

AGENCY WORKERS REGULATIONS EMPLOYER GUIDE

On 1 October 2011, the Agency Workers Regulations (AWR) became law; and they could have a major impact on your business. In this guide, we help you to understand what this means for your company, and as experts in employment law, highlight the key issues that you need to be aware of in preparing for the changes.

What does 'equal treatment' for agency workers actually mean?

After 12 weeks in an assignment, the agency worker's relevant terms and conditions must be no less favourable than if you had recruited them at the same time to do the same job; taking into account qualifications, skills and experience.

What defines an 'agency worker'?

The regulations apply to all agency workers, including those employed through umbrella companies, but exclude workers who are genuinely self-employed.

How does the 12 week qualifying period work?

The regulations apply once an agency worker has carried out 12 weeks of consecutive work in a particular role, regardless of working pattern (full-time or part-time hours). In general, breaks between assignments of more than 6 weeks will reset the qualification 'clock'. A new qualifying period will also begin if an agency worker starts a new assignment that's substantially different from the previous one. Any time worked before 1 October 2011 will not count towards the qualifying period.

It's important to be aware that any company suspected of deliberately structuring an agency worker's assignments so as to avoid complying with AWR could face heavy penalties.

Which working and employment conditions are covered?

The right to equal treatment only applies to terms and conditions relating to working time, holidays and pay, such as:

- Duration of working time
- Overtime and night work
- Breaks and rest periods
- Holidays and public holiday pay
- Collective facilities

The regulations do not extend to:

- Occupational sick pay
- Maternity/paternity pay
- Redundancy and notice pay
- Payments related to pension entitlement
- Bonuses not based on individual performance
- Profit sharing schemes
- Season ticket loans or car allowances

What are day one rights?

Agency workers have certain rights that apply from the first day of their assignment, such as a right to access 'collective facilities' and amenities, e.g. a canteen or a crèche. They also have the right to be informed of any opportunities for permanent employment.





How do you decide which terms would have applied, had you recruited an agency worker directly?

The relevant terms and conditions concerning working time, holidays and pay will be any that apply generally to direct employees; either because they are set out in a pay scale or an agreement with a trade union, or because they are given as a matter of 'custom and practice'. So, if you have a pay scale that sets starting pay for the relevant job, that's the reference point for equal treatment. If there's no pay scale, but as a matter of course pay is set at a particular pay rate and/or there's a certain entitlement to leave, these will be the deciding points of reference.

What if an agency worker is carrying out a unique role?

Agency workers are sometimes taken on to carry out a one-off project, with no permanent employee carrying out the same job. In the absence of a relevant policy or precedent, the regulations are unlikely to apply to an agency worker's pay. However, if there is a clear policy on annual leave for permanent employees for example, an agency worker would be entitled to equal treatment in that respect.

If my agency workers get paid more than my employees, will I have to pay my employees more?

The legislation will only apply to agency workers that are worse off than direct employees, so you're off the hook with that one.

How will complaints about equal treatment be made?

After the 12 week qualifying period has elapsed, agency workers have the right to request details of how their pay and conditions have been determined from their agency. If after 28 days the agency hasn't responded, they can come to you as the hirer for the same information. If the agency worker believes they are not being treated in line with the terms and conditions of the new directive, they can make a claim through the Employment Tribunal - usually within three months of the assignment.

Who is liable for failure to provide equal treatment?

If a claim is taken to the Employment Tribunal, they will assign liability to whichever party it believes is responsible for causing the disadvantage to the worker. If your recruitment agency can prove that it has made reasonable efforts to establish equal treatment for the agency worker, the liability will lie with your company as the hirer.

What are the penalties for being in breach of the Regulations?

You would be required to pay compensation for the agency worker's loss, subject to a minimum of 2 weeks pay. Apart from in cases of detriment and victimisation, 'injury to feelings' awards cannot be made under the Regulations. You may also face an additional penalty of £5,000 if you are suspected of deliberately structuring assignments so as to avoid complying with AWR.

This list isn't exhaustive, so we know that you're bound to have a few more questions around the Agency Workers Regulations - you might even be unsure about whether your company will be affected. So to speak to an expert in employment law for some consultative advice - tailored to the unique positioning of your business- contact your local branch of Office Angels.