



Agency Worker Regulations

The Agency Workers Regulations will come into force in England, Scotland and Wales on 1 October 2011.

The Regulations will give agency workers the right to the same basic working and employment conditions they would receive if they were engaged directly by the company to do the same job. Importantly however, the Regulations do not alter agency workers' employment status i.e. they do not make an agency worker an employee of either the hirer or the agency.

Who is an agency worker?

An agency worker is an individual who is supplied by a temporary work agency to work temporarily under the supervision and direction of the company. Ltd Company workers can still qualify as a temporary worker if they are under the supervision and direction of the company.

How does an agency worker qualify?

An agency worker will only be entitled to equal treatment once she/he has completed 12 weeks' of service in the same role with the same hirer. This is irrespective of the working pattern (e.g. full time or part time). It is also irrespective of which or how many agencies supplied the agency worker to do the same role at the hirer. The entitlements include pay, duration of working time, night work, rest periods, rest breaks and annual leave.

A new qualifying period will begin only if a new assignment with the same hirer is substantively different (and that does not mean simply changing a job title), or if there is a break of more than six weeks between assignments in the same role.

The qualifying period will be paused (rather than stopped) if the worker takes:

- a break of six weeks or less;
- certified sick leave for no more than 28 weeks;
- statutory/ contractual maternity, adoption or paternity leave; or
- time off for public duties (including jury service).

In other cases where an agency worker takes a break which is related to pregnancy or childbirth, or takes maternity, adoption or paternity leave, the agency worker will be treated as if he or she has continued working in an assignment.

As stated above, the Regulations will not change the employment status of agency workers. Therefore they will still not have the right to claim for unfair dismissal, redundancy pay or maternity leave which are entitlements reserved for employees. Nor will agency workers be entitled to benefits such as occupational sick pay, company pension schemes, share options schemes, loans, expenses, health/life insurance, financial participation schemes and bonus payments based upon organisational or company performance. These are considered a reflection of a long term relationship between an employee and an employer.



What will they be entitled to?

There are two rights to which agency workers are entitled from the first day of an assignment.

- Hirers must inform agency workers of existing vacancies in their organisation. Hirers do not have to actively seek out each agency worker and tell them individually of the vacancies but they must ensure that they have the same access to information about vacancies as other workers.
- Agency workers will also be entitled to access collective on-site facilities such as crèche and childcare facilities, canteen facilities, car parking and the provision of transport services. However, access to facilities can be refused if there are 'objective grounds' for doing so. In practice this means that if there is a waiting list for childcare facilities or a car park space, an agency worker is not automatically entitled to a place but can be subject to the same criteria to access the facility as someone directly recruited by the hirer. 'Amenities' such as subsidised gym membership and season ticket loans are out of scope as they are considered to be a reflection of the long term relationship between an employee and a hirer which will not be appropriate for agency workers.

The Regulations will require a qualifying agency worker to be treated as if she/he had been recruited directly by the hirer to do the same job. This means equal:

- Pay
- Duration of working time
- Rest periods
- Annual leave – will be rolled up into the hourly pay rate.

Equal treatment will need to be established in respect of the terms and conditions that apply to a comparable worker or a comparable employee engaged in the same role or broadly similar work. Pay scales and benefits outlined in company handbooks and any collective agreements must be taken into account when establishing equal treatment.

Pregnant agency workers will be entitled to paid time off to attend medical appointments and antenatal classes once they have achieved the 12 weeks' qualifying service.

Who is responsible for compliance?

The temporary work agency will be responsible for any breach of a right in relation to equal treatment (except for breach of the Day One rights which are the sole responsibility of the hirer). However, the agency will have a defence if it has taken 'reasonable steps' to obtain the necessary information from the hirer, and has acted 'reasonably' in determining the agency worker's basic working and employment conditions. An employment tribunal will examine where the fault for the breach lies and will apportion liability, and any financial sanctions, accordingly.



The agency and the hirer must co-operate with each other to ensure that an agency worker receives his/her rights. An agency can assist the hirer by asking the right questions at the right time – whether this is on receipt of instructions to supply a worker or when it is clear that the assignment will last longer than 12 weeks. All intermediaries in the supply chain are responsible for ensuring the agency worker receive his/her entitlement. Therefore even if a worker issued a claim against their supplying agency only, the agency can join any other party to that claim if they have contributed to the breach.

How can we work together to prepare for the regulations?

From the 1st October 2011 agency workers will start the 'clock' at day one, therefore equal rights will apply for most after 24th December 2011.

We will be contacting all our clients individually to discuss the regulations, answer any questions and discuss details of your basic benefits including holiday. Where you have a structured pay scale we will ask for details for temporary workers expected to be qualifying in December.

Once the regulations are live we will be discussing how the regulations will affect you and the temporary workers for each booking placed with us. We do expect that as many of our clients already pay the temporary workers in line with permanent staff, there will be minimal impact on our clients with the introduction of the regulations.

In the meantime please contact us with any questions you have.

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