

## EAA Regulations Policy

The Employment Agencies Act (EAA) is a piece of legislation, which sets a minimum standard of conduct for recruitment agencies in the UK.

### What does the EAA mean for contractors?

The Act aims to protect the best interests of the candidate, as well as the interests of the hirer. Additionally, the regulations provide added protection for jobseekers and companies using the services of recruiters and stipulate how recruitment businesses should operate.

To meet these regulations, each contractor will need to provide some simple information, including:

- Proof of identification – if they apply for a job, the agency is required to ask them to provide proof of identification. They may also ask for evidence of any training or qualifications that are mandatory for specific positions with particular companies.
- Referees - they should ask for two references or two referees that they can contact in accordance with Recruitment Employment Confederation (REC) guidelines. This information may then be passed on to a future possible employer, once they have the candidate's permission.

The Regulations provide some protection during an assignment.

In particular, the Regulations seek to ensure that:

- You will get paid by the agency even where they do not receive payment from the end client;
- The agency cannot restrict you from providing services directly for the end client upon termination of the contract;
- The agency does not withhold pay in certain circumstances;
- The agency provides you with specific information relating to the services they will provide and the assignments they have sourced for you;
- The agency cannot charge you for their work-finding services, or require that you pay for additional services from them in order for them to find work for you.

### Informing the contractor of Health & Safety practices

As well as providing the candidate with factual and detailed information about a vacancy, the agency must share with you any Health & Safety documentation that the end employer has provided.

### What is the conduct regulations 'opt out'?

A candidate can choose to 'opt out' of the regulations. Whilst the regulations have been conceived to ensure greater legislative protection for candidates, there may be issues which conflict with the spirit of the IR35 rules. Agencies should offer and receive a signed opt-out before the candidate is introduced to the client, otherwise the opt-out could be invalid, leaving the agency in breach of the regulations, and also preventing the agency from putting restrictions on the candidate that have been requested by the client. To do this they must sign and return an EAA opt-out form.

For more information on these rules and the implications and benefits of opting out of the Conduct Regulations, please view the Government guidance – [EAA guidance notes](#).

Contractors should also expect to see a clause in the opt-out from the agency that clarifies that the regulations don't apply and that the client does not control the contractor.

If a contractor is considered to be controlled by the client and does not opt out, then the agency is required to work through a series of steps. These include creating paperwork about the client's requirements and contractor's suitability for the role, possibly checking the contractor's qualifications and completing a CRB (Criminal Record Bureau) check for certain roles.

The Regulations permit individuals to opt-out of the Regulations if they are:

- Working through a limited company; and
- Not working with people under the age of 18 or vulnerable adults.

### **What are the pros and cons of opting out?**

Contractors do suffer some disadvantages from opting out. For example, the agency is required to pay workers who are covered by the regulations even if they have not been paid; contractors who have opted out lose this protection. Plus, the agency must agree terms with the contractor before introducing them to the client; this significantly reduces contractor flexibility in what is supposed to be a flexible, highly skilled labour resource.

In addition, if a contractor has opted out, then the agency can use restrictive covenants that can potentially restrict the contractor from using a competing agency or going to a competitor of the client. There are other regulations relating to temporary-to-permanent fees, which can negatively impact on the client if they want to take the contractor on as an employee or a direct contractor.

### **What to do if a contractor notifies us that they wish to withdraw an Opt Out Notice**

We will always ensure that a contractor is aware of the implications of an Opt Out, utilising the information provided above.

Should a contractor request to withdraw the Opt Out, then we will advise the following:

*"You can also choose to opt back into the Regulations if you choose to do so at a later date upon giving notice in writing to both **Clarity Umbrella and your recruitment business** of your intention to do so. A signed and dated copy of the letter should be sent to Clarity Umbrella Ltd at either 10 Queen Street, Ipswich, Suffolk, IP1 1SS or via email at [info@clarityumbrella.co.uk](mailto:info@clarityumbrella.co.uk)."*

We will also confirm, to the agency, of the contractor's intention to do so at the first opportunity. We must also make it clear that by providing this opt out, that Clarity Umbrella Ltd also agree to the Opt Out.

### **Additional Notes:**

The Regulations permit individuals to opt-out of the Regulations if they are:

- Working through a limited company; and
- Not working with people under the age of 18 or vulnerable adults.

If the above conditions cannot be satisfied, for example they are working as a Social Worker, then the Regulations will automatically apply to an assignment.