

Agency Workers Regulations

Outlining Key Changes & Responsibilities



What is AWR?

Day 1 Rights for **ALL** agency workers.

The Agency Workers Regulations came into effect on the 1st October 2011.

They have been designed to give agency workers the same basic working and employment conditions.

It ensures an agency workers terms and conditions must be no less favourable than if the client had recruited that individual at the same time to do the same job, enforcing equal treatment.

The 12 Week Qualifying Period



These new equal treatment entitlements will only come into effect after an agency worker has completed a 12 week qualifying period with the same hirer, in the same role. After 12 calendar weeks the temporary worker must be given equal treatment.

What this means to YOU, the hirer of the Agency Worker

If you are the employer and hire temporary workers through Prime Appointments or another agency, you will need to provide Prime Appointments with up to date information on your Terms and Conditions.

This is so that we can ensure the temporary worker receives the correct equal treatment as if they were recruited directly.
(After 12 weeks in the same assignment with you).

You are responsible for ensuring that all agency workers can access your facilities and are able to view information on your job vacancies from the first day of their assignment.

New Entitlements

The regulations provide new entitlements giving agency workers the same access to certain facilities provided by the hirer as comparable permanent workers from the first day of their assignment. This includes:

- Access to facilities such as the staff canteen, transport facilities, car parking and child-care facilities
- Access to vacancies with the right to be notified of any job vacancies within the hirer
- The right for pregnant workers to take paid time off for ante-natal appointments during any assignment

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Calculating the 12 week qualifying period

This is triggered by working in the same job with the same hirer for 12 calendar weeks. A calendar week will comprise any period of seven days starting with the first day of an assignment.

Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis. Therefore even if the agency worker is on assignment for only a couple of hours a week, it will still count as a week and they will still be entitled to equal treatment after 12 calendar weeks calculated in this way.



A new qualifying period will only begin if the new assignment with the same hirer is substantively different and/or there has been a minimum of six weeks break between assignments.

An agency worker can qualify for equal treatment after 12 weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

Substantively Different

The whole or main part of the role must be substantively different; it is not enough to simply change a line manager but not the job requirements or to transfer the agency worker between similar administrative functions or move them within a single, relatively small business unit or just give a different pay rate. There has to be a genuine and real difference to the role.

A combination of the following characteristics can help to establish if a job role is substantively different.

- Are different skills and competence's used?
- Is the pay rate different?
- Is the work in a different location/cost centre?
- 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?

Breaks between Assignments.....Questions and Answers

When does the clock pause and when does it restart?

If the break between assignments with the same hirer is less than 6 weeks and the role is not substantively different, generally the clock will pause and start ticking again when the agency worker resumes work with the hirer.

What reasons are likely to re-start the clock?

- An agency worker begins a new assignment with a new hirer

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- An agency worker remains with the same hirer but is moved to a different job role. This might be immediately after the first role or before the 6 week break has elapsed.
- If there is a break of 6 weeks or more between assignments with the same hirer.

What absences are likely to pause the clock?

- Any break of less than 6 weeks between assignments or during an assignment. It will restart when the agency worker returns to the role.
- Where the absence is related to pregnancy or sickness or beyond the control of the agency worker, such as workplace closure.

The qualifying period will pause or continue to tick depending on the type of absence.

Pay

The definition of pay for the purposes of these Regulations is defined as basic pay plus other contractual entitlements that are directly linked to the work done by the agency worker whilst on assignment, i.e. 'Pay for work done'.

Pay includes

Basic pay	Based on the annual salary an agency worker would have received if recruited directly (usually converted into hourly and daily rate, taking into account any pay increments)
Overtime payments	Subject to requirements regarding the number of qualifying hours
Annual leave	Where the entitlement is above the statutory minimum of 5.6 weeks (at a full time equivalent rate) which can be added to the hourly or daily rate. (2.5% more if 33 days)
Bonuses (or commission payments)	Attributable to the amount or quality of work done by the individual, including where sales or productions targets are achieved and payments relating to personal performance
Additional discretionary, non contractual bonuses	Are paid with such regularity that they have become custom and practice e.g. where a Christmas bonus has been so paid.
Vouchers	Which have monetary value and are not "salary sacrifice schemes" e.g. luncheon vouchers, child care vouchers.

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Pay excludes

Occupational Sick Pay	Based on the annual salary an agency worker would have received if recruited directly (usually converted into hourly and daily rate, taking into account any pay increments)
Occupational pensions	Subject to requirements regarding the number of qualifying hours
Occupational maternity, paternity or adoption pay(these do not effect an agency workers statutory entitlements)	
Redundancy pay (statutory and contractual)	
Notice Pay (statutory and contractual)	
Payment for time off for Trade Union duties	
Advances	In pay or loans e.g. For season tickets
Expenses	Such as accommodation and travel expenses
Bonuses	Which are not directly linked to the contribution of the individual e.g. A flat rate bonus that is given to all directly recruited workers to encourage loyalty and long term service
Additional discretionary, non contractual bonuses	As long as these payments are not made with such regularity that they have become custom and practice. e.g. A one off payment to celebrate a particular event
Payments or rewards linked to financial participation schemes. (e.g. ownership schemes, phantom share schemes)	
Overtime	Or similar payments where the agency worker has not fulfilled qualifying conditions required of a direct employee
The majority of benefits in kind	Given as an incentive or reward for long-service. As an example, where Building Society workers maybe be given a reduced rate mortgage.
Any payments that require an eligibility period of employment	

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Examples of Bonus payments that would be included

- Commission payments linked to sales
- Bonuses payable to all staff who meet a specific individual performance target.
e.g. in terms of calls handled in a given time
- Bonuses payable to all staff who consistently respect company standards or values
- Bonuses payable on the basis of individual performance over a given period

Examples of Bonus payments that would not be included

- Bonuses reflecting the overall performance of the company
- Bonuses reflecting the overall performance of the part of the organisation where the agency worker has worked, but to which the agency worker has made only a minimal contribution
- Bonuses designed to reward loyalty to the organisation or longer-term service

Performance Appraisal System

The effect of the regulation is not to require integration of agency workers into performance appraisal systems for permanent staff.

The agency worker is entitled to the bonus that a permanent employee performing at the same level in the same job would have received, but this does not mean that the same process for assessing performance need be followed.

However, should a hirer choose to address this requirement of the regulations by integrating an agency worker into an existing performance appraisal system, this need not affect the worker's employment status.

Annual Pay Award

Where a hirer gives an annual pay increment. The agency worker should receive the same pay increment as if recruited directly.