

Factsheet: Agency Workers – the Changes

Agency Workers – The Changes

The Agency Worker Regulations 2010 (the Regulations) will come into force from 1 October 2011. This factsheet only gives a brief overview of the Regulations.

These Regulations have come in on the principle of equal treatment between agency workers and staff recruited directly via a company and if you use temporary staff via agencies, this change is going to affect you. They do not change the employment status of agency workers.

The rule of thumb on what these Regulations mean as 'equal treatment' is that they must simply be treated as if they have been recruited directly for the position.

Who is covered by these Regulations?

These new Regulations cover agency workers, temporary work agencies and employers.

An Agency Worker is an individual who is "supplied by a temporary work agency to work temporarily for and under the supervision and direction of a company". This can be on the basis of a contract of employment with the agency or a contract to perform work and services personally for the agency.

They do not cover self-employed people who work for a company under a contract for services or those who have been directly employed on a temporary basis by the Company and individuals who have been recruited permanently via a recruitment agency.

Qualifying Periods

The Regulations will give agency workers 2 rights:

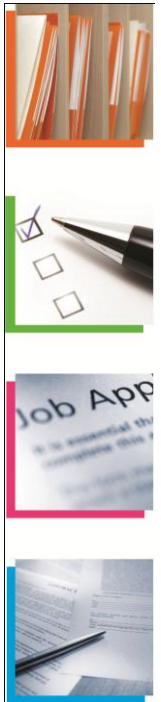
1. The right from day 1 of their assignment to equal access to employment opportunities and collective facilities, and
2. The right after undertaking the same role, for the same company for 12 continuous weeks to the same basic working and employment conditions.

If the worker moves between related companies and that company has its own legal identity then the qualifying period will restart. However, if you deliberately adopt this approach you run the risk of breaching the anti-avoidance provisions of the Regulations.

If there is a substantive change to the agency worker's role then the qualifying period will be re-started. However, to determine whether there is a substantive difference the changes must be in the skill set required to do the job and in the nature of the work and duties carried out. So again you will need to be careful to not breach the anti-avoidance provisions of the Regulations.

Avoidance by a structure of assignments

The guidance on these Regulations in regards to avoidance is that offering 11 week assignments is going to be seen as anti-avoidance if you then have a break and re-start their assignment. A break to discount the qualifying period will be at least 6 calendar weeks or more.



The other is two or more short assignments that intend to avoid the qualifying period. The guidance, whilst similarly recognising the company's intention, appears to place great emphasis on establishing a deliberate act by the company and regular pattern designed to avoid the Regulations. In any event, companies will need to be very cautious in offering more than two short term, consecutive assignments to the same agency worker.

Other changes:

- From day 1 the agency worker will have the right to be informed of relevant vacancies – this information can be covered in inductions as to where vacancies are posted
- From day 1 the agency worker will have the same access to facilities, i.e. toilets, canteens, work place crèches, staff rooms, mother and baby rooms, prayer rooms, food and drinks machines, car parking. It does not cover off-site facilities such as an off site gym that is provided as part of a benefit package given as a reward for long term service and loyalty.
- After 12 weeks the agency worker has the same basic working and employment conditions as those employees recruited directly. This includes:
 - Contractual holiday pay
 - Overtime pay
 - Shift Allowances
 - Unsocial hours premiums or bonuses
 - Bonuses linked to individual performance (the agency worker has to be employed at the time when a bonus falls due or if a service period is required.
 - Luncheon or transport vouchers

They are not entitled to:

- occupational pensions
 - company sick pay
 - contractual notice pay
 - contractual redundancy pay
 - benefits in kind (company car allowances or health insurance) or financial participation schemes (i.e. share options) or where there is a discretionary or non-contractual bonus scheme that is not paid as a matter of custom and practice or share participation scheme that reflects long term performance or reward loyalty.
- After 12 weeks a pregnant agency worker will have the right to reasonable paid time off work to attend ante-natal appointments.
 - Other absences that suspend continuity are where the employee has 28 weeks sickness absence, annual leave and jury service.
 - Continuity of service continues to accrue during absences related to pregnancy, childbirth, statutory maternity, paternity or adoption leave.
 - The agency worker has the right to request that their agency provides them with a written statement that gives them the information about the basic working and employment conditions of the assignment.

How should you prepare?

You will need to assess the number of agency workers you use and the number of assignments which last 12 weeks or more and whether there are differences between the employment terms and conditions and access to collective facilities between them and your permanent employees.

Other issues to be considered:

- Restricting assignments to less than 12 weeks
- Increasing your direct recruitment of temporary employees and/or self-employed
- Engaging casual workers through an 'in house' bank
- Increase the use of self-employed workers
- Increase the use of managed/outsourced services
- Negotiate with agency suppliers, to reduce risks and costs

Agency workers will have the right to bring a claim to an Employment Tribunal to enforce their right to equal treatment. The Employment Tribunal can award compensation to take account of any financial loss suffered by the agency worker and can make an additional award of up to £5,000 for any breach of the anti-avoidance provisions.