

Answering the recruitment challenge: Getting creative with contracts

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Presented by
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Welcome

Our presenters



Catherine Daw | Partner, Employment

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Catherine works with employers, particularly in the manufacturing, healthcare and tourism sectors, providing strategic and day-to-day advice to HR and management teams.

Catherine was recently named as a 'Recommended Lawyer' in the Legal 500 2022 directory and the Chambers and Partners legal directory.

[Connect with Catherine on LinkedIn](#) to learn more.



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Acts for employers across a wide range of industries from international automotive and manufacturing concerns to financial services, professional services and large charities.

Colin was recently named as a 'Recommended Lawyer' in the Legal 500 2022 directory.

[Connect with Colin on LinkedIn](#) to learn more.



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Current landscape

Current landscape



Statistics – CEO responses*

- 75% of SME CEOs intend to increase employee numbers
- ONS – total job vacancies reached 1.1m, July – Sept 2021
- 1.3m overseas workers left the UK
- 70% of CEOs report difficulties in recruiting and retaining talent
- 31% report increases in staff turnover, mainly because of pay
- **62% are seeing an impact on their ability to operate at full capacity**



Responses

- 71% of companies are increasing wages to respond to the recruitment challenge
- Most are looking at different ways of recruiting and different ways of working
- Reviews are taking place of skills and putting in place more defined development plans
- Some are considering recruitment and retention bonuses

*Research links

[Business leaders face supply chain disruption and recruitment challenges \(vistage.co.uk\)](https://www.vistage.co.uk/business-leaders-face-supply-chain-disruption-and-recruitment-challenges)

[Winning the talent war \(vistage.co.uk\)](https://www.vistage.co.uk/winning-the-talent-war)



Poll 1

Are you currently facing a recruitment or retention challenge?



Poll 2

Are you currently facing a retention challenge?

Employment models



Poll 3 and 4

Do you engage your workforce by any of the following methods:

Employment models

E

Employees:

- Full employment rights
- Full tax and NI
- Personal service
- No substitution
- More certainty?
- Less flexible?

W

Workers:

- Some employment rights
- Tax and NI can vary
- Personal service
- No substitution
- Certainty depends on contract
- More flexible?

SE

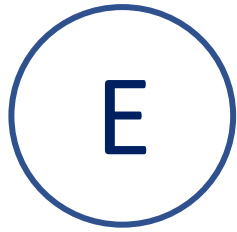
Self employed:

- No employment rights
- Beneficial tax and NI
- No Personal service?
- Substitution?
- Certainty?
- Flexibility?

AW

Agency worker:

- Some employment rights
- Tax and NI?
- Personal service
- Substitution?
- Certainty?
- Flexibility



Right	Employees	Workers	Self employed	Agency workers
Unfair Dismissal	X	-	-	-
Discrimination	X	X	?	?
Working Time	X	X	-	?
Holiday	X	X	-	?
Minimum Wage	X	X	-	?
S1 Statement	X	X	-	?
Maternity Leave	X	-	-	?
Shared Parental	X	-	-	?
Redundancy	X	-	-	?
TUPE	X	?	-	?
Agency Worker	-	-	-	X

Employment sub models

P

Permanent

- Salaried
- Certainty
- Inflexible?
- Expensive?
- Restrictive?

FT

Fixed term

- By time (six months)
- By event
- Fixed term employees' regulations

ZH

Zero hours

- Flexibility vs uncertainty
- Exclusivity rules
- Reputation
- Continuity of service issues
- Holiday pay issues

Non employment sub models

DC

Direct contractor:

- Self employment vs worker status risk
- Right to substitute
- Self employment factors?

PSC

Personal service company contractor:

- IR35 (Off Payroll Working Rules)
- Deemed employment tax risk
- Knowing the chain of supply

UC

Umbrella company:

- Differs from pure Agency model
- Managed service company (MSC) regime
- Complex area
- Individual often employed by the MSC/umbrella company

**Making employment
attractive**

Attracting and retaining - Incentives



Bonuses:

- Joining bonuses ('golden handshakes')
- Retention bonuses ('golden Handcuffs')
- LTIPS (3/5)
- Withholding on departure
- Hybrid cash and share options/ shares



Shares:

- Share classes
- Non dividend shares/ capital only
- Non-voting shares
- Growth value approach
- Shareholders Agreements
- Tax advice
- Impact on retention?



Share options:

- Tax advantaged vs Non-tax advantaged
- CSOP/ SAYE/ EMI/ SIP
- Exercise conditions?
- What are you incentivising?
- Impact on retention?



Shadow share options:

- Bonuses linked to share performance but not shares or share options
- Not normally as tax efficient
- Hard to value private companies
- Only works for companies

Attracting and retaining - Flexibility

L

Location:

- Home vs Office/Site
- UK vs Overseas?
- Commuting Costs
- Office attendance
- Cultural impact

H

Hours:

- Flexible hours
- Part-time work
- Trusted working arrangements

P

Pay:

- Basic
- Long term incentive plans
- Bonuses

Attracting and retaining – Benefits/carrots

R

Redundancy:

- Enhanced redundancy packages
- Do they retain?
- Do they retain the right people?
- Are they a recruitment tool?
- Age discrimination

FFR

Family-friendly rights:

- Enhanced rights/pay?
- Do you offer this?
- Do you recruit on this?
- Is this a retention tool?
- Contractual vs flexibility?

P

Progression:

- Training
- Professional development
- Promotion
- What can you commit to?

H

Holiday entitlement:

- Popular choice
- Ability to buy additional holiday

Attracting and retaining - Sticks

RC

Restrictive covenants:

- Complex
- But not illegal
- Impact on recruitment?
- Impact on retention?

CB

Claw backs:

- Bonuses?
- Training investment
- Unlawful deductions
- Repayment powers
- Ss 13 – 16 ERA 1996
- Clear contractual rights

Not

Notice periods:

- Security for whom
- Cost
- Difficulty enforcing as employer
- Garden leave
- Payment in lieu

Answering the recruitment challenge webinar series

Graduate employment - all you need to know Tuesday 14 December 2021

For the second webinar in the series, we are delighted to welcome guest speakers James Corbin and Matt Cook from the Careers and Employability Service at the University of Kent, who will join Antonio Fletcher from the Brachers Employment team for this session.

The speakers will address:

- An overview of the graduate labour market and the current situation in the South East.
- What graduates are looking for in employment and how businesses can attract the top talent.
- What the University of Kent is doing to support graduates moving into employment, including specific case studies.
- Antonio will also be providing his input on any legal points that arise.

Who should attend?

This webinar will be of value to HR professionals and anyone involved in recruitment within their organisation, who wants to understand more about the benefits of graduate employment and how to go about attracting the best talent.

[Secure your place today](#)

Questions