

The Agency Worker Regulations 2010

Additional rights for agency workers

The Agency Worker Regulations 2010 come into force on 1 October 2011. The Regulations grant additional rights to agency workers and are likely to have a significant impact on the construction and IT sectors.

Who is an agency worker?

An agency worker is any individual who:

- Is supplied by a temporary work agency (TWA) to work temporarily for and under the supervision and direction of your business; and
- Has a contract with the TWA, which is either:
 - a contract of employment with the TWA; or
 - any other contract to perform work and services personally for the TWA.

A TWA is an employment business that supplies workers to hirers for temporary work (as opposed to an employment agency, which finds permanent employment for individuals).

Day one rights

From 1 October 2011, from the start of their assignment, an agency worker will be entitled to:

- Access any collective facilities and amenities that other employees or workers within your business have access to, for example:
 - canteens;
 - child-care facilities; or
 - the provision of transport services (for example, transport between sites).
- The same opportunity to apply for relevant vacancies as other employees or workers within your business.

The right to equal treatment

From 1 October 2011, an agency worker will be entitled to the same “*basic working and employment conditions*” that they would have been entitled to had they been directly recruited by your business. This entitlement will not apply until an agency worker has undertaken the same role (whether on one or more assignments) within your business for a 12-week qualifying period. Basic working and employment conditions relate to:

- Pay (including basic pay, overtime pay, holiday pay, bonuses for individual performance and vouchers with a monetary value, such as childcare vouchers);
- Working time;
- Night work;

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- Rest periods and breaks; and
- Contractual annual leave.

A pregnant worker will also have the right to receive various enhanced entitlements, including paid time off for antenatal care.

How to calculate the qualifying period

The qualifying period starts on 1 October 2011 and accrues on a weekly basis, regardless of the hours the worker works in each week.

Continuity will be broken and an agency worker will have to start their 12-week qualifying period again when:

- They start a new substantively different role within your business (for example, moving from a production line role to an administrative role).
- There is a break of at least six calendar weeks between assignments that the agency worker undertakes within your business.

Continuity will continue to accrue where a break is due to:

- Pregnancy, childbirth or maternity that take place during pregnancy and for up to 26 weeks after childbirth.
- The agency worker taking maternity, paternity or adoption leave.

Some periods away from work, whether between assignments or during an assignment, will merely suspend continuity (neither counting towards continuity nor breaking it), for example:

- Sickness absence of up to 28 weeks.
- Annual leave.
- Jury service of up to 28 weeks.

A worker who changes agency during an assignment will continue to accrue service with your business.

What are the penalties for breaching the new laws?

- If your business breaches its obligations under the new laws an employment tribunal can award compensation, taking into account the agency worker's losses.
- A tribunal can also award compensation of up to £5,000 against your business if it decides you have attempted to structure an assignment in order to avoid the qualifying period.

More information

If you have any questions about the content of this checklist, please contact James Hutchinson on 020 7240 3474 or at j.hutchinson@beale-law.com.

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