



Escape Recruitment

Agency Worker Regulations (AWR)

Agency Worker FAQs

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Frequently Asked Questions

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

In summary the AWR are a set of regulations which give Agency Workers rights to equal treatment with regard to pay, holidays 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, with the same Hirer. There are also rights which will apply from day one, known as “Day 1” rights (see question 9).

The right to equality does not apply to all terms and conditions of employment.

2. When does the Agency Worker Regulations (AWR) come into effect?

The Agency Worker Regulations will come into force in England, Scotland and Wales on 1 October 2011 and in Northern Ireland the Agency Workers (Northern Ireland) Regulations 2011 will come into effect on 1 December 2011.

3. What if I started my assignment before the 1st October 2011?

The qualifying period is not retrospective.

Therefore for Agency Workers on assignments which started before the 1st October 2011, the 12 week qualifying period will still start from 1 October 2011. (See question 6 for information on the ‘qualifying period’)

4. Who will these regulations affect?

The AWR covers all 'Agency Workers'.

For the purposes of the legislation an Agency Worker is:

- An individual who is supplied by a Temporary Work Agency to work temporarily for and under the supervision and direction of a Hirer,
and
- Has a contract with the Temporary Work Agency which is either a contract of employment or some other contract to perform work/services for the agency.

5. What about Limited Company Contractors and the Self-Employed?

Genuinely self-employed persons are excluded whether they operate via limited companies or not.

Limited Company Contractors are 'Agency Workers' if they are not genuinely self-employed and therefore are included in the regulations.

6. What is the 12 week qualifying period/qualifying clock?

In order to become entitled to have the same basic terms and conditions of employment as if they had been employed directly by the Hirer, Agency Workers must complete 12 continuous calendar weeks during one or more assignments in the same role, with the same Hirer.

7. How do you calculate the 12 week qualifying period?

Any week during which an Agency Worker works is counted whether full time or part time. A calendar week will comprise any period of seven days starting with the first day of an assignment.

A new qualifying period will start when:

- An Agency Worker begins a new assignment with a new Hirer
- An Agency Worker remains with the same Hirer but is in a different role.
- Where there is a break between assignments with the same Hirer which is longer than 6 weeks and does not meet the criteria of a break which 'pauses' the clock or during which the clock continues.

The 'Qualifying Clock' will pause when there is a break:

- For any reason, if not more than 6 calendar weeks
- Up to 28 weeks because the agency worker is incapable of work because of sickness or injury
- For the purpose of taking leave to which the agency worker is entitled, including annual leave
- Caused by a regular & planned shutdown of the workplace by the Hirer (eg Christmas)
- Up to 28 calendar weeks to allow the agency worker to perform jury service.
- Caused by a strike, lock-out or other industrial action at the Hirer's establishment.

The qualifying clock continues during breaks due to:

- pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth (or whenever she returns to work if this is sooner than 26 weeks)
- maternity leave, adoption leave or paternity leave

8. What are my entitlements as an Agency Worker?

Under the Regulations, Agency Workers will receive entitlements at two points in their assignment:

- On 'Day 1' of their assignment
- After completion of 12 week qualifying period.

9. What are my 'Day 1' rights as an Agency Worker?

From 'Day 1' of an assignment, 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
- Informed by the Hirer about any relevant job vacancies with the Hirer that would be available to a comparable employee or worker

10. What are collective facilities and amenities in relation to 'Day 1' rights?

This list is not exhaustive and may include:

- A canteen or other similar facilities
- A workplace crèche
- Transport services
- Toilets/shower facilities
- Staff common room
- Waiting room
- Mother and baby room
- Prayer room
- Food and drinks machines
- Car parking

11. What are Agency Workers rights after the 12 week qualifying period?

After the completion of the 12 week qualifying period in the same role with the same Hirer, Agency Workers will be entitled to "the same basic terms and conditions of employment as if they had been employed directly by the Hirer" at the time the qualifying period commenced.

Relevant terms and conditions that the Agency Worker is entitled to receive are those relating to:

- Pay
- Duration of working time
- Night work
- Rest periods
- Rest breaks
- Annual leave
- Pregnant Agency Workers who have completed the qualifying period are also entitled to:
 - o Paid time off for ante natal appointments and classes when on assignment
 - o Provisions where working environment poses risk to agency worker who is pregnant, has given birth in the last 6 months or is breast feeding a child.

12. What is meant by 'Pay' in the Regulations?

For the purposes of the Regulations, Pay means any sums of money paid to the Agency Worker in connection with the worker's employment.

'Pay' Includes:

- Basic pay (based on annual salary a Agency Worker would have received if hired directly)
- Overtime payments (these are subject to any requirements relating to any qualifying hours)
- Shift or unsocial hours allowance, risk payments for hazardous duties
- Payment for annual leave (any entitlement above the statutory minimum of 5.6 weeks can be added to the hourly or daily rate)
- Bonus or commission payments which are directly attributable to the quality or amount of work completed by the individual.
- Vouchers or stamps which hold a monetary value eg child-care vouchers

'Pay' Excludes:

- Expenses eg accommodation or travel expenses
- Occupational sick pay
- Occupational pension schemes
- Occupational maternity, paternity or adoption pay
- Redundancy pay
- Notice pay
- Guarantee payments as they apply to directly recruited staff if laid off
- Payment for time off for Trade Union duties
- Advances in pay or loans
- Payment or reward linked to financial participation scheme eg share ownership schemes, profit sharing schemes, option schemes
- Overtime or similar payments where the agency worker has not fulfilled the qualifying conditions required of someone directly recruited
- Payments where the agency worker has not met the eligibility period of employment/service required of someone directly recruited or if the agency worker is no longer on assignment when the bonus is paid (if the same applies to those recruited directly)

13. Are bonuses included?

Bonuses will be included if the payment or reward is: "directly attributable to the amount and quality of work done by the agency worker". If it is for some other reason eg to reward loyalty, then it is outside the scope of the regulations.

14. How is equal treatment established?

For most cases equal treatment will be established by giving the same relevant entitlements to the Agency Worker as if they had been recruited as an employee or worker to the same job.

15. Can I, as an Agency Worker, request information about my entitlements?

Yes, if you believe your entitlements are not being met you can request information. How and when you can do this depends on the information you require:

- Day 1 entitlements:
 - o You can write to the Hirer for information. The Hirer will have 28 days to respond in writing from the receipt of the request
- Entitlements after 12 week qualifying period:
 - o After the 12 weeks has elapsed, you can write to the Temporary Work Agency to request information.

16. Where can I get further information on the Agency Worker Regulations (AWR)?

- Agency Workers Regulations Guidance May 2011, produced by Department for Business Innovation & Skills
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf>
- Your Employment Status, Direct Gov
http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Workersemployeesandselfemployment/DG_10027916

17. Who can I speak to at Escape for more information?

Your Escape Consultant on:

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