Introductory agencies and ‘self-employed’ live-in carers

Employment Tax

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Despite HMRC’s clear guidance (in ESM4015) and the recent Chatfield-Roberts v Phillips & Universal Aunts case, we are aware that some introductory agencies still purport to provide ‘self-employed’ live-in carers to elderly or disabled clients, even though many live-in carers are unlikely to be self-employed under the status tests.

Introductory agencies typically match live-in carers to clients for a one-off fee. Training and background checks are provided, but the client then takes responsibility for the provision of their own care either using government funding or their own money.

Introductory agencies are not regulated by the Care Quality Commission (England’s regulator of health and social care services). We understand that they do fall under the remit of the Employment Agency Standards Inspectorate and the Conduct Regulations (as an ‘employment agency’, that is, a business that finds permanent roles where the work-seeker is employed by the hirer) but many are probably not aware of this.

A rudimentary search on the internet returns a huge number of introductory agency options – an indicator that there is great demand for their services, but also, perhaps, that that there are few barriers to entry into the marketplace.

Nearly all the marketing material we have seen refers to introductory agencies providing families with a ‘self-employed’ carer, saying things like ‘(we) provide families seeking care with the opportunity to select their own independent, self-employed carer’, ‘our professional carers are self-employed for tax purposes’, and ‘you won’t have to liaise with the tax office or worry about holiday pay and sick pay’. However, many live-in carers are probably not self-employed under the status tests

(for example, because they must perform specific tasks/ cannot turn up and leave when they want/cannot send a substitute, etc).

In our experience, there is often a misunderstanding in the care sector (and indeed in other sectors) that status is a matter of choice. (In addition, some carers often want to be self-employed because of the perceived benefits that it brings.) It is not clear whether these introductory agencies are operating under this same misunderstanding.

Although there is probably no obligation on the introductory agency to tell the client that they may become the employer of the carer they are matched with, clearly the way that they are introducing the carer to the client could be misleading and leave both the hirer and the carer with tax problems.

We think it is vital that introductory agencies do more in this space and hope to persuade the relevant authorities to produce some joined up guidance for introductory agencies to inform and educate them on the law around status. The authorities will also need to consider how they will deal with the historic non-compliance that there is likely to be. There is, of course, a bigger question about how this situation fits with wider social and health care strategies.

In the meantime, we wanted to produce this quick summary of the problem as background for advisers, as there will be clients and carers who need professional advice and assistance to guide them in the right direction, help them manage their ongoing tax positions and potentially deal with historic problems.