

Guidance on the Agency Workers Regulations

The Agency Workers Regulations (SI 2010/93) (the “Regulations”) give agency workers the right to the same basic terms and employment conditions, after a 12 week qualifying period, as if they had been directly recruited into the same job by the hirer. The Regulations do not affect how agency workers are recruited or managed once in post.

Which Workers Are Affected By The Regulations?

The Regulations affect the agency worker, the hirer and the temporary work agency (Thorpe Molloy Recruitment). The key elements which define whether someone is considered an agency worker, and therefore within the scope of the Regulations are:

- ✦ There is a contract between the worker and Thorpe Molloy Recruitment.
- ✦ The worker is temporarily supplied to the hirer by Thorpe Molloy Recruitment.
- ✦ When working on assignment the worker is subject to the supervision and direction of the hirer.
- ✦ The worker is not in a business on their own account.

There are various checks and procedures that the hirer and Thorpe Molloy Recruitment are required to perform in order to comply with the Regulations and ensure that temporary agency workers are treated fairly in respect of their pay and working conditions.

What Are Agency Worker Rights Under The Regulations?

There are 2 parts to the Regulations. Agency workers will receive rights on Day 1 (Day 1 Rights) and further rights after completing a 12 week qualifying period in the same job, regardless of whether they are working full time or part time hours.

Day 1 Rights

From Day 1 of an assignment agency workers are entitled to be treated equally to a comparable worker at the hirer in respect to access to collective facilities and amenities, these may include for example, canteen, workplace crèche, toilets/shower facilities, staff common room, food and drinks machines and car parking. Agency workers will not have an absolute right to access all facilities if the hiring company can objectively justify the reason for not providing access

AND

From Day 1 of an assignment agency workers are entitled to access information about any relevant job vacancies at the hirer’s organisation that would be available to a comparable employee or worker.

What Are Agency Worker Rights Under The Regulations cont.

Rights After 12 Weeks In The Same Job

After an agency worker completes a 12 week qualifying period with the same hiring company, in the same role, they will be entitled to have the basic terms and employment conditions detailed below:

- ✦ Pay including overtime and shift allowances.
- ✦ Bonuses that are attributable to the agency worker's individual performance.
- ✦ Working hours (including length of night work, rest periods and break periods).
- ✦ Holidays and holiday pay.
- ✦ Paid time off for ante-natal appointments for pregnant agency workers.

Equal treatment is not required in respect of all the terms and conditions that the person would have received had they been recruited directly. It covers basic working and employment conditions. They are those which are ordinarily included in relevant contracts (or associated documents such as pay scales, collective agreements) of direct recruits. This means terms and conditions normally set out in:

- ✦ Standard contracts.
- ✦ A pay scale or pay structure.
- ✦ A relevant collective agreement.
- ✦ A company handbook or similar.

What's Excluded?

Having completed the 12 week qualifying period, an agency worker is entitled to the same basic terms and conditions that he or she would have received if recruited directly. However, under the Regulations there are certain exclusions, including:

- ✦ Occupational sick pay.
- ✦ Occupational pension.
- ✦ Occupational maternity, paternity or adoption pay.
- ✦ Redundancy pay.
- ✦ Notice pay.
- ✦ Payment for time off for Trade Union duties.
- ✦ Guarantee payments.
- ✦ Advances in pay or loans.
- ✦ Expenses such as accommodation or travel.
- ✦ Payments or rewards linked to financial participation schemes.
- ✦ Majority of benefits in kind.
- ✦ Payments that require an eligibility period of employment.
- ✦ Bonuses which are not directly linked to individual contribution.

What Is The Qualifying Period?

The qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks. Calendar weeks will be accrued regardless of how many hours the agency worker works on a weekly basis.

These provisions can best be explained by thinking of the qualifying period as a clock which runs from 0 to 12. Sometimes a gap between assignments, or a move to a new assignment, will mean that the clock is reset to 0 and must start again. In other circumstances a break will merely 'pause' the clock which will then continue to tick when the agency worker returns. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.

Here's a summary of how the clock can be paused or stopped.

| Absence | Effect |
|---|-------------------------------------|
| Agency worker begins a new assignment with a new hirer | Clock resets to zero |
| Agency worker remains with the same hirer but is no longer in the same role but a substantively different role | Clock resets to zero |
| Break in assignment of more than 6 weeks (which is not one which "pauses" the clock or during which it continues to tick) | Clock resets to zero |
| Any reason where the break is less than 6 weeks | Pauses the clock |
| Sickness absence | Pauses the clock for up to 28 weeks |
| Annual leave | Pauses the clock |
| Shut downs - e.g. factory closure | Pauses the clock |
| Jury service | Pauses the clock for up to 28 weeks |
| Industrial action | Pauses the clock |
| Pregnancy and maternity related absence | Clock keeps ticking * |
| Statutory maternity, paternity or adoption leave | Clock keeps ticking ** |

* The protected period for a pregnant agency worker begins at the start of the pregnancy and ends 26 weeks after childbirth (or earlier if she returns to work).

** Where an agency worker has a contract of employment with an agency and is entitled to this type of leave.

Does The Hirer Need To Have A Comparable Worker?

It is not necessary to look for a comparable worker to the agency worker. It is quite possible to identify the appropriate “basic working and employment conditions” without one. However, the hirer will be deemed to have complied with the Regulations on equal treatment on basic working and employment conditions if the hirer identifies an appropriate comparator and treats the agency worker in the same manner. In these circumstances the comparator must be an employee.

A comparator needs to be engaged in broadly similar work, but account can be taken of their skills and qualifications as this may justify a higher level of pay for the comparator. They must work at the same or, if there is no comparable employee in the same workplace, in another of the hirer’s workplaces. They will not be a comparable employee if they are no longer employed by the hirer.

Concerned About Not Being Treated In Compliance With The Regulations?

Under the Regulations agency workers are entitled to information relating to their equal treatment rights. Information on Day 1 rights should be requested from the hirer, because they have the responsibility for access to the on-site facilities and vacancy information. The hirer will have 28 days to respond.

If an agency worker has concerns that they have not been treated in compliance with the Regulations, they should outline their own concerns in writing to their Thorpe Molloy Recruitment consultant. We will respond within 28 days.

Additional Rights For Pregnant Workers

After completing the 12 week qualifying period an agency worker will be paid for time that she has to take off in order to attend ante-natal appointments. The payment will be the agency worker’s current hourly rate and will be paid for each hour that she misses of her assignment. The agency worker should provide evidence of the appointments to the hirer and Thorpe Molloy Recruitment (save for the first appointment which is usually to confirm pregnancy) and provide guidance on how much time out each ante-natal appointment will take.

It is the responsibility of the agency worker to notify Thorpe Molloy Recruitment and the hirer of her pregnancy.

Thorpe Molloy Recruitment will request the hirer performs a workplace risk assessment and makes a reasonable adjustment if necessary. If this is not possible Thorpe Molloy Recruitment will seek alternative suitable work with another hirer for the agency worker.

If the pregnant agency worker can no longer complete the duties of the original assignment for health and safety reasons, Thorpe Molloy Recruitment will need to find alternative sources of work (paid at a rate that is no less favourable than the last assignment which was terminated on health and safety grounds relating to the pregnancy.) If alternative work cannot be found, then the pregnant agency worker will have the right to be paid by Thorpe Molloy Recruitment for the remaining duration of the original assignment.

Holiday Entitlement

Under the Regulations, agency workers are entitled to the same contractual holiday entitlement as if they have been directly recruited by the hirer - even if this is over and above the statutory entitlement of 28 days.