

Agency Workers Regulations

The final countdown

Are you armed with the facts?

If you engage the services of any of the 1.3m temporary agency workers in the UK, you may be affected. Failure to prepare now could see your business facing heavy costs in 2011. Get the facts on AWR with our 12 point guide and be ready for the change.

01

UP TO 1.3m UK TEMPORARY WORKERS MAY BE AFFECTED.

AWR come into effect on 1st October 2011. With 1.3m agency workers currently on assignment in the UK, and only one year to go before the big change, smart companies are taking action now.

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AGENCY WORKERS WILL BE ELIGIBLE FOR EQUAL TREATMENT.

Under the new Regulations, agency workers will – after 12 weeks of working on an assignment – have the right to the same basic working and employment conditions, that they would have been entitled to, had they been recruited directly by the organisation to do the same job.

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THE DEFINITION OF AN 'AGENCY WORKER' IS BROAD.

The Regulations exclude any individual that provides a service to an organisation as a client of a business run by that individual, i.e. a genuinely self-employed contractor working through their own limited company. It's important to note that an individual will not be excluded on the basis that their services are provided through an umbrella company.

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AGENCY WORKERS QUALIFY AFTER 12 WEEKS.

The right to equal treatment (with respect to the relevant terms and conditions) applies once an agency worker has carried out 12 weeks of work in a particular role only. In general, breaks between assignments of more than 6 weeks will reset the qualification 'clock'.

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BASIC WORKING & EMPLOYMENT CONDITIONS ARE COVERED.

The right to equal treatment applies to terms and conditions relating to working time, holidays and pay only. The Regulations do not extend to sick pay, maternity/paternity pay, redundancy, notice pay, payments related to pension entitlement, or bonuses not based on individual performance.

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EQUAL TREATMENT MIGHT NOT BE BLACK AND WHITE.

After 12 weeks on an assignment, the agency worker's relevant terms and conditions must be no less favourable than if the client had recruited that individual at the same time to do the same job; taking into account qualifications, skills and experience where relevant.

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DEFINING TERMS AND CONDITIONS CAN BE COMPLEX.

The relevant terms and conditions concerning working time, holidays and pay, will be any that apply generally to direct employees; either because they are set out in a pay scale or an agreement with a trade union, or because they are given as a matter of 'custom and practice'.

If you have a pay scale that sets starting pay for the relevant job, that's the reference point for equal treatment. If there's no pay scale, but as a matter of course pay is set at a particular pay rate and/ or there's a certain entitlement to leave, these will be the deciding points of reference.

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THERE ARE EXCEPTIONS TO THE RULE.

Agency workers are sometimes taken on to carry out a one-off project, with no directly hired employee carrying out the same job. In the absence of a relevant policy or precedent, the Regulations are unlikely to be relevant to an agency worker's pay. However, if there is a clear policy on annual leave for directly hired employees, an agency worker would be entitled to equal treatment in that respect.

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MAY NOT ALWAYS BE RELEVANT TO PAY.

If pay is agreed on an individual basis and there is no 'custom and practice', the Regulations are unlikely to be relevant to pay. They would however apply to holiday and working time issues, if an organisation has a common policy on either of these.

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NOT ALL
RIGHTS
FOLLOW THE

12

WEEK
RULE.

Agency workers may have rights that apply from day one of their assignment – such as a right to access ‘collective facilities’ and amenities, e.g. a canteen, transport, or a crèche – on the same terms as a comparable direct employee. They will also have a right to be informed of any relevant opportunities for permanent employment.

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DIRECT EMPLOYEES CAN'T USE THE REGULATIONS TO DEMAND COMPARABLE PAY.

The legislation will only apply to agency workers that are paid less than direct employees. It does not work both ways.

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RESPONSIBILITY IS SHARED.

The Regulations make clear that both agency and hirer can be separately responsible for any failure to provide equal treatment. This means an employer will be liable if they are found to have failed to provide the agency with accurate and timely information about terms and conditions. Likewise, the agency will be liable if it has failed to accurately set a worker's pay and conditions in accordance with information received.

At the forefront of legislation.

If your company is not affected by this particular legislation, you can still benefit from our professional expertise. We understand that legislative changes can have a significant impact on organisations and can work with you to assess the impact on your business.

For more information, or to discuss your other talent management challenges, please contact **Duncan Ward** on 020 7429 5379 or at duncan.ward@badenochandclark.com