

Agency Worker Regulations – what do they really mean?

by Jane Middleton from The Middleton Partnership

We've heard about them and we've no doubt been rather confused by them and now we hope to provide you with a user friendly guide to them. We all know how valuable temporary and contract workers are for UK business as a whole. Employers who use recruitment agencies to hire staff are responsible for what they do, so they must be sure the agency acts appropriately and in accordance with their equality and diversity policies.

Agency workers are classed as "workers" rather than as employees. To be clear, all so called "workers", including agency workers, are **already** entitled to the following rights:

- Paid annual leave, rest breaks and limits on working time, National Minimum Wage, no unlawful deductions from wages, discrimination rights under the Equality Act 2010 & Health and safety at work.

So.....what has changed with the arrival of the Agency Worker Regulations 2010 which came into force on **1 October 2011**? These new regulations give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a **qualifying period of 12 weeks** in a particular job for a company.

Who is covered by the regulations? The regulations cover **agency workers supplied by a temporary work agency to a hirer**. This includes most agency workers that are often referred to as 'temps'. To establish who has a right in these regulations, the agency worker needs to be able to identify a comparator so someone who does a similar job to them and that they can compare themselves to.

Who is not covered by the regulations? The regulations don't cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

What rights do agency workers now have?

The new regulations allow an agency worker to be entitled to the following things from **Day 1**:

- the same access to facilities such as staff canteens, childcare (i.e.: on-site crèche facilities) and transport as a comparable employee of the hirer
- to be informed about job vacancies that might be available in the company.

In addition, after a **12-week qualifying period**, an agency worker is now entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:

Pay: including any bonus, commission or holiday pay relating to the assignment (however this **does not** include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay)

Working time rights: including any annual leave over and above what is required by law.

Agency Workers (regardless of their employment status) will also be entitled to paid time off to attend ante-natal appointments during their working hours.

Does the 12-week qualifying period have to be continuous? No it doesn't – any breaks between or during an assignment in the same job that are less than 6 weeks in length will simply **pause** the accrual of the 12-week qualifying period. Most breaks between or during an assignment to the same job that are 6 weeks or more will reset the 12-week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- absences for sickness and jury service (for up to 28 weeks)
- annual leave, shut downs (e.g. factory closures & school holidays) and industrial action (for the duration of the absence).

However, **pregnancy and maternity-related absences**, maternity leave, paternity leave and adoption leave will not pause the 12-week accrual at all - instead the 12-week accrual period will continue throughout the duration of the absence and include these weeks as those counting towards the 12-week total.

What if you have an agency worker who is working on more than one assignment? If an agency worker is working on more than one assignment then the agency worker will have two or more accrual periods. So what this means is that if you have agency worker with assignment A and assignment B, they would need to work for 12 weeks on assignment A before their rights apply to assignment A and 12 weeks on assignment B before their rights apply to assignment B. The regulations require that a new assignment would need to comprise 'substantively different work or duties' for the qualifying period to start again.

What is a 'comparative employee'? The regulations aim to ensure an agency worker is engaged on the same relevant terms and conditions as a "comparable employee". In other words, "what terms and conditions would the agency worker have got if they had been directly recruited into the role?"

An employee is a 'comparable employee' if at the time of an alleged breach of the regulations:

- Both employee and agency worker are working for and under the supervision and direction of the hirer
- Both employee and agency worker are engaged in the same or broadly similar work (this could involve an examination of qualification and skills in the workplace)
- The employee works or is based at the same establishment as the agency worker. (The employee can work or be based at a different establishment but only where such an employee cannot be found working or based at the same establishment).

The **Agency Workers Directive** came into force on **1st October 2011** and the main principle of the directive is **to give equal treatment to someone who has been with the hirer for 12 continuous weeks in a given job.** Agency workers are now entitled to at least the basic working and employment conditions such as pay and working time which are equal to the hirer's own employees. So its overall aim is to make working conditions fairer and more

equitable for those agency workers who are essential to the smooth running of our businesses – surely that has to be a good thing?watch this space.

Full guidance on the Agency Workers Regulations can be found on the Department for Business, Innovation and Skills website.

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