

AGENCY WORKERS REGULATIONS CANDIDATE GUIDE

On 1 October 2011, the Agency Workers Regulations (AWR) - designed to give you the right to equal treatment - became law; and the changes could have a major impact on your recruitment terms and conditions. In this guide, we help you to understand how the legalisation stands to affect you, and what action you can take if you feel your employer is in breach of the AWR.

What does 'equal treatment' for agency workers actually mean?

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

What defines an 'agency worker'?

The regulations apply to all agency workers, including those employed through umbrella companies; but exclude workers who are genuinely self-employed.

How does the 12 week qualifying period work?

The regulations apply once an agency worker has carried out 12 weeks of consecutive work in a particular role, regardless of working pattern (full-time or part-time hours). In general, breaks between assignments of more than 6 weeks will reset the qualification 'clock'. A new qualifying period will also begin if an agency worker starts a new assignment that's substantially different from the previous one. Any time worked before 1 October 2011 will not count towards the qualifying period.

An agency worker taking time off after childbirth will continue to accrue her qualifying period whilst absent from work. However, if she takes off more than 26 weeks, the assignment will be broken and she will have to start a new qualifying period.

Which working and employment conditions are covered?

The right to equal treatment only applies to terms and conditions relating to working time, holidays and pay, such as:

- Duration of working time
- Overtime and night work
- Breaks and rest periods
- Holidays and public holiday pay
- Collective facilities

The regulations do not extend to:

- Occupational sick pay
- Maternity/paternity pay
- Redundancy and notice pay
- Payments related to pension entitlement
- Some types of bonus not based on individual performance
- Profit sharing schemes
- Season ticket loans or car allowances

What are day one rights?

As an agency worker, you will have certain rights that apply from the first day of your assignment, such as a right of equal access to 'collective facilities' and amenities, e.g. a canteen or a crèche. You will also have the right to be informed of any relevant opportunities for permanent employment.





What is the effect of the AWR on holiday pay?

All workers are legally entitled to a minimum of 28 days annual leave, inclusive of public holidays. The Agency Workers Regulations allow for payment to be made in lieu of any holiday that is accrued over and above the minimum, so that you're not obliged to take the extra time off.

Do assignments through other recruitment agencies at the same hiring company count towards the 12 week qualifying period?

Yes. Your consultant should ask you about your recent employment history to establish whether you are nearing the end of your qualifying period. You also need to make sure that you inform your agency of any previous companies that you've been placed with.

What if I'm carrying out a unique role?

Agency workers are sometimes taken on to carry out a one-off project, with no permanent employee carrying out the same job. In the absence of a relevant policy or precedent, the regulations are unlikely to apply to your pay. However, if there is a clear policy on annual leave for permanent employees for example, you would be entitled to equal treatment in that respect.

How do I raise a complaint about equal treatment?

After your 12 week qualifying period has elapsed, you have the right to request details of how your pay and conditions have been determined from your recruitment agency. If after 28 days the agency hasn't responded, you can approach the hiring company for the same information. If you believe that you are not being treated in line with the terms and conditions of the new directive, you can make a claim through the Employment Tribunal - usually within three months of your assignment ending.

This list isn't exhaustive, so we know that you're bound to have a few more questions around the Agency Workers Regulations - you might even be unsure about whether you'll be affected at all. So to talk to an expert for some individual and personable advice, contact your local branch of Office Angels.