

Temporary Worker FAQs on Agency Workers Regulations

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

These are regulations which arise out of the European Agency Workers Directive. They came into force on 1 October 2011 and give temporary agency workers the right to the same pay and working conditions that they would have been entitled to had they been directly employed into the same role by the hirer.

2. Who do the regulations apply to?

All temporary agency workers including those employed through umbrella limited companies. Workers who are genuinely self-employed, such as some single person personal service companies, are excluded.

3. What is meant by equal treatment?

There are two types of equal treatment rights. First there are the day 1 rights which are entitlements the hirer must provide you with from day 1 of an assignment. See question 4 for more detail. Liability for ensuring you receive these entitlements lies with the hirer.

Second are the week 12 rights. Under the AWR, temporary agency workers become entitled, after they have been in the same role with the same hirer for 12 calendar weeks, to the same pay and working conditions as a comparable direct employee of the hirer. Further detail on what is meant by pay and working conditions can be found in question 9 below. Liability for ensuring you receive these entitlements lies primarily with the agency you work through. However before supplying you into the assignment we took details from the hirer about the pay and working conditions that applied to ensure we could meet our obligations under the AWR. If the information we were given is incorrect and we acted reasonably in making the necessary enquiries, liability may switch to the hirer.

4. I hear I have rights from day one of my assignment as an agency worker. What are these and who is responsible for them?

From day one of an assignment you are entitled to be given equal access to the hirer's collective facilities such as office canteens, parking or transport facilities, on site gym facilities etc. under the same rules and conditions as the hirer's direct employees. So, if a direct employee of the hirer would not be entitled to a car parking space until they were at manager level or above the same will apply to you. Equally if the hirer's canteen facilities are subsidised for all their internal workforce the same will apply to you.

You are also entitled to be informed of suitable internal vacancies at the hirer's site. This does not mean you are entitled to be hired into the role or even interviewed for it if you are not considered suitable, but you are entitled to equal access to information about them.

5. What if there is no comparable direct employee at the hirer?

Together with the hirer, we will consider the pay and working conditions you would be entitled to if you were recruited directly by the hirer. In the absence of an actual comparator in the hirer's business, we and the hirer will refer to other factors such as company pay scales or the market rates and any other conditions which apply in the hirer's workplace.

6. When does the qualifying period start for me?

If you were already in a temporary agency role when the AWR come into force, the qualifying period started on 1 October 2011. For all temporary workers starting assignments on or after 1 October 2011, the qualifying period will start on the first date of your assignment. Note that under certain circumstances the qualifying period will be paused.

Type of absences that affects the 12 week qualifying period

- Where there is a break in an assignment for whatever reason of less than six weeks.
- Certified sickness absence – this pauses the clock for up to 28 weeks.
- Annual leave.
- Seasonal shutdowns.
- Jury service - pauses the clock up to 28 weeks.
- Industrial action.
- In the case of pregnancy / maternity related absence or paternity, maternity, adoption leave the clock carries ticking throughout the absence or statutory protected period as if the temporary agency worker was at work.

7. In what circumstances would I have to start the qualifying period again?

A qualifying period will have to be restarted if there is a break between assignments for any reason other than those included above, which is longer than 6 weeks.

The qualifying period may also re-set to zero if you move to a substantively different temporary assignment i.e. at a new hirer or within the same hirer but to a completely different role.

8. How do I calculate the 12 week qualifying period if I only work part time?

If you work in each of 12 consecutive calendar weeks (taking into account any periods of absence that might pause the clock) irrespective of whether you work in each of those weeks on a full time or part time basis, you will have worked the qualifying period by the end of them.

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

Please see the table below.

YES	NO
Basic pay	Company profit sharing schemes
Local bonus schemes / commission structures based on quality or quantity of work done	Occupational pension schemes
Overtime payment rates (provided qualifying criteria are met)	Occupational maternity / paternity pay / adoption
Shift allowances	Redundancy pay (statutory and contractual)
Monetary vouchers of fixed value	Benefits in kind
Paid holiday entitlement	Occupational sick pay
Rest breaks / periods	Notice pay (contractual & linked to loss of employment)
Paid time off for antenatal appointments	Payment for time off for trade union duties
	Any payments that require eligibility of service

11. How much holiday will I be entitled to?

Upon completion of 12 calendar weeks within the same role with the same hirer, you will be entitled to the same amount of paid holiday as if you had been directly recruited by the hirer for the assignment. You are already entitled to the statutory minimum paid holiday of 5.6 weeks per year (which will be calculated pro rata depending on the proportion of the holiday you work). Under AWR you will also be entitled to any contractual paid holiday over and above the statutory minimum which you would be entitled to if the hirer was to engage you directly.

Under the working Time Regulations statutory, paid holiday cannot be rolled up into a single pay rate but must be paid separately in addition to your pay rate. However under the AWR any additional contractual paid holiday entitlement can be rolled up into your pay rate.

12. When will I see a difference in pay?

You may not because you may already be receiving a rate that is AWR compliant.

However, this may not be practical in all cases. If the hirer is not willing to pay an AWR compliant rate from the outset your rate will need to increase at the point you complete the 12 week qualifying period in the same role with the same hirer.

13. Can I be asked or made to opt out of the regulations?

No

14. Is the hirer pension plan included?

No.

15. Will I be entitled to incremental increases in pay rates and holiday?

Yes, after completion of the 12 week qualifying period and subject to you meeting any qualifying criteria the hirer has in place for its own direct workforce, you will be entitled to benefit from incremental increases in holiday entitlement and pay. For example if after 1 year of continuous service all permanent employees receive an additional day's leave, you will have the same entitlement. Please note that any service before the of 1st October 2011 does not count. For all entitlements under AWR the clock started on 1 October 2011.

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

Firstly, if you are pregnant you will need to notify us in writing of that fact. We will then notify the hirer, who will conduct a workplace risk assessment with a view to removing any risks. If removing the risks or making an adjustment is neither possible nor reasonable, the hirer will then notify us and we will endeavour to find you suitable alternative work. In the context of office based work we consider the likelihood of this to be low. 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.

17. Do the regulations impact paternity rights?

No. These were recently in any event under the Additional Paternity Leave Regulations 2010.

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

You must us without delay about a change in role. Furthermore, you are obliged to notify us of the previous temporary agency roles you have been supplied into to enable us to determine whether there are previous assignments in the same or a similar role with the same hirer into which we are placing you as these may count towards your 12 week qualification period. Failure to do so may mean that previous weeks worked for the hirer are not counted towards your qualifying period which may in turn delay you receiving equal treatment under AWR.

19. 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).

20. Can I be excluded from entitlements under the Regulations?

If you are genuinely in business on your own account, i.e. you operate through your own personal service limited company and the hirer and/or us is your client rather than your principal and you take a degree of financial risk while undertaking the assignment then you will be excluded from the scope of the regulations. In addition there are certain types of contract which provide, what is called, a derogation from AWR. This means that if you are engaged under such a contract then you will not be entitled to certain entitlements under the Regulations. For example under Regulation 10 there is provision for temporary workers to be engaged under contracts of employment a term of which must be to pay you for 4 weeks between temporary assignments at 50% of the best pay rate you achieved in the last 12 weeks of your last assignment. If you are engaged under such a contract you will not be entitled to the equal pay provisions of the regulations but you will be entitled to your day 1 rights (see question 4) and to equal working conditions such as the same working hours, holiday, rest breaks and so on. On the other hand you will be an employee in law and will therefore be entitled to the employment protections under the Employment Rights Act. This is known as the Swedish Derogation and it is not practical for many agencies so few are likely to implement it as a model.