

## 1. Introduction

- 1.1 The Agency Workers Regulations 2010 ('AWR') come into force on 1 October 2011 and will apply to employers who regularly use agency workers (temps), giving agency workers the same rights as permanent employees that are similar to those which apply to permanent employees.
- 1.2 Although agency workers are entitled to a range of statutory protections (e.g. the Agency Workers Regulations and the National Minimum Wage Act 1998), agency workers (temps) have not historically enjoyed the same statutory employment rights as permanent employees. This is due to the considerable flexibility in managing their work force that employers need to respond quickly to peaks and troughs in work flow or to complete a particular project.
- 1.3 The AWR will ensure that agency workers receive equal treatment in terms of basic terms and conditions of employment after 12 weeks' continuous service.
- 1.4 Compliance with the AWR will not affect the agency worker's employment status. An agency worker is an employee.
- 1.5 An employer that fails to comply with its obligations under the AWR may be liable for a breach of the law and may be made against it by an Employment Tribunal.

## 2. Who will be affected by the AWR

- 2.1 The AWR will apply to:
  - 2.1.1 Employers who are involved in the supply of temporary agency workers;
  - 2.1.2 Individuals who are supplied as agency workers by a temporary work agency and are working temporarily for and under the direction and control of the hirer;
  - 2.1.3 Hirers of temporary agency workers.
- 2.2 Those who are not covered by the AWR include:
  - 2.2.1 Individuals who are not supplied by a temporary work agency but are working on a temporary basis for a hirer;
  - 2.2.2 Individuals who are working on Managed Service Contracts (MSCs) and are not working under the direction and control of the hirer;
  - 2.2.3 Individuals who are working for temporary staffing banks;

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- 3.3.1.2 Time e.g. if working is limited to a

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The requirement is to ensure that the employment conditions of agency workers are not less favourable than those of permanent employees directly recruited by the employer.

## 4. Permanent contracts

4.1 There is an exception to the general rule that agency workers must be treated no less favourably than permanent employees. This exception applies to agency workers who have been assigned to a permanent contract of employment for a period of 12 weeks or more, i.e. during the period of the contract when they are not working because there are no suitable assignments. This means that, after 12 weeks in a given assignment, the agency worker will not be entitled to the same pay as if they had been recruited directly by the employer.

4.2 Even if this exception applies, agency workers must still benefit from the other provisions of the law relating to the duration of work, annual leave and other benefits. Agency workers must still receive the same basic working and employment conditions as permanent employees.

## 5. How is the 12-week qualification period determined?

5.1 The 12-week qualification period is determined by the agency worker working for 12 continuous calendar weeks.

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A calendar week of seven days starting with the first day of the assignment. For part time staff, calendar weeks will be accrued irrespective of whether the worker works on a weekly basis.

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5.2 The AWR are not applicable to agency workers already on assignment at the time the AWR come into force. The 12-week qualifying period will start on 1 October 2011.

Therefore for those agency workers already on assignment at the time the AWR come into force, the 12-week qualifying period will start on 1 October 2011.

5.3 An agency worker who is assigned to more than one hirer during a week, resulting in more than one assignment, will only be counted as one assignment for the purposes of the 12-week qualifying period with different hirers running at the same time.

more than one hirer during a week, resulting in more than one assignment, will only be counted as one assignment for the purposes of the 12-week qualifying period with different hirers running at the same time.

5.4 An agency worker who is assigned to the same hirer with the same terms and conditions of employment as a particular hirer, will only be counted as one assignment for the purposes of the 12-week qualifying period.

to ensure the 12-week qualifying service requirement for comparable terms and conditions of employment as an agency worker with a particular hirer.

5.5 Because the way the AWR provide for the calculation of the 12-week qualifying period for agency workers is based on the concept of an assignment, these provisions do not take account of breaks in the assignment of an agency worker. This means that the 12-week qualifying period is calculated by linking of the qualifying period as a continuous period.

Because agency workers can be irregular, the way the AWR provide for the calculation of the 12-week qualifying period is based on the concept of an assignment, which means that the 12-week qualifying period is calculated by linking of the qualifying period as a continuous period.

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5.5.1 Sometimes the clock will reset to zero because the assignment ends and the worker is not assigned to a new hirer.

Changes in assignments will mean that the clock is reset to zero. Most commonly, this would occur when an assignment ends and the worker is not assigned to a new hirer.

5.5.2 In other cases, the clock will not reset during a break in the assignment and the clock will continue to tick when the agency worker returns to work.

There will be a break between assignments (or between assignments to the same hirer) if the break is less than six weeks. If the break is six weeks or more, the clock will reset. If the break is less than six weeks, a break may just 'pause' the clock, meaning it will continue to tick when the agency worker returns to work.

5.5.3 In some cases, the clock will not reset during a break in the assignment and the clock will continue to tick when the agency worker returns to work. This is the case for breaks due to maternity leave or paternity leave, where the clock will continue to tick for the originally intended period even if the agency worker is not working during the break.

For example, breaks due to maternity leave or paternity leave will continue to tick for the originally intended period even if the agency worker is not working during the break.

5.5.4 The table below shows different ways in which gaps in the assignment of an agency worker will affect the 12-week qualifying period.

The table below shows different ways in which gaps in the assignment of an agency worker will affect the 12-week qualifying period.

Type of assignment break	Effect on 12 week qualifying period
Agency worker begins new assignment with new hirer	Reset the clock
Agency worker remains with same hirer but is no longer assigned to that hirer	Reset the clock
Break between assignments of less than six weeks	Does not reset the clock
Break between assignments of six weeks or more	Reset the clock
Annual leave	Does not reset the clock

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Shut downs e.g. work school holidays	Does not stop the clock
Industrial action	Does not stop the clock
Sickness absence (maternity leave)	Does not stop the clock for up to 28 weeks
Jury service	Does not stop the clock for up to 28 weeks
Pregnancy and maternity absence, statutory maternity leave or adoption leave	Does not stop the clock keeps ticking for intended or actual duration of assignment

Where a hirer has directed an agency worker to move from one workplace to another with the same hirer, the worker's continuity is not broken unless the worker is assigned to a different role.

## 6. What constitutes a substantial change to a job role?

- 6.1 As stated above, a change to a job role with the same hirer, the worker's continuity is not broken unless the worker is assigned to a different role.
- 6.2 However, in order for a change to a job role to be a substantive change to the job role, the change must be a substantive change to the job role, the change must be a substantive change to the job role, the change must be a substantive change to the job role.
- 6.3 A combination of factors (not one factor on its own) can be taken into account to determine if a change to a job role is substantively different:
  - 6.3.1 Is the pay different?
  - 6.3.2 Does the change involve a change in skills and competences?
  - 6.3.3 Is the work more or less demanding?
  - 6.3.4 Is there a change in the nature of the work?
  - 6.3.5 Does the change involve a change in the nature of the work?
  - 6.3.6 Does the change involve a change in the nature of the work?
- 6.4 In order for the change to be a substantive change to the job role, the agency must notify the temporary work agency that the change is a substantive change to the job role, the agency must provide a description of the new role, the agency must provide a description of the new role, the agency must provide a description of the new role.

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- 8.2.2 If and when [REDACTED] [REDACTED] payments and shift/unsocial hours allowance [REDACTED]

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|-------|---|
| 8.2.4 | Whether [REDACTED] vouchers which have monetary value; and [REDACTED] |
|-------|---|

- 8.2.5 Annual [REDACTED] [REDACTED]

- 8.3.1 In response to requests, the requirement to provide information can be requested any time after the request is received:

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8.4 In relation to data protection, an agency worker can make a written request for information from the hirer then has 28 days to respond in writing from the hirer and must provide a written statement of the rights of a comparable worker or employee and the rights of the agency worker.

8.5 If the request is not met after 12 weeks, the agency worker cannot request information until the request has lapsed. In this case, the agency worker can make a written statement for a written statement from the hirer in respect of equal treatment they do not believe they are receiving. The hirer then has 28 days to respond in writing from receipt of the request. The agency worker can then bring a claim out:

8.5.1 Relevant information includes basic working and employment conditions such as the number of weeks of annual leave, etc.

8.5.2 Any relevant factors that were considered when determining the terms and employment conditions e.g. if the agency worker is put on the pay scale.

8.5.3 Where the agency worker is doing the same or similar work to that of a comparable employee, the agency worker is entitled to the same or similar terms and conditions applicable to that employee. Any differences in treatment e.g. based on qualifications, skills and qualifications.

8.5.3.1 If the agency worker has not received a written statement of their employment conditions within 30 days of starting, they can then write to the hirer requesting the information. Again, the hirer then has 28 days to respond in writing.

8.5.3.2 If the agency worker is not satisfied with the response or no response, they can bring a claim to an employment tribunal in relation to their rights under the Equality Act 2010.

## 9. Liability issues

9.1 As far as day to day running of the business is concerned, liability rests with the hirer and the temporary work agency will not be responsible for these entitlements. The agency does not have a role in delivering the services.

9.2 As regards basic working and employment conditions, liability can rest with the hirer. The agency will initially apply the equal treatment principle. However, it will only do so if it has taken 'reasonable steps' to obtain information about its basic working and employment conditions. If it has received such information it acted reasonably in determining that the agency worker's conditions should be the same as the hirer's and where it had responsibility for applying those conditions to the agency worker, it had acted reasonably in treating the agency worker had been treated

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these steps, then liability is likely

- 9.3 In terms of financial  
the agency would  
equitable compensation  
their entitlement  
weeks' pay for  
unless the tribunal  
and then it has

tribunal will make an assessment of  
what it concludes is just and  
such as loss of earnings related to  
there is a minimum award of two  
regardless of the value of the loss,  
agency worker behaved unreasonably  
the award if it is just and equitable.

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## 10. Information and Consultation

- 10.1 After 1 October  
about temps to  
transfers of undertakings  
Information and Consultation  
hirers are required to provide  
working temporarily  
are working and  
information could  
with their information

hirers to provide written information  
during collective redundancies,  
other statutory consultation, like the  
Employees Regulations. Specifically,  
the total number of agency workers  
areas of the business in which they  
are doing. Failure to provide this  
liabilities for hirers for failing to comply  
obligations.

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