

Employment Alert

Court of Appeal hands down important Judgment concerning agency workers

The Court of Appeal delivered its Judgment in an important decision concerning agency workers (*James v London Borough of Greenwich*) on 4 February 2008.

There have been conflicting cases over the last few years as to whether agency workers can be considered employees of the end user. It was therefore with some relief that the question was finally referred to the Court of Appeal. A number of cases which raised this question were stayed pending the outcome of this very important Judgment.

In short, the Court of Appeal stated that only on grounds of necessity will a contract of employment be implied between an agency worker and the end user of his or her services and this will be a question of fact.

As a postscript the Court noted that it was fully aware of the controversy surrounding the lack of protection for agency workers but it stressed that it was not for the Court to express views about a change or to initiate a change in the law to extend employment protection rights to agency workers and that further developments will need to come from Parliament.

The Judgment is undoubtedly good news for those organisations who use agency workers. To try and gain the protection afforded by this Judgment, end user organisations should ensure that they have in place a written contract between it and the agency worker (which should include, amongst other things, a declaration that the agency worker is not an employee of the end user) and that all parties abide by the terms of that written contract.

If you have any questions regarding this email alert or require assistance in preparing or reviewing your contracts with agencies you may use then please do not hesitate to contact Lara Crane by email (lara.crane@rlb-law.com) or by telephone (020 7227 7478).

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If you would like any information on any of these or other employment matters, then please contact Sejal Raja (sejal.raja@rlb-law.com) or Lara Crane (lara.crane@rlb-law.com) or telephone on 020 7222 7040. Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.