

Agency worker regulations 2010



A new set of regulations covering the employment of agency workers came into force on 1 October 2011. The following guide sets out the basic rights under the Agency Worker Regulations 2010.



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Who do the regulations apply to?

The regulations apply to:

- Agency workers - individuals supplied by an agency to work temporarily for a hirer
- An agency involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer
- and hirers (private, public and third sector)

The regulations do not apply to the self-employed, in-house temporary staffing, banks and individuals working under a managed service contract (when a company provides a specific service to a customer, such as catering or cleaning).



What rights do agency workers have on day one?

From their first day on the job, agency workers are entitled to access facilities and amenities and to be given notification about relevant job vacancies in the organisation.



Facilities include: canteens; workplace crèches; transport services (such as transport between sites, but 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.

What rights do agency workers have after 12 weeks?

After 12 weeks on the job, agency staff are entitled to the same basic working and employment conditions as other directly recruited staff.

These rights are limited to pay (basic pay, including any fee, bonus or commission related to the work done by the agency worker, holiday pay and vouchers or stamps which have monetary value); duration of working time (e.g. if working hours are limited to a maximum of 48 a week); night work; rest periods; rest breaks; annual leave.

Pay does not include sick pay, redundancy or incentive and bonus payments which are not related to the work the agency worker does.

Pregnant agency workers who have completed the 12 week qualifying period will be entitled to paid time off for ante natal appointments.

What counts as a week?

The 12 week qualifying period is triggered when an agency worker works in the same job with the same hirer for 12 calendar weeks (any period of seven days starting with the first day of an assignment).

Workers can include weeks when they only work for a few hours a week in the same assignment.

The 12 weeks accrues from the day the Regulations came into force on 1 October 2011.

When does the clock stop and start?

The Government guidance compares the 12 week period to time on a stopwatch. There are certain circumstances which result in a break in work. Depending on the reason for the break, the clock may either have to be reset or resumed from the same point. There are other reasons which enable the clock to keep on running.

Reset to zero

Reasons for the qualifying clock to reset to zero are where:

- The agency worker begins a new assignment with a new hirer;
- The agency worker stays with the same hirer but in a substantively different role which the agency has put in writing; and
- There is a break of more than 6 weeks for any other reason not covered below.

Resumed

Types of break that will cause the qualifying clock to 'pause' and resume from the same point include:

- A break for any reason if it is no more than 6 calendar weeks and the agency worker returns to the same role with the same hirer;
- A break of up to 28 weeks because the agency worker is incapable of work because of sickness or injury;
- To take leave to which the worker is entitled e.g. annual leave;
- To perform jury service;
- A break caused by a planned shutdown of the workplace by the hirer (for example at Christmas); and
- A break caused by industrial action at the hirer's establishment.

Keeps Running

Breaks where the clock continues to run include:

- Breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth; and
- Any breaks due to maternity leave, adoption leave or paternity leave.
- In each of these cases the clock will continue to tick for the originally intended duration of the assignment, or the likely duration of the assignment (whichever is longer).



Can employers terminate the contract after 11 weeks?

Yes, there is nothing in the regulations to prevent hirers from releasing an agency worker after, say, 11 weeks.

However, the regulations do also include some anti avoidance provisions. These apply where an agency worker is prevented from completing the 12 week qualifying period because of the way the work assignments have been structured.

In that case, a Tribunal may decide that this is done with the intention of depriving the agency worker of equal treatment. If so, the agency worker will be deemed to have completed the 12 week qualifying period and entitled to the right to equal treatment. This could also result in a Tribunal making an additional award to the agency worker of up to £5,000.



What redress will an agency worker be entitled to if they have not received equal treatment after 12 weeks?

An agency worker can make a request for relevant information from the agency who has 30 days to respond. If the agency does not respond the agency worker can make a request to the hirer who has 28 days to respond.

The agency worker can also bring a claim in the Employment Tribunal. A Tribunal can make a declaration as to the agency worker's rights and order unlimited compensation. No award can be made for injury to feelings.

Generally, an agency will be liable for any failure to provide equal treatment after 12 weeks. However, it will have a defence where it can show that it took reasonable steps to obtain information from the hirer about basic working conditions and assessed the position of the comparator.

A claim for equal treatment after 12 weeks can be brought against both the agency and the hirer where responsibility for the breach is not clear.

More Information

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