ Ltd Company workers (Small Companies ONLY): Ltd Company worker market rates.
- ✓ PAYE workers up to 12 weeks on assignment: PAYE worker market rates.
- ✓ PAYE Parity Workers (over 12 weeks on assignment): The greater of the PAYE worker market rates or the agreed Parity Pay Rates.

This means that Small Companies can have up to three sets of pay rates, one for each of the above agency worker categories, while larger companies can only have the two PAYE variants.

6

The haulier and agency now need to negotiate charge rates. These will be a compromise between the agency's need to generate enough margin over the total cost of employment of their temporary workers and the amount the haulier is willing to pay. There are two approaches:

- ✓ Closed book, where the agency does not disclose its pay rates and margins, but simply proposes charge rates with no breakdown or other explanation.
- ✓ Open book, where the pay rates and agency commission are completely transparent to the haulier. In this case it is very important that the agency can justify their margin by demonstrating value for money and by being able to provide a clear breakdown of its costs and value-added services.

7

If the result is increased charge rates, it is reasonable to expect the haulier to review and optimise its agency requirements, probably looking to reduce the size of its agency worker pool. This is likely to trigger the haulier to request the transfer of agency drivers to permanent roles; either via direct transfer for a fee or via a Temp2Perm arrangement. The agency should be prepared for this eventuality and have relevant terms agreed.