

mini candidate guide to the Agency Workers Regulations



Over 20 of your most
frequently asked questions

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an introduction to the Agency Workers Regulations

The Agency Workers Regulations were published at the start of 2010 and come into force on the 1st of October 2011. The Agency Workers Regulations originate from the Agency Workers Directive. The aim of the legislation is for agency workers to be provided with equal treatment in the workplace.

Upon completion of a 12 week qualifying period, agency workers will be entitled to the same basic working and employment conditions that they would have received if an agency worker had been directly recruited by the hirer.

Under the regulations there are also 'day one rights', which apply from the first day of the assignment (which can be no earlier than 1st October 2011). These rights include access to onsite collective amenities (such as car parking and canteen), as well as access to information about permanent job vacancies. It is possible that the hirer may decline to offer certain facilities provided they can show good justification for doing so.

1. What are the Agency Workers Regulations?

The regulations give agency workers the right to the same employment and working conditions that they would have enjoyed had they been directly employed by the hirer after 12 weeks in a given job.

2. Who does it affect?

All agency workers including those employed via umbrella companies or other intermediaries. Workers who are genuinely self-employed are excluded.

3. What is equal treatment?

This principle is based upon an agency worker being entitled to the same basic working and employment conditions as a comparable employee of the hirer after 12 weeks in the same job.

4. What happens if there is no permanent employee comparator?

The agency and the hirer will consider the basic working and employment conditions that the agency worker would be entitled to if the agency worker was recruited directly by the hirer. In the absence of an actual comparator the agency and the hirer will consider various factors such as internal pay scales and national rates of pay for the job concerned. There may be other conditions which apply generally in the workplace which the agency worker might be entitled to.



5. When does the qualifying period start for me?

This will commence as of the first date of your assignment (no earlier than 1st of October 2011) as the regulations do not apply retrospectively. Under certain circumstances the qualifying period can be paused, see below:

Type of absence that affects the 12 week qualifying period	Effect on 12 weeks qualifying period
Any reason where break less than 6 weeks	Pauses the clock
Sickness absence	Pauses the clock up to 28 weeks
Annual leave	Pauses the clock
Shutdown	Pauses the clock
Jury service	Pauses the clock up to 28 weeks
Industrial action	Pauses the clock
Pregnancy / maternity related absence	Clock keeps ticking throughout the statutory protected period
Paternity, maternity, adoption leave	Clock keeps ticking throughout the statutory protected period

6. Can the qualifying period stop?

A qualifying period will re-set to zero if there is a break, for a reason not included above, for more than 6 weeks between assignments. The qualifying period may also re-set to zero if an agency worker moves to a substantively different assignment.

7. I only work 3 days a week, how will the 12 week qualifying period work?

The 12 week qualifying period is based upon 12 continuous calendar weeks irrespective of working patterns and the number of days worked each week. In this case, a 3 day week will contribute 1 week towards the 12 week qualifying period.

8. What will I be entitled to after 12 weeks?

Please refer to the table below which illustrates what is and isn't included following the successful completion of the 12 week qualifying period:

Basic pay	✓
Local bonus schemes / commission structures based on quality or quantity of work done	✓
Overtime payment rates (provided qualifying criteria are met)	✓
Shift allowances	✓
Monetary vouchers of fixed value	✓
Holiday entitlement	✓
Rest breaks / periods	✓
Paid time off for antenatal appointments	✓
Company profit sharing schemes	✗
Occupational pension schemes	✗
Occupational maternity / paternity pay / adoption	✗
Redundancy pay (statutory and contractual)	✗
Benefits in kind	✗
Occupational sick pay	✗
Notice pay (contractual & linked to loss of employment)	✗
Payment for time off for trade union duties	✗
Any payments that require eligibility of service	✗



9. The hirer operates a local bonus scheme, am I entitled to this?

Yes, under the regulations where there is a bonus scheme which relates to quality and / or quantity of work done then you are entitled to the same opportunity to achieve that bonus as a permanent employee in the same role. All other bonus schemes related to company performance may be excluded.

10. From day one of my assignment as an agency worker, will I be entitled to apply for a permanent vacancy with the hirer?

Unless it is a company re-organisation, you will be entitled to access information about the vacancies.

11. How much holiday will I be entitled to?

Upon completion of 12 calendar weeks within the same role with the same hirer, the agency worker will be entitled to the same amount of holiday entitlement as if the agency worker had been directly recruited directly by the hirer for the assignment.

Further details on holiday entitlement are available within the agency worker's contract with Supreme Education and any Assignment Details Forms associated with the particular assignment.

12. When will I see a difference in pay?

If there is an increase in pay it will be paid once the agency worker has worked in the same role with the same hirer for 12 calendar weeks provided this meets the criteria laid down within the Agency Workers Regulations.

Please refer to questions 5 to 7 for further details on the 12 week qualifying period.

13. Is it possible for agencies or workers to opt out of the regulations?

No.

14. Is the hirer pension plan included?

It is not included, however you are have access to a stakeholder pension scheme through Supreme Education. Please speak to your local branch for more details.

15. If applicable, will I be entitled to receive any incremental increases in annual leave which are awarded for length of service?

Yes, after completion of the 12 week qualifying period and subject to the agency worker meeting the qualifying criteria for the increase in annual leave. For example if after 1 year of continuous service all permanent employees receive an additional day's leave, the agency worker will also need to have 1 year's continuous service in order to qualify for this. No service prior to 1st October 2011 will be taken into consideration.

16. Will I be entitled to the same incremental pay increases as a permanent worker?

Yes, after completion of the 12 week qualifying period and subject to the agency worker meeting the qualifying criteria for the pay increase i.e. 1 year's service.

17. Am I entitled to occupational sick pay?

No, this is not included within the Agency Workers Regulations. However, subject to the statutory qualifying criteria you may be entitled to statutory sick pay, which may be processed via Supreme Education.

18. If I am pregnant, how will AWR affect me?

Firstly, a pregnant worker will need to notify Supreme Education in writing that she is pregnant. Supreme Education will then notify the hirer, who will then conduct a workplace risk assessment and will endeavour to remove any risks should they be found in the work area. If an adjustment is not possible or not deemed reasonable, the hirer will then notify Supreme Education. Supreme Education will then endeavour to find suitable alternative work.

Furthermore, after completing a 12 week qualifying period the agency worker will be allowed paid time off for antenatal medical appointments and antenatal classes during the assignment. Evidence must be provided to confirm such appointments.

19. Do the regulations impact paternity rights?

No, paternity rights were recently revised in the UK, under the Additional Paternity Leave Regulations 2010.

20. If the hirer moves me from one role to another, what should I do?

You will have an obligation to notify Supreme Education as soon as possible about the change in role. Furthermore, if you take up any other assignment during your time with Supreme Education with another agency, you will be required to keep us informed with these details.

Failure to notify Supreme Education of these changes may mean that previous weeks worked for the hirer are not counted towards the qualifying period and this will result in a delay in the agency worker receiving equal treatment.

21. If my assignment ends with one hirer and I accept a new assignment with another hirer, will I still be eligible for equal treatment?

No, as this is a new hirer, then the qualifying period will start again (unless you return to the hirer in the same role within 6 weeks).

22. What is a Derogation Contract?

These are contracts of employment which comply with regulation 10 of the Agency Workers Regulations. These contracts are often referred to as "Derogation Contracts". Unlike a contract for services, workers will be entitled to a minimum notice period and certain additional protections under the Employment Rights Act although the worker will forego the right to equal treatment in relation to pay.



Next steps

We're here to help you every step of the way, so please contact your local Supreme Education consultant or local branch if you require any further clarification or have any further questions.

www.supreme-education.com

Disclaimer

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