

A CLIENT'S GUIDE TO THE AGENCY WORKERS REGULATIONS (2010)

The Agency Workers Regulation (2010) will be introduced on 1st October 2011. This will give agency workers the right to equal treatment with comparable permanent employees as regards to pay, holidays and working conditions. These rights commence once they have completed a 12 week qualifying period.

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

Day 1 Rights

From the first day of their assignment agency workers will be entitled to be treated as favourably as a comparable employee in relation to access to collective facilities and amenities provided by the hirer.

These may include:

- Canteen
- Crèche
- Transport services
- Toilet/shower facilities
- Staff common room
- Waiting room
- Mother and baby room
- Prayer room
- Food/drinks machines
- Car parking

[This is a non-exhaustive list, so other facilities can be included if they are available to employees]

If there are no comparable employees there is no entitlement to equal treatment.

From day 1 the hirer must provide details to the agency worker about relevant job vacancies within the company that would be available to a comparable worker. How the hirer publicises vacancies is up to them, but the agency worker must be told how to access the information.

As an employment business we must obtain information from all our clients about pay and basic working conditions. This is so that all agency workers receive equal treatment after a 12 week qualifying period.

The 12 week "qualifying period"

- The agency worker is not entitled to equal treatment until she/he has completed the 12 week qualifying period.
- The agency worker must work in the same role with the same hirer for 12 calendar weeks. Calendar weeks will be accrued regardless of how many hours are worked (e.g. a worker does 4 hours a week for 12 weeks - they become entitled to equal treatment).
- If there is a break of 6 weeks or more, the clock starts again (except in circumstances where a break of more than 6 weeks will only suspend the clock) - see the qualifying clock scenarios below.

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- Sick leave does not “break” the clock unless it is for 28 weeks or more. Pregnancy and maternity leave do not break the clock (for the protected period from the start of the pregnancy to the end of the 26 weeks following childbirth).

Equal Treatment

The regulations say:

- An agency worker is entitled to the same “relevant terms and conditions” as a comparable employee at the hirer.
- An employee is a comparable employee in relation to the agency worker if both are:
 - engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualifications and skills, and
 - the comparable employee works or is based at the same establishment as the agency worker, or works or is based at another establishment, if there is no comparable employee at the site the agency worker works at.

Equal treatment covers:

- Pay
- Duration of working time
- Night work
- Rest periods
- Rest breaks
- Annual leave

Pay includes:

- basic hourly rate as a comparable employee
- overtime payments
- unsociable hours allowances
- holiday pay (if paid more than Statutory Holiday Pay this can be added to the hourly rate)
- bonus payments directly attributable to the amount or quality of work done by the individual
- luncheon vouchers, childcare vouchers

Pay does not include:

- occupational sick pay
- occupational pensions
- occupational maternity, paternity or adoption pay
- redundancy pay
- notice pay
- payment for Trade Union duties
- advances in pay and loans e.g. for season tickets
- expenses for accommodation and travel expenses
- bonuses not linked to individual performance
- payments that require an eligibility period not met by the agency worker

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Working time and holiday:

Agency workers who reach the qualifying period become eligible to the same rest breaks as directly recruited employees, e.g. in first 12 weeks they may only get 30 minute lunch break. After this they become entitled to the same as perm staff, so it may go up to 1 hour.

If direct recruits do not have to work more than 48 hours then the agency workers should be offered the same terms and conditions.

If the hirer has more generous holiday entitlement than Statutory Holiday Pay, then the agency worker is entitled to the additional amount.

The Qualifying Clock

Scenarios where the clock pauses:

Example 1:

Katrina works for as a Receptionist for *Company A* for 11 weeks, she is then signed off sick for 26 weeks. After that period she returns to *Company A* in the same role.

Result:

Katrina's clock continues, so after one more week in the job she becomes entitled to equal basic terms and conditions as an equivalent employee.

Reason:

The clock only resets to zero after a gap of more than 28 weeks when a worker is incapable of work due to sickness or injury.

Example 2:

Nicholas works for *Company B* for 7 weeks. He is then not required for 4 weeks due to a lighter workload in his department. He then returns to work for *Company B* in the same job 4 weeks later.

Result:

Nicholas' clock continues from 7 despite the gap of 4 weeks.

Reason:

Gaps of up to and including 6 weeks only pause the qualifying clock. If the break was longer than 6 weeks the clock would reset to zero.

Scenarios where the clock will reset to zero:

Example 1:

Karen works for *Company C* as a Marketing Assistant for 10 weeks. She is then transferred to another department to work as a Data-inputter.

Result:

Karen's clock resets to zero as the work is significantly different.

Reason:

Different jobs at the same hirer reset the clock as long as the jobs involve significantly different skills.

Example 2:

Philip works for *Company D* for 6 weeks. He then works for *Company E* for 2 weeks. He then returns to the same role at *Company D* for a further 6 weeks.

Result:

Philip's clock resets to zero.

Reason:

Different jobs at different hirers reset the clock, even though the gap was less than 6 weeks.

Scenarios where the clock will continue to tick:

- Breaks due to childbirth, pregnancy or maternity which take place during pregnancy and up to 26 weeks after childbirth
- Any breaks due to the worker taking maternity/paternity or adoption leave.
[In these cases the clock continues for the originally intended duration of the assignment]
- If a worker works for *Company E* through *Recruitment Company A* for 6 weeks and then transfers to *Absolutely Recruitment*, the clock will continue from 6 weeks (as long as the worker returns to the same job within the same company).

Combined Absences:**Example:**

Christopher works for *Company F* for 4 weeks. He is then not required for 5 weeks. He is then signed off sick for 2 weeks, after which he returns to *Company F* in the same job.

Result:

Christopher's clock continues to run when he returns to work.

Reason:

This is because after the 5 week gap his clock is paused due to sickness.

Who is liable for ensuring equal treatment?

- The agency bears primary liability for the application of equal treatment.
- However, the agency will have a defence if they have taken reasonable steps and it is the hirer who is responsible for the breach.
- Absolutely Recruitment will take reasonable steps to obtain relevant information from you about basic Terms and Conditions in your organisation, and set appropriate conditions for the agency worker.
- The hirer will be responsible for supplying us with accurate information relating to employees' basic pay and working conditions. If the hirer provides incorrect information they may be liable for the breach.
- An employment tribunal will apportion liability between the agency, any intermediaries and the hirer, and will apportion any financial sanctions accordingly.

How will the AWR be enforced?

- The Regulations will be enforced through employment tribunals.

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