

agency workers regulations

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you

1. What are the Agency Workers Regulations (“the AWR”)?

A set of regulations which will, for the first time, provide all agency workers with a right to equal treatment with their directly recruited equivalents employed within a hirer’s organisation after 12 weeks in a given job. This is known as “the equal treatment principle.

Some equal treatment rights will apply from day one of an assignment (known as “day one rights”. See question 9).

2. When will the AWR come into force?

The regulations come into effect on 1st October 2011

3. Who do the regulations apply to?

All agency workers including those employed via umbrella companies or other intermediaries.

4. Who do the regulations not apply to?

Workers who are genuinely self employed such as Limited Company Contractors who are excluded.

5. What does equal treatment cover?

Equal treatment will apply to the basic working and employment conditions of the agency worker such as:

- Duration of working time
- Overtime
- Breaks
- Rest periods
- Night work
- Holidays
- Public holidays
- Pay (see questions 5 and 6)
- Terms and conditions ordinarily included in employee contracts (for example, collective agreements, pay scales, company handbooks)

- Other matters of custom and practice in the workplace concerned (for example, access to facilities).

These conditions should be the same for an agency worker, as for employees directly recruited by the hirer to do the same role.

6. What does equal treatment in relation to “pay” include?

This includes basic pay, plus other contractual entitlements directly linked to the work undertaken by the agency worker whilst on assignment i.e.

- Payment for overtime (subject to any requirements regarding the number of qualifying hours)
- Shift allowances
- Unsocial hour premiums
- Basic pay
- Payment for annual leave
- Bonuses or commission payments that are directly linked to the quality or quantity of work done by an agency worker.
- Vouchers or stamps with a monetary value e.g luncheon or transport vouchers. Childcare vouchers are included unless they are funded on a salary sacrifice basis.

7. What is excluded from the meaning of “pay”?

Aspects of pay that are provided to employees in recognition of the long term relationship between the employer and the employee such as:

- Profit sharing schemes
- Occupational pension contributions
- Occupational sick pay
- Redundancy pay
- Occupational maternity, paternity or adoption pay
- Payment for time off for trade union duties
- Notice pay
- Advances in pay or loans
- Expenses
- The majority of benefits in kind
- Any payments that require an eligibility period of employment/ service, if not met by the agency worker.

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8. How is the 12 week qualifying period calculated?

It is 12 calendar weeks regardless of working pattern (full time or part time). A new qualifying period will begin under the following circumstances:

- A new assignment with a new employer commences
- A new assignment with the same employer is substantively different
- There is a break of more than 6 weeks between assignments in the same role.

The qualifying clock will pause under the following circumstances:

- Any reason where there is a break in the assignment for less than 6 weeks
- Sickness absence pauses the clock for up to 28 weeks
- Annual leave
- Shut downs (e.g school holidays)
- Jury service pauses the clock for up to 28 weeks
- Industrial action

The qualifying clock "keeps ticking" during a period of pregnancy and maternity related absence.

9. What are "day one rights"?

Some aspects of equal treatment apply before the 12 week qualifying period i.e. from day 1 of the worker's assignment. The regulations give agency workers the same access to certain facilities and information provided by the hirer. These include:

- Access to information on job vacancies with the hirer (i.e. vacancy lists) except where the hirer is re-structuring their business as part of an internal re-organisation.
- Access to collective facilities and amenities (i.e. canteen, childcare, transport).

10. How is equal treatment on pay established where there are no permanent employees within the hirer's business to compare the worker to?

Other equal treatment rights will be considered, for example, the hirer might give all its permanent employees 6 weeks paid annual leave and paid time off for bank holidays. The agency worker should be entitled to the same treatment on these points, regardless of whether their work is of a similar nature to that of the permanent employees.

11. Can I obtain information about my equal treatment rights from the agency or the hirer?

Yes. But you can only request this information after the 12 week qualifying period has elapsed. The agency (and the hirer) will have 28 days to respond to the worker's request from the date it is received.

12. How are performance based bonuses monitored?

This can be done in conjunction with the hirer's existing procedures or by making use of the worker feedback arrangements.

Applying the hirer process does not affect an agency worker's employment status.

13. Would my assignments with other agencies with the same hirer count towards the 12 week qualifying period?

Yes – as per usual practice Randstad will ask you about your recent employment history to ascertain whether your assignment is nearing the qualifying period for equal treatment.

14. Are there any exceptions to the AWR rules?

Yes, the two main ones are:

- the "derogation contract": If the worker is engaged on a permanent contract of employment with the agency AND the agency pays the worker at 50% of their usual hourly rate (provided this is not below the National Minimum Wage) in respect of calendar weeks whilst they are not working for a hirer but are available to work, the worker will not be entitled to equal treatment in relation to pay.
- the Managed Service: This involves the complete outsourcing of a proportion of the hirer's business, for example, the "packing" section of a manufacturing line.

15. I have worked in an assignment for almost a year, why must the qualifying period commence as of the 1st of October?

The qualifying period is not retrospective and the qualifying period will start from 1st October 2011.

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

Yes – as per usual practice Randstad will ask the worker about their recent employment history to ascertain whether the worker is nearing the qualifying period for equal treatment.

17. Are there any exceptions to the AWR rules?

Yes, the two main ones are:

- The "derogation contract": If the worker is engaged on a permanent contract of employment with the agency AND the agency pays the worker 4 weeks pay at 50% of their usual hourly rate (provided this is not below the National Minimum Wage) whilst they are not working but are available to work the worker will not be entitled to equal treatment in relation to pay. The basic minimum level of company annual holiday still needs to be taken into account with this type of contract.
- The Managed Service: This involves the complete outsourcing of a proportion of the hirer's business, for example, the "packing" section of a manufacturing line.

Randstad welcome these regulations and will comply with the regulations so that they are applied in the spirit in which they are intended.

For further information, contact your consultant.