



AWR FAQ Questions

What are the Agency Worker Regulations?

The AWR bring the European Agency Workers Directive into UK law. The Agency Workers Regulations were published at the start of 2010 and come into force on the 1st of October 2011. The aim of the legislation is for agency workers to be provided with equal treatment in the workplace in relation to basic employment conditions

Who do they affect?

Any individual that is supplied via an agency to work temporarily for a Client. The agency worker works under the supervision and direction of the hirer but only has a contract with an agency. 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. An individual is not prevented from being an agency worker under the Regulations simply because they work through an intermediary body. For example, an individual working through an umbrella company, who finds work via an agency, is covered by the Regulations.

Who Falls Outside AWR?

A worker who is working in a professional capacity, are genuinely self employed on their own account or are engaged by a company which are providing outsourced services to you.

Check List

Example characteristics of an agency worker

Works for a variety of hirers on different assignments but is paid by the agency who deducts tax and National Insurance contributions

The AW has a contract with the TWA but works under the direction and supervision of the hirer

Time sheets are given to the TWA who pays the AW for the hours worked

If an AW is on sick leave, the TWA pays the Statutory Sick Pay (subject to satisfying the criteria applicable to all workers)

The TWA pays holiday pay when paid statutory annual leave is taken

Example characteristics of a worker who is outside the Regulations

The "employment agency" introduces an individual to an employer for a directly employed role, paid by the employer

The contract is agreed between the worker and employer and is open ended or may be for a fixed period

There is no ongoing contractual relationship between the employment agency and the worker

What will those covered under AWR be entitled to?

Upon completion of a 12 week qualifying period in the same job with the same hirer, agency workers will be entitled to the same basic working and employment conditions that they would have received if they 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.

Day 1 Rights may include:

- 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

How will equal treatment be determined?

First, the hirer should establish if there are any comparable workers or employees. To be comparable they should be;

- doing the same or broadly similar work to the agency worker
- working at the same location as the agency worker or, if there is no such person, be in another location owned by the hirer

If there are no comparable workers or employees there is no entitlement to equal treatment.

Comparator for Day 1 Rights	access to facilities	access to vacancies
Working for and under the supervision and direction of the hirer	Yes	Yes
Engaged in same or broadly similar work	Yes	Yes
Based at same establishment	Yes	Yes
Based at different establishment	Yes	Yes
Must still be employed/engaged at the time of the breach of the Regulations	Yes	Yes

What is included in 'basic working and employment conditions'?

After an agency worker completes a 12 week qualifying period with the same hirer, in the same role, they will be entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. They are;

- **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**

In addition, pregnant agency workers who have completed the 12 week qualifying period, will be entitled to **paid time off for ante natal appointments**. For any entitlement requiring a period of service – eg enhanced entitlement to annual leave after 12 months – the period starts at the time the qualifying period commenced (not 12 months and 12 weeks but 12 months).

What is not included?

- Contractual sick pay
- Contractual maternity, paternity and adoption pay
- Compensation for loss of office or redundancy
- Pension or retirement payments
- Loyalty or long service payments
- Paid time off for TU duties
- Guarantee payments
- Loans and expenses incurred in employment

What is the 12 week qualification period?

The 12 week qualifying period 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. Therefore, even if the agency worker is on assignment for only a couple of hours a week, it will still count as a week and they will still be entitled to equal treatment after 12 calendar weeks calculated in this way.

For example, an agency worker begins work on a Tuesday so all work done up to and including the following Monday will count as one calendar week.

**For further information, advice or guidance please contact our team of experienced consultants on
01706 641818.**

A full risk assessment or consultation can be provided on request by our HR department