

## **A CANDIDATE'S GUIDE TO THE AGENCY WORKERS REGULATIONS (2010)**

### **What you need to know as an agency worker**

The Agency Workers Regulations (2010) will be introduced on 1<sup>st</sup> October 2011. This will give agency workers the right to equal treatment. This means that when you are taken on by an agency and supplied to work for the agency's client (the hirer) you will be entitled to work under the same basic employment rights that would have been applied if the hirer took you on directly. These new rights will apply after you have worked in the same role for the same hirer for **12 weeks**.

Agency workers are also entitled to new rights from the first day of their assignment (Day 1 rights).

### **Day 1 Rights**

From day one of an assignment, as an agency worker, you will be entitled to the following two rights:

1. The hirer you are working for must inform you of any relevant job vacancies in the organisation and ensure that you have the same access as other workers to the information available. This does not mean that you will automatically have the right to be employed by the hirer; you must follow the usual recruitment process that they use.
2. You will also be entitled to access collective facilities such as a crèche and childcare facilities, canteen facilities, car parking and the provision of transport services that are provided to the hirer's own workers.

The access to facilities can be refused if your hirer has 'objective grounds' for doing so. In practice this means that if there is a waiting list for childcare facilities or a car park space, you will not be automatically entitled to a place but can be subject to the same criteria to access the facility as someone directly recruited by the hirer. You will **not** be entitled to 'amenities' such as a subsidised gym membership and season ticket loans as they are considered to be a reflection of the long-term relationship between an employee and a hirer. The hirer has sole responsibility for ensuring that you receive these Day 1 rights.

### **The 12 week "qualifying period"**

After you have worked for 12 calendar weeks in the same role with the same hirer you will be entitled to equal treatment irrespective of your working pattern (e.g. full time or part time) and irrespective of which or how many agencies supplied you to do the same role at the same hirer.

Any time worked during a week will be counted as 'one week' for the purposes of calculating the qualifying period even if you have only worked a few hours in a week.

A new qualifying period will begin only if a new assignment with the same hirer is substantively different 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 you take:

- a break (for any reason) of 6 weeks or less and then return to the same role with the same hirer
- certified sick leave for no more than 28 weeks

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- time off during periods where the hirer does not require you to work because of various types of industrial action
- time off during periods when the hirer has temporarily closed down (e.g. Christmas shut down)
- time off for public duties (including jury service of up to 28 weeks)

In other cases if you take a break which is related to pregnancy or childbirth, or if you take maternity, adoption or paternity leave, you will be treated as if you have continued working in an assignment.

It is clear that as an agency worker you will not have to work for 12 consecutive weeks via the same agency to qualify for the right to equal treatment. It is possible for you to accrue the 12 weeks' qualifying period over a much longer period of time and through more than one agency.

Time spent on an assignment up to and including 30 September 2011 will not count towards your qualifying clock.

Absolutely Recruitment may ask you to give details of previous assignments that you may have completed. You are not under a statutory obligation to provide us with information, but if you do not, we will not be able to ensure that we provide you with equal treatment rights.

If you work for different hirers at the same time i.e. one for two days a week and the other for three you will have two qualifying clocks running at the same time and you will qualify for equal treatment with each of the hirers after working 12 calendar weeks for them (this is only the case if the two roles are different).

### **Equal Treatment**

The Regulations require that as an agency worker you are treated as if you had been recruited directly by the hirer to do the same job. On a practical level, this means that equal treatment will need to be established in respect of the basic terms and conditions that apply to a comparable worker or a comparable employee engaged in the same role or doing broadly similar work taking into account the skills and qualifications of yourself and the comparable employee/worker. The comparable employee or worker must work at the same establishment as you or at another of the hirer's establishments.

Equal treatment covers:

- pay
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave

Equal pay will include:

- basic salary
- bonuses or commission payments related to the quantity and quality of work carried out by you
- shift allowance
- overtime payments
- holiday pay
- vouchers (e.g. Luncheon vouchers, providing they have a fixed monetary value and are not part of a salary sacrifice scheme).

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Equal pay does **not** include

- benefits in kind
- vouchers which are a salary sacrifice arrangement between an employer and an employee
- pension payments
- occupational sick pay
- redundancy pay
- notice pay
- advances and loans
- share and option schemes
- maternity, paternity and adoption pay (over and above the statutory entitlement)
- loyalty bonuses or any other bonus payments which are directly attributable to the amount or quality of the work performed by you
- guarantee payments
- expenses
- health / life insurance

Holiday entitlement – as an agency worker you are already entitled to the statutory leave entitlement of 28 days (pro-rata'd). If you qualify for equal treatment you will also be entitled to any additional holiday entitlement the hirer provides to direct recruits.

### **Pregnant Agency Workers**

If you are a pregnant agency worker you will be entitled to paid time off to attend pregnancy related medical appointments and ante natal classes once you achieve the 12 weeks' qualifying period. You will need to show Absolutely Recruitment the appointment card or other proof of appointment (except for the first appointment).

In addition, if an assignment is terminated on pregnancy related health and safety grounds Absolutely Recruitment will have to find you suitable alternative work on terms which are not substantially less favourable than the previous assignment. If Absolutely Recruitment cannot find you suitable alternative work we will pay you for the remainder of the original assignment. If you unreasonably refuse suitable alternative work you will not be entitled to such pay.

### **Complaints**

If you have completed the 12 week qualifying period and you believe that you are not receiving equal treatment you should contact Absolutely Recruitment to find out if this has happened and why. If you do not receive a satisfactory response you are entitled to make a request for a written statement from Absolutely Recruitment who will then have 28 days to respond in writing. If you do not receive the information within 30 days of making the request, you can make a request directly to the hirer.

There will be no independent body tasked with policing and enforcing the Regulations. Instead you will be able to pursue a claim in an Employment Tribunal in order to enforce your rights. Such claims can either be brought against the hirer the agency or both depending on the particular breach in question. The Employment Tribunal will analyse the facts to determine to what extent each party is responsible for the breach of the Regulations.

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