

Agency Workers Regulations

Guidance for Managers

The Agency Worker Regulations give agency workers the entitlement to equal treatment with respect to basic employment and working conditions if and when they complete a continuous 12 week qualifying period with the same hirer in the same role.

In other words, after 12 weeks, their basic terms and conditions of employment (namely pay and other basic working conditions) must be no less favourable than the terms they would have been entitled to if they been recruited directly by the NHS. Agency workers are also entitled access to on-site facilities and information on job vacancies from day one of their assignment.

Who do these Regulations apply to?

The Agency Workers Regulations apply to:

- individuals who work as temporary agency workers
- individuals or companies (private, public and third sector) involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer
- and the hirers themselves (private, public and third sector).

Who is an Agency Worker?

An agency worker is someone who has an employment contract (or an agreement to provide services personally) with an Agency but works temporarily for and under the direction and supervision of a hirer (you). This relationship between agency worker, agency and hirer is a key feature of these Regulations and who is covered by them.

Exemptions

Those who are likely to be outside the scope of the regulations include:

- individuals on secondment from one organisation to another or
- individuals working for in-house temporary staffing banks where a company employs its temporary workers directly and they are only supplied to work for that same business or service ie 'Bank staff' or
- individuals who find work through a temporary work agency but are in business on their own account or
- individuals working on Managed Service Contracts where the worker does not work under the direction and supervision of the hirer or
- individuals who find direct employment with an employer through an "employment agency".

KEY POINTS

- There is no minimum amount of work that needs to be completed in order for a week to count as one of the 12 for qualification purposes.
- A break between assignments of six weeks or less, in the same role, shall not break 'continuity' for qualification purposes.
- The hiring employer (you) must provide the agency with information about the relevant terms and conditions to which an agency worker would be entitled if he or she had been hired directly. The agency is responsible for ensuring that the agency worker receives these terms and conditions if he or she completes the 12-week qualifying period.
- The hiring employer (you), or nominated CCG deputy, must approve the agency worker's timesheet.

The hiring employer (you) should make the agency worker aware that they must not:

- share their daily rate with a CCG customer whilst on an assignment with the CCG delivering to the customer
- compete with the CCG for CCG customer business whilst on an assignment with the CCG delivering to the customer.

Basic working and employment conditions

The right to equal treatment under the Agency Workers Regulations is not a general right not to be treated less favourably on the grounds that an individual is an agency worker; instead, the principle of equal treatment will apply only to certain terms and conditions relating to working time, holiday entitlement and pay.

It is important to give consideration to the specific requirements of the job an agency worker is being hired to perform. If the requirement is for someone to work part-time, then the relevant terms concerning working time are those that would have applied had the hirer engaged the agency worker as a part-time employee.

How do the regulations affect an agency worker's pay?

What is included in the definition of pay?

- Basic pay based on the annual salary an agency worker would have received if recruited directly (usually converted into hourly or daily rate).
- Overtime payments, if qualifying hours have been completed.
- Annual pay award -where a hirer gives an annual pay increment, an agency worker should receive the same pay increment as if recruited directly.
- Shift/unsocial hours allowances
- Payment for annual leave (where the entitlement is above the statutory minimum of 5.6 weeks (at a full time equivalent rate) which can be added to the hourly or daily rate.

- Bonuses or commission payments directly attributable to the amount or quality of the work done by the individual, including where sales or production targets achieved and payments related to quality of personal performance.

What is excluded?

- Occupational sick pay (the regulations do not affect an agency worker's entitlement to statutory sick pay. If an agency worker has a contract of employment with the agency, and depending on qualifying service, they may be entitled to such payments from the agency.)
- Occupational pensions (agency workers will be covered by new automatic pension enrolment which will be phased in from October 2012).
- Occupational maternity, paternity or adoption pay.
- Redundancy pay (statutory and contractual).
- Notice pay (statutory and contractual).
- Payment for time off for trade union duties.
- Expenses such as accommodation and travel expenses.
- Overtime or similar payments where the agency worker has not fulfilled qualifying conditions that a permanent member of staff would have to fulfil. So, for example, an agency worker would have to be doing work over and above standard hours to qualify for overtime, not just do a shift that permanent staff tend to do on an overtime basis.
- Any payments that require an eligibility period of employment/service, if not met by the agency worker (same treatment as someone directly employed) or if the agency worker is no longer on assignment when the bonus is paid (if the same applies to directly recruited employees).
- Bonuses which are not directly linked to the contribution of the individual – e.g. a flat rate bonus that is given to all directly recruited workers to encourage loyalty or long term service.
- Additional discretionary, non-contractual bonuses, as long as these payments are not made with such regularity that they have become custom and practice e.g. a one-off payment to celebrate a particular event.

Annual Leave / Rest Entitlements

After 12 weeks an agency worker will be entitled to the same treatment in relation to the duration of working time, night work, rest periods and rest breaks as he or she would have received if recruited directly to the same job.

For example, where a directly recruited employee would have had a more generous entitlement to rest than the statutory minimum requirement (perhaps a lunch hour rather than the minimum 20 minute rest during a shift of more than six hours), an agency worker will also be entitled to this once the 12 week qualifying period has elapsed

Annual Leave entitlements

In relation to paid annual leave, all workers have a statutory entitlement to 5.6 weeks per year (based on their working pattern – someone working five days a week is entitled to 5.6 x 5 = 28 days).

As with rest breaks above, the agency worker concerned should receive the same enhanced entitlement as a directly recruited employee once the 12-week qualifying period has elapsed.

What is a week?

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.

There is no minimum amount of work that needs to be completed in order for a week to count as one of the 12 for qualification purposes. 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.

12 week qualifying period

A new qualifying period will only begin if the new assignment with the same hirer is substantively different and/or there has been a minimum of six weeks break between assignments.

An agency worker can qualify for equal treatment after 12 weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

The qualifying clock

The working patterns of agency workers can be irregular. The Regulations therefore provide for a number of circumstances in which breaks in the assignment of an agency worker do not prevent him or her from completing the qualifying period. Sometimes a gap between assignments – or a move to a new assignment - will mean that the clock is reset to zero and must start again. In other circumstances a break will merely ‘pause’ the clock which will then continue to tick when the agency worker returns. Further information can be found on the NHS employer’s website: [Agency Workers](#)

Meaning of the ‘same role’

If a change in position is to require an agency worker to re-qualify for equal treatment, the whole or main part of the new role must be ‘substantively different’ from the previous role.

A further requirement is that the agency must have notified the worker in writing of the type of work they will be required to carry out in the new role.

Breaks between assignments

The general rule under the Regulations is that any break between assignments of six weeks or less, in the same role, shall not break ‘continuity’ for qualification purposes.

Working through multiple agencies

An agency worker might work for a hirer for 6 weeks with one agency and is placed with the same hirer three weeks later by another for a further eight weeks. As there has not been a six week break

between the assignments, the agency worker will be entitled to equal treatment after 6 weeks on the second assignment.

Pregnant workers and new mothers

The agency worker has the right to reasonable paid time off to attend ante-natal appointments and the right to be suspended from work if an insurmountable risk related to pregnancy is identified and an alternative assignment cannot be found, however the responsibility for these rights lie with the agency.

Workplace Risk Assessment

The agency will ask you to perform a workplace risk assessment and make a reasonable adjustment if necessary. If this is not possible, the agency will need to seek alternative suitable work with another hirer and ensure that the agency worker is paid for any period of the assignment when she could not work due to a health and safety risk.

It is your responsibility to carry out a work place risk assessment and where a risk is identified, you should make adjustments to remove the risk. If an adjustment is not possible or reasonable and would not remove the risk, you should inform the agency who will endeavour to find suitable alternative work.

Mandatory Training

Agency staff who are assigned for longer than a 2 week period, are required to complete the CCG's mandatory on line training module on Information Governance. Additional mandatory training may also be required, for example Health and Safety. Further information is available from the HR Learning and Development team.

Managers must complete the Agency Staff Checklist and issue the Information Pack for all approved Agency Workers. Please refer to the **Agency Staff Checklist** document on the intranet.

Additional information and Frequently Asked Questions can be found on the NHS employers website: [Agency Workers](#) or alternatively, contact a member of the HR team.