The flexible workforce
How to reward and retain
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The world of work is changing at a rapid pace. The emergence of the gig economy has brought with it innovative working practices. Businesses from a range of industry sectors are choosing to adopt flexible working models to achieve or maintain business agility.

Non-standard ways of working have been in the spotlight over the past year. The recent cases on employment status have given rise to much debate as to the benefits of increased flexibility over the potential downsides of moving away from the traditional ‘employer-employee’ model. The Taylor review, expected to conclude in Summer 2017, is focused on the rapidly changing nature of work, and the status and rights of agency workers, the self-employed, and those working in the gig economy.

Whatever the outcome of the Taylor review, it seems clear that both the on-demand economy and the need for businesses to respond quickly to market demand are here to stay. Companies will need access to a flexible workforce and will want to secure the best talent and results from that workforce, as they do from their permanent employees. It is therefore essential for businesses to consider not only how to structure their flexible workforce but also how to incentivise them.

In this new world, the businesses which take the time to structure effective, innovative incentive arrangements for their flexible workforce may find that they win the competitive edge and see their business performance pulling ahead of their competitors.

The focus of this briefing is therefore not the current challenges to employment status; instead it looks at the issue through a different lens. It considers the incentives which employers might adopt to ensure that they attract and retain the best flexible workforce. There is a wide range of possibilities to explore – some conventional, some less so.
The cash bonus – a traditional but effective incentive

The most common type of incentive arrangement is the cash bonus. This may be the most flexible and attractive option to reward productivity and incentivise workers in a flexible workforce.

The needs of the business will determine what performance measures are appropriate for a cash bonus arrangement.

What performance metrics might be relevant?

- The availability of the worker (e.g., by reference to the speed of response or the proportion of jobs taken up).
- Productivity (e.g., by reference to the number of tasks completed within a set timeframe).

Performance determined by reference to positive feedback from the business or the customer about their experience when interacting with the individual (ideally using a real-time, readily accessible feedback system).

The arrangement could be a layered one. So, for example, a worker could be given an initial cash bonus for completing a task within a prescribed timeframe, but then be eligible for an additional monthly or quarterly bonus if the aggregate number of completed tasks over the longer timeframe exceeds a certain number or quality specification. The aim of a layered approach would be to encourage repeat engagement of individuals who provide quality services.

Encouraging performance through non-cash incentives

Offering benefits in kind may be another way to attract new individuals to a flexible workforce and to encourage them to keep responding to requests for engagement and keep providing quality services.

However, whilst a straightforward provision of non-cash benefits is a good way to attract workers, it will only really act as an incentive if the benefit provision is itself linked to performance. One way to achieve this would be to allow the flexible workforce to participate in a ‘ladder’ benefit arrangement, in which they gain access to a greater range and value of benefits as their performance improves, i.e., as they climb the ladder.

The performance criteria would most likely be aligned with those applicable to any cash incentive arrangement.

What types of benefits might be included?

- Increased access to higher quality/better paid work.
- Being given priority refusal on any new work engagement.
- Skills development — access to skills training courses at discounted rates.
- Access to a wellness programme — including discounted rate gym membership and access to discounted rate medical insurance (or potentially to participate in the company’s medical insurance scheme if it is not possible for the individual to obtain medical insurance at a sensible premium in the market if not permanently employed).
- Access to financial advice and/or pensions advice at a discounted rate.
- Contribution to a pension arrangement of the employee’s choice (e.g., of an amount equal to the minimum level of contribution required under the pensions auto-enrolment regime).

The potential range of non-cash benefits is broad. The types of benefits chosen will be driven partly by the operating model of the business and partly by what is perceived to be attractive to the flexible workforce in question. Depending on the type of non-cash benefit offered, benefit in kind tax may be payable.
Would a conventional share incentive arrangement work?

Share incentive arrangements are generally viewed as a useful way to reward, incentivise and retain an employee engaged on a permanent employment contract. But do they work for a flexible workforce?

The key reasons why share incentive arrangements work well for a static employee population are as follows.

- They give employees a stake in the growth of the business — because they will benefit directly from an increase in share price — and therefore encourage them to contribute.
- They can be offered to all employees on a tax favoured basis.
- They act as a retention tool — the award will usually lapse if an employee voluntarily leaves employment before the end of the vesting period, typically three years from the date of the award.

Not all of these translate across well to a flexible workforce. Under the law as it stands, it is not possible to offer certain tax favoured share incentive arrangements to non-employees. Further, it would not be advisable to open up an employee share scheme to non-employees as this would risk tainting the status of that scheme as an 'employees' share scheme' (and so risk losing useful company law exemptions – on financial assistance, for example).

It should be possible to set up a bespoke non-tax favoured share incentive arrangement for non-employees. But if the aim of offering a share incentive arrangement to a flexible workforce is for it to operate as a retention incentive, this type of arrangement may not be effective. This is because the usual timeline for vesting of a share incentive award is three years. Members of a flexible workforce may value their ability to control their own working pattern and prefer not to be bound to continue with one working arrangement – the prospect of receiving shares in a number of years' time may simply not work as an incentive to perform well now. Whilst it would, in theory, be possible to provide for a shorter performance period, businesses should be wary of putting in place an arrangement which might result in complaints from their permanent workforce that they are establishing a more favourable share scheme for their flexible workforce than is in place for their permanent employee base (albeit that the flexible workforce may not enjoy the same tax benefits).

Another reason that businesses may be reluctant to put in place a share incentive arrangement for non-employees is that they would not be able to claim statutory corporation tax relief in respect of share incentive awards made to non-employees in the way that they do in respect of employees.
What about a phantom arrangement instead?

A phantom scheme is one under which individuals, usually employees, are given the right to receive a cash payment calculated by reference to a share price (or increase in a share price – a phantom option). No actual shares are awarded and the award is in many ways tantamount to a cash bonus. Once the performance period has ended, the employee can choose to ‘exercise’ the phantom option if the company’s share price exceeds the notional exercise price and receive a cash payment equal to that difference in value.

In a private company setting in particular, phantom awards may be more effective as an incentive tool as shares are not readily tradeable. Another advantage with phantom awards is that it would be possible to award them over shorter performance periods with less risk of upsetting permanent staff as the arrangements would not so readily be compared. They may not, however, have the same psychological impact as a share incentive award, as the individual would not have the prospect of becoming a shareholder in the business, with the result that the award may not effectively encourage an increase in performance. Given this, it may be that a straightforward cash bonus (together with non-cash benefits) would achieve the same result.

Flexibility in the pay system too?

One of the most attractive features of being part of a flexible workforce is that it allows the individual to be in control of their own working pattern. Would it be appealing for this control also to extend to choosing which pay system applied?

Workers could be given a choice as to how they are paid. They could opt for a basic pay structure only, or have the opportunity to earn additional incentives which could increase their overall pay, subject to performance, but be on a lower basic pay rate. There could also be an option for the worker to elect frequency of payment – opting to draw down their pay/fees on a daily, weekly or monthly basis.

To maintain flexibility, the individual would be allowed to nominate their preferred pay system when they first made themselves available, with regular future opportunities to flex their arrangement and change that nomination.

This flexible pay system could be operated in conjunction with any share based or cash incentive arrangement and the ‘ladder’ non-cash benefits system, described above. This would then provide a holistic pay and benefits package with built in flexibility to attract and incentivise a 21st century flexible workforce.
As the on-demand economy grows and companies are required to be increasingly responsive to market demands, it will be the businesses that seek to meet the needs of their flexible workforce which are more likely to have the competitive edge. Those which provide the best overall work experience – which will include pays and benefits – will ultimately attract and retain the best flexible workforce, and so improve business performance.
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