

The Agency Workers Regulations 2010

Candidate
FAQs



Sellick Partnership
Recruitment Specialists

Agency Workers Regulations - FAQs for Temporary Workers

These FAQs have been produced to aid your understanding of the Agency Workers Regulations. They have been based on the Agency Workers Regulations 2010 and the UK Government Guidance issued in May 2011. The content is correct at the time of writing but may be subject to change.

1. What are the Agency Worker Regulations?

The agency worker regulations have been introduced to give agency workers the right to the same basic employment and working conditions that they would have received if they had been employed directly by the end client. Certain rights will be applied from day one of an assignment (see question 6); the majority of rights will apply following completion of the 12-week qualifying period (see question 7).

2. When does AWR come into force?

1st October 2011.

3. Who do the Agency Worker Regulations apply to?

The regulations will apply to all PAYE agency workers and those employed via umbrella companies or other intermediaries. Workers who are genuinely self-employed (i.e. limited company contractors in business on their own account) are unlikely to be within the scope of the regulations.

4. What is equal treatment?

Equal treatment will apply to the agency workers basic working and employment conditions. This includes:

- Duration of working time
- Overtime
- Breaks
- Rest Periods
- Night Work
- Holidays

5. How is equal treatment established?

The requirement for equal treatment is simply to treat the worker as if he or she had been employed directly to the same job. Equal treatment is not required in respect of all terms and conditions but covers basic working and employment conditions. They are those that are included in relevant contracts of direct recruits and can usually be found in:

- Standard contracts
- A pay scale or pay structure
- A company handbook
- A relevant collective agreement

6. What are day one rights?

The agency worker will have certain entitlements from day one of their assignment. These entitlements are:

- Access to collective facilities and amenities, such as canteen, childcare facilities, transport services.

N.B. - If there is a waiting list for these facilities then the temporary worker will join the waiting list.

- The right to be informed by the hirer of relevant job vacancies within the hirer's organisation that would be available to a permanent employee. The agency worker should know where and how to access this information.

7. What is the 12-week qualifying period?

An agency worker must have been engaged for a period of 12 continuous calendar weeks working in the same role, with the same hirer before they have the right to equal treatment. This qualifying period is irrespective of whether an agency worker works full or part-time - i.e. calendar weeks will be accrued regardless of how many hours the worker completes on a weekly basis.

A new qualifying period will begin if there is a break of more than six calendar weeks between assignments in the same role, or, where the agency worker takes on a new assignment with the same hirer, which is substantively different to the previous assignment.



N.B. - The qualifying period is not retrospective. Agency workers will only start to accrue the 12-week qualifying period after the Regulations come into force on 1st October 2011.

8. When would the qualifying period be paused?

The types of break that will cause the qualifying period to be paused are:

- A break for any reason that 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 due to sickness or injury
- A break of up to 28 calendar weeks to allow the agency worker to perform jury service
- A break caused by the regular and planned shutdown of the workplace by the hirer (e.g. over the Christmas period)

N.B. - Breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth will not pause the qualifying period. The 'qualifying clock' will continue to tick for the originally intended duration of the assignment.

9. Do assignments with other agencies with the same hirer count towards the 12-week qualifying period?

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. All agency workers will be asked about their recent employment history so that the agency is able to ascertain whether they have completed part or all of the qualifying period before starting the assignment.

10. What are the rights once the 12-week qualifying period has been satisfied?

After an agency worker completes the 12-week qualifying period with the same hirer in the same role, they are entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. They are:

- Key elements of pay (i.e. basic pay, overtime payments, shift allowances, bonus or commission payments that are directly attributable to the work done by the agency worker)
- Duration of working time (i.e. work the same number of hours as permanent employees)
- Night Work
- Rest Periods
- Rest Breaks
- Annual Leave

N.B. - In addition, pregnant workers who have completed the 12-week qualifying period will be entitled to paid time off for antenatal appointments. Payment must cover the entire appointment including the time taken to and from the appointment if during assignment hours.

11. What is excluded from the meaning of pay?

There are certain aspects of pay that are provided to employees in recognition of the long-term relationship between the employer and employee. Agency workers are therefore not entitled to:

- Occupational sick pay (statutory sick pay will not be affected by the regulations)
- Occupational pensions
- Redundancy pay
- Occupational maternity, paternity and adoption pay (statutory payments will not be affected by the regulations)
- Payments or rewards linked to financial participation schemes such as share ownership schemes
- The majority of benefits of kind given as an incentive or reward for long service
- Bonuses that are not directly linked to the contribution of the individual

12. How is holiday pay affected by AWR?

All workers have a statutory holiday entitlement to 5.6 weeks per year. This entitlement includes bank and public holidays. If a hirer gives permanent employees a more generous contractual leave entitlement, the agency worker should receive the same enhanced entitlement upon completion of the 12-week qualifying period.



13. Is it possible for agencies or workers to opt out of the regulations?

No, it is not possible to opt out of the regulations. Workers are entitled to make a complaint to an employment tribunal within 30 days of a breach of the AWR.

14. Who is liable for a breach in regulations?

Agency workers are entitled to information that is relating to their equal treatment entitlements.

If this is in relation to Day 1 entitlements, the requirement to provide the information lies with the employer. This information can be requested at any time after the start of the assignment.

If this is in relation to entitlements received after the 12-week qualifying period then the requirement to provide information lies with the agency and the agency worker can only request this information after the 12 weeks have been completed. The agency will be able to defend their position by demonstrating that they have taken reasonable steps to obtain the necessary information from the client.

15. How is Sellick Partnership preparing for the introduction of AWR?

Sellick Partnership has established an AWR Committee to create and implement new processes to aid compliance with the regulations. As well as ensuring that Sellick Partnership provides both clients and temporary workers with informed, accurate and compliant solutions to their recruitment requirements.

All Sellick Partnership employees have received training and guidelines regarding the AWR ensuring the business is up to date with any advances and changes to the new regulations.

16. Where can I obtain further information on AWR?

If you have any further questions regarding the AWR please contact either Helen Lacey or Andrea Sin on 0161 834 1642, alternatively e-mail your question to AWR@sellickpartnership.co.uk.

Alternatively, the full regulations and explanations can be found on the BIS website www.bis.gov.uk.

East Midlands Office

Century House
13 St. James Court
Friar Gate
Derby
DE1 1BT

Tel: 01332 542580
Fax: 01332 542581

Leeds Office

17 Park Place
Leeds
LS1 2SJ

Tel: 0113 243 9775
Fax: 0113 242 9813

Manchester Office

Queens Court
24 Queen Street
Manchester
M2 5HX

Tel: 0161 834 1642
Fax: 0161 834 2223

Midlands Office

Winton House
Stoke Road
Stoke-on-Trent
ST4 2RW

Tel: 01782 572700
Fax: 01782 572701

Newcastle Office

Rotterdam House
116 Quayside
Newcastle upon Tyne
Tyne and Wear
NE1 3DY

Tel: 0191 261 8585
Fax: 0191 261 8510



[linkedin.com/company/94634](https://www.linkedin.com/company/94634)



twitter.com/SellickManc



Sellick Partnership
Recruitment Specialists

www.sellickpartnership.co.uk