

Agency Workers Regulations Summary



The Government has published guidance in order to help employers understand the implications and their responsibilities under the Agency Workers Regulations which were implemented on 1st October 2011 in Great Britain. Separate regulations are required for Northern Ireland and it is anticipated that 1st December 2011 will be the implementation date there.

Read on below for a summary of the guidance.

Who do the Regulations apply to?

Individuals who work as temporary agency workers. Those likely to be outside the scope of the Regulations include:

- those who find work through a temporary work agency but are in business on their own account;
- those working on Managed Service Contracts;
- those working for in-house temporary staffing banks;
- those who find direct employment with an employer through an "employment agency";
- those on secondment.

Day 1 rights

Collective facilities

From 1st October 2011, agency workers are entitled to be treated no less favourably than a comparable worker or employee in relation to access to collective facilities unless the treatment can be objectively justified. Included facilities may be:

- canteen (whether on or off site)
- workplace crèche
- transport services (local pick up and drop offs – not company car allowances or season ticket loans)
- toilets/shower facilities
- staff common room
- waiting room
- mother and baby room
- prayer room
- food and drinks machines
- car parking

Information about vacancies

Agency workers who have a comparable worker based at the same establishment will have the right to be provided with information about any relevant job vacancies. Hirers can decide how they publicise the vacancies, but the agency worker must know where and how to access the information.

Where 12 weeks service is required

After 12 weeks on the same assignment, an agency worker will be entitled to the same basic terms and conditions of employment as they had been employed directly by the hirer. They are:

- key elements of pay;
- duration of working time;
- night work;
- rest periods;
- rest breaks;
- annual leave;
- paid time off for ante-natal appointments.

Pay

Pay includes:

- Basic pay;
- Overtime payments;
- Shift/unsocial hours allowances, risk payments for hazardous duties;
- Payment for annual leave;
- Bonuses or commission payments directly attributable to the amount or quality of the work done by the individual;
- Vouchers or stamps which have monetary value and are not salary sacrifice schemes.

Pay does not include:

- Occupational sick pay;
- Occupational pensions;
- Occupational maternity, paternity and adoption pay;
- Redundancy pay;
- Notice pay;
- Payment for time off for trade union duties;
- Statutory guarantee pay;
- Advances in pay or loans;
- Expenses;
- Profit share schemes;
- Overtime or similar payments where the agency worker has not fulfilled qualifying conditions required of someone directly recruited;
- The majority of benefits in kind given as an incentive or reward for long service;
- Any payments that require an eligibility period of employment/service if not met by the agency worker;
- Bonuses which are not directly linked to the contribution of the individual.

Working time

Agency workers will be entitled to the same terms and conditions relating to the duration of working time, night work, rest periods, annual leave and to be paid the appropriate overtime rate as he would have received as a direct employee.

Pregnant workers and new mothers

Pregnant workers will be allowed paid time off to attend antenatal medical appointments and classes when the 12 week qualifying period is met.

Calculating the 12 week qualifying period

The 12 week qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks. Calendar weeks will be accrued regardless of how many hours the worker does per week and no time prior to 1st October 2011 will count.

Summary of how absence affects the qualifying clock

Type of absence that affects the 12 week qualifying period	Effect on 12 week qualifying period
Agency worker begins a new assignment with a new hirer (See below)	Clock resets
Agency worker remains with the same hirer but is no longer in the same role	Clock resets
Break between assignment of 6 weeks or more (which is not one which 'pauses' the clock or during which it continues to tick)	Clock resets
Any reason where the break is less than 6 weeks	Pauses the clock
Sickness absence	Pauses the clock for up to 28 weeks
Annual leave	Pauses the clock
Shut downs – e.g. factory closure, school holidays	Pauses the clock
Jury service	Pauses the clock for up to 28 weeks
Industrial action	Pauses the clock
Pregnancy and maternity-related absence	Clock keeps ticking*
Statutory maternity, paternity or adoption leave	Clock keeps ticking**

A “new hirer”

A new hirer must be a different person, or be a different legal entity. Moving an agency worker around multiple sites will not usually break continuity unless it is a substantively different role.

“Substantively different”

The work or duties which make up the whole or main part of a role must be substantively different. Transfers between similar administrative functions; movement within a single, relatively small business unit or increases in pay rates are not enough to constitute substantive difference.

A combination of the following characteristics can help to establish if the work or duties are substantively different:

- Are different skills and competencies used?
- Is the pay rate different?
- Is the work in a different location/cost centre?
- Is the line manager different?
- Are the working hours different?
- Does the role require extra training and/or a specific qualification that wasn't needed before?
- Is different equipment involved?

The hirer must notify the agency in writing when there is a new role that is substantively different and record details of on the job requirements.

The agency must provide a description of the new role in writing to the agency worker. It is advisable that the agency records details about the new vacancy and notify the agency worker that their role has substantively changed and that the qualifying period will start again.

Giving of information

Employers who hire temporary agency workers through an agency will need to provide the agency with up to date information on their terms and conditions so that they can ensure that an agency worker receives the correct equal treatment, as if they were recruited directly, after 12 weeks in the same job.

Agencies will need to ask the hirer for information about pay and basic working conditions (when it is clear that the agency worker will be in the same job with the same hirer for more than 12 weeks) so that they are treated as if they had been directly recruited to the job. This also applies where an assignment is not expected to last for more than 12 weeks, but then is extended to last more than 12 weeks.

The hirer will also need to provide the agency with the following details in order to comply with the Regulations if and when an agency worker completes 12 weeks in a given job:

- The level of basic pay, if and when there are overtime payments and shift/unsocial hours allowances or risk payments for hazardous duties;
- Types of bonus schemes the hirer operates (and how individual performance is appraised and information on annual pay increments);
- If they offer vouchers which have monetary value;
- Annual leave entitlement.