

## Agency workers – all change as valuable employment law rights are gained from 1st October 2011

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### What are the Agency Workers Regulations (AWR)?

The Agency Workers Regulations 2010 ("the Regulations") which come into effect on 1 October 2011, will give agency workers many of the same basic employment and working conditions as their comparable colleagues who work on a permanent basis in the same or a similar role.

### So who is covered by the Regulations?

The Regulations will cover agency workers who are supplied to a hirer by an employment agency. These workers are often referred to as 'temps'. Agency workers sourced through intermediaries will also fall under the Regulations. When do the agency worker's rights kick in? On 1 October 2011, an agency worker will be entitled to only limited additional rights from day one of his employment and further enhanced rights upon completing a qualifying period of 12 weeks.

### What are the new rights for the agency worker?

From the **first** day of employment, an agency worker will be entitled to:

1. Equal access to facilities and amenities as the permanent employees. This includes (but is not limited to) childcare, the staff canteen and transport.
2. Information about potential vacancies within the hirer's company.

After a 12-week period, an agency worker can in addition expect to receive the same treatment as the hirer's own employees in the following areas:

1. Pay (including commission, individual performance bonuses, holiday pay, overtime, shift work)
2. Duration of working time

3. Night work
4. Rest periods
5. Rest breaks
6. Annual leave
7. Paid time off for antenatal appointments

The Regulations do not cover pay that is linked to longer-term reward and retention such as redundancy pay, notice pay, company sick pay, company pensions, and enhanced maternity/paternity/adoption pay. The majority of benefits in kind are also excluded (such as travel expenses).

### Does the qualifying period of 12 weeks have to be continuous?

No, if the break between or during an assignment is less than 6 weeks and you return to the same hirer to do the same or substantively similar role (even through a different agency), then it is likely that your qualifying period will be uninterrupted. This means that an agency worker could obtain the 12 week period through several assignments.

### Can the continuous period count in other circumstances?

The Regulations state that holiday, absences for sickness for up to 28 weeks, jury service and industrial action will pause the continuous period and not reset it. Maternity, paternity, pregnancy and adoption leave will all enable the continuous period to continue as if the agency worker were still attending work.

### Who has liability for breach of your rights?

For a breach of the 'day one' entitlements, liability lies solely with the hirer. In the event of a breach of a '12-week' right, legal liability can rest with either the hirer or the employment agency.

The agency is responsible for setting the worker's terms and conditions, so the liability will initially be placed with them. However, as the Regulations provide that the hirers provide the employment agency with details about the working and employment conditions given to their employees, the agency could have a defence if it can be shown that it took all reasonable steps to obtain correct and complete information from the hirer and it is the hirer's failure to do this that has caused the breach. In this case, the hirer could be solely liable.

### If there is a breach, when should you make a claim?

If an agency worker feels there has been a breach, he should make a claim within 3 months.

### What will you receive if you win your claim?

An Employment Tribunal has the ability to make a financial award which is mainly based on the loss of the worker's earnings – there is no upper limit. Tribunals may also decide to make recommendations to the employment agency and/or hirer as well as make declarations of the worker's rights. Additionally, the anti-avoidance provisions in the Regulations mean that, if it is found that assignments are deliberately structured by the hirer to prevent the agency worker from benefiting from the Regulations, a penalty of £5,000 may be levied against them.

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