

Agency Workers Regulations (AWR) Information Sheet

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

The Regulations will give agency workers the right to receive treatment equal to that of a client's own directly engaged workers in respect of pay, conditions relating to working hours, access to the client's on-site facilities and the right to be informed of job vacancies that the client has.

Summary of entitlements under the AWG

Day 1 Rights

- Access to Collective Facilities
- Access to internal vacancies

Week 12 Rights

- Basic working and Employment conditions
- Pay (including Bonuses where applicable)
- The duration of working time
- Night work
- Rest periods
- Rest breaks
- Annual leave

Qualifying for Equal Treatment

Agency workers will need to qualify in order to be entitled to receive equal treatment. It is important to note that the qualifying criteria (working for 12 weeks for the same client in the same role) only applies in respect of pay and equal treatment. The right to access a client's on-site facilities and information about permanent roles will apply from day one of an agency worker's assignment.

What is Equal Treatment

Agency workers will need to qualify for equal treatment in order to be entitled to receive equal pay and working conditions. Regulation 5 provides that a qualifying agency worker is entitled to the "*same basic working and employment conditions as [she/he] would be entitled to for doing the same job had [she/ he] been recruited by the hirer...*" Regulation 6 then sets out what these basic working and employment conditions are:

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

Day one Rights

Agency workers from day one of the assignment will be entitled to access collective facilities which clients make available to their own workers on-site, such as canteen and transport services. Agency workers will also be entitled to details of the client's existing vacancies.

Pay - What is equal pay?

"Pay" is defined as *"sums payable to a worker of the hirer in connection with the worker's employment, including any fee, bonus, commission, holiday pay or other emoluments referable to the employment whether payable under the contract or otherwise."* For example, if a client pays a directly employed worker £8.00 per hour to work on a production line, a qualifying agency worker supplied to do exactly the same role will also be entitled to be paid at least £8.00 per hour. The agency worker can look either to the actual pay that the client's own directly engaged employee receives, or the amount that the client would pay someone doing an identical role if the client has no specific comparator.

Bonuses

Clients who pay bonuses to their own directly engaged workers may have different criteria, rules and formulae for such payments. A bonus that a client pays which is directly attributable to a worker's individual performance will be within the definition of "pay." **In comparison, a bonus which is directly linked to an individual's length of service or company performance will not be within the definition of "pay."**

Payment excluded from the definition of Pay

A number of different types of payments have been excluded from the definition of pay which therefore an agency worker will not be entitled to receive. These include;

- Occupational Sick Pay (Sick pay over and above statutory sick pay)
- A pension, allowance or gratuity in relation to retirement or compensation for loss of office
- Any payment in respect of occupational maternity, paternity or adoption leave
- Redundancy pay
- Any payment in relation to a financial participation scheme" such as distribution of shares or options, or a share of profits in cash or shares
- Payments that a client pays to its own directly engaged workers which are not "directly attributable to the amount or quality of the work done by a worker, and which is given to a worker for a reason other than the amount or quality of work done such as to encourage the worker's loyalty or to reward the worker's long term service"
- Expenses
- Advances and loans
- Health and life insurance
- Other prescribed payments

Duration of Working Time

Agency workers will be entitled to equal treatment with regards to working time, including the duration of their working hours, night work, rest periods and breaks

Annual Leave Entitlement

All qualifying agency workers will be entitled to the same annual leave as workers directly engaged by the client. Therefore, if a client gives its comparable employee more than the statutory entitlement, the agency worker will be entitled to the additional leave.

Agency workers will have a right to access client on-site facilities and to be informed of job vacancies applying from day one of an assignment. However the additional rights to equal pay and working conditions will only apply to agency workers who "qualify" by working for a "qualifying period" which is 12 weeks from 1st October or 12 weeks from the start of the assignment if the assignment starts after October 1st.

Exceptions to the AWR rules

The two main exceptions to the AWR rules are:

The Regulation 10 compliant contract "derogation contract": If the worker is engaged on a permanent contract of employment with the agency AND the agency pays the worker 4 weeks' pay at 50% of their usual hourly rate (provided this is not below the National Minimum Wage) whilst they are not working but are available to work, the worker will not be entitled to equal treatment in relation to pay.

The Managed Service: This involves the complete outsourcing of a proportion of the hirer's business, for example, the "packing" section of a manufacturing line.

For further information please see the following links;

Direct Gov Website

http://www.direct.gov.uk/en/NI1/Newsroom/DG_199272

Recruitment and Employment Confederation (REC)

http://www.rec.uk.com/_uploads/documents/briefing-for-candidates-september-2011.pdf

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