

FACTSHEET ON THE AGENCY WORKERS REGULATIONS

The Agency Workers Regulations 2010 (AWR) will come into effect from 1st October 2011. It will give agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job.

It is not retrospective and for those agency workers already on assignment, the entitlement and qualifying period will begin from 1st October 2011.

Key concepts:

Agency worker	An agency worker (often referred to as a 'temp') is someone who has a contract with the Temporary Work Agency (an employment contract or an agreement to perform work or provide services personally) but works temporarily for and under the direction and supervision of a hirer. Those who are in business on their own account where the status of the hirer is that of a client or customer of a "profession or business undertaking" (i.e. a genuine business to business relationship) are not included in this definition and out of scope of the AWR.
Temporary Work Agency (TWA)	a TWA is a person in business, whether operating for profit or not and including both public and private sector bodies, involved in the supply of temporary agency workers. This could be a "high street" agency, but also an intermediary, such as an umbrella company or a master or neutral vendor if they are involved in the supply of the agency worker. The regulations do not cover employment agencies who introduce workers to employers for direct or permanent employment. Cherry Professional is a TWA for the purposes of these Regulations. Cherry Professional also places permanent candidates who will not be affected by the AWR.
Hirer	The hirer (end-user) is a company, partnership, sole trader or a public body, engaged in economic activity whether or not operating for profit, and which books agency workers via a TWA. YOU are a Hirer when you engage a 'temp' from Cherry Professional.
Day 1 rights	There are 2 aspects: 1) From Day 1, agency workers are entitled to be treated no less favourably than a comparable worker or employee in relation to access to collective facilities and amenities provided by the hirer. Collective facilities and amenities include: <ul style="list-style-type: none"> • a canteen or other similar facilities • a workplace crèche • transport services (e.g. in this context, local pick up and drop offs, transport between sites – but not company car allowances or season ticket loans) • toilets/shower facilities • staff common room • waiting room • mother and baby room • prayer room • food and drinks machines • car parking Hirers are liable for less favourable treatment unless it can be objectively justified. 2) Agency workers have the right to be informed by the Hirer of any relevant vacant posts with the Hirer, to give the agency worker the same opportunity to find permanent employment. This can be by way of general announcement in a suitable place in the Hirer's establishment. Cherry Professional recommends that Hirers prepare an agency worker induction pack that includes information about access to facilities, amenities and information about vacancies. We will reasonably endeavour to assist Hirers in providing such information.
Qualifying Period (QP)	The qualifying period is 12 weeks and is triggered by working in the same job with the same hirer for 12 calendar weeks. A calendar week in this context will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis and does not have to be consecutive. The accrual of 12 weeks (the clock) is affected as follows: <ul style="list-style-type: none"> • The clock stops if there is a break of 6 weeks or more between assignments. • The clock pauses for breaks of less than 6 weeks, annual leave, shut-downs and strikes. • The clock pauses for up to 28 weeks for jury service or illness. • The clock continues to run for any absence related to pregnancy, childbirth, maternity. • The clock re-sets if the agency worker returns to a new role which is substantively different to the previous role. Cherry Professional will monitor the clock using our candidate template system and will alert you in weeks 9 or 10 that the QP is approaching.

Equal Treatment	<p>An agency worker is entitled to the same basic working and employment conditions as a comparable employee or worker. The terms and conditions affected by the AWR are:</p> <ul style="list-style-type: none"> • key elements of pay – see separate table about pay • duration of working time e.g. if working is limited to a maximum of 48 hours a week • night work • rest periods • rest breaks • annual leave • paid time off for ante natal appointments <p>An agency worker can request information about basic terms and conditions once the QP has been reached. The request must first be made to the TWA, and if there is no response within 30 days, then to the Hirer, who has 28 days to respond.</p> <p>Failure to provide equal treatment means a breach of the AWR and the agency worker can claim compensation from either or both the TWA and/or the Hirer. A minimum compensation of 2 week's pay can be awarded to the agency worker.</p>
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What is included in "pay"	What this means	Does not mean
Basic Pay	'Pay for work done'; annual salary usually converted in hourly/daily rate. NB to this may be added some or all of the other contractual elements below and includes shift / unsocial hours / pay and risk payments for hazardous duties	Occupational pension contributions; redundancy/severance, expenses; occupational sick pay occupational maternity, paternity, adoption pay Note: agency workers are entitled to statutory sick pay (paid by TWA)
Overtime pay	Extra pay for additional overtime hours	An automatic entitlement for extra pay as an agency worker will still need to qualify for overtime as if recruited directly (where such criteria apply to the latter)
Bonus or incentive payment linked to personal performance	'Pay for work done' and directly attributable to the individual	Bonuses based solely on company performance, discretionary one-off bonuses
Holiday pay	Above the statutory minimum, can be given as leave or paid in lieu as part of the hourly/daily rate	Other contractual and statutory paid leave, (e.g. compassionate leave, paid time off for union duties or jury service) NB unless employed by the TWA, who would be responsible for any such provision due
Vouchers or stamps	Of fixed monetary value so another form of "pay", such as luncheon vouchers	Other benefits in kind, Financial Participation Schemes, Phantom Share Schemes
Paid time off for antenatal appointments	After the 12 week qualifying period, paid at full hourly rate for the time it takes to attend the appointment	