

Agency Workers Regulations - The Basic Facts

Background

The Agency Workers Regulations came in to effect on 1st October 2011 and are the result of a long discussed EU Directive.

The AWR extend certain equal treatment rights to temporary workers with regards to pay, holidays and working conditions. Temporary workers gain these rights once they have completed a 12 week qualifying period.



Who is an Agency Worker?

An agency worker is an individual who has any contract to perform work and services personally for a temporary work agency (individuals who work through umbrella companies are not excluded from this definition). Genuinely self employed workers are excluded from the Regulations and their status is defined by the work they perform. Classic tests of self employment include whether workers work under their own supervision, use their own tools and have the right to supply substitute workers in their place.

The 12 Week Qualifying Period

An agency worker must work in the same role with the same hirer for 12 weeks to complete the qualifying period. The amount of time which is worked within a qualifying week is not relevant. If there is a break in the role of 6 weeks or more the clock starts again unless the break is due to sick leave, pregnancy or maternity. Agency workers will continue to accrue time towards the 12 week qualifying period if they are supplied by a different temporary work agency.

Establishing Equal Treatment

An agency worker is entitled to the same "relevant terms and conditions" as a comparable employee of the hirer (if the terms are ordinarily included in comparable employee contracts). An employee is "comparable" if;

1. He or she is engaged in the same or broadly similar work with regard, where relevant, to whether they have a similar level of qualification and skills.
2. He or she is based at the same establishment or, in the absence of this, in another of the client's establishments.

If no comparable employer exists then hirers needs to consider the amount they would pay if they were to recruit directly for the same position.

What does Equal Treatment Cover?

Pay, duration of working time, night work, rest periods, rest breaks and annual leave.

How is Pay Defined?

The definition includes basic pay, overtime, shift premia, certain bonuses (i.e. performance as opposed to loyalty related), commission payments and holiday pay.

Other Agency Worker Rights

Other rights include;

1. The right to access the hirer's collective facilities (e.g. canteen, childcare facilities and transport services) from day one.
2. The right to be informed by the hirer of relevant posts (via notice board or intranet access) from day one.
3. The right for pregnant workers to be paid when attending ante-natal appointments (following the 12 week qualifying period). Pregnant workers should also be offered suitable alternative work if the role can no longer be fulfilled for health and safety reasons.

How will the AWR be enforced?

The AWR will be enforced through employment tribunals. Employment Tribunals can award compensation of not less than 2 weeks' pay plus expenses or other losses (but not for injury to feeling). Additionally compensation of up to £5000 can be awarded where assignments have been deliberately arranged to avoid equal treatment.

Where does Liability for the AWR lie?

Primary liability for its application lies with the temporary work agency. However the agency will have a defence if it has sought to establish the existence of a comparable employee and the hirer will be liable to the extent that it has breached its responsibilities.

Practical Implications

Clearly the AWR will have a differing effect depending on the type of staff supplied and the seasonality of assignments. Some assignments are by nature short term and some temporary workers will be paid more than their permanent comparator (the AWR does not "cut both ways"). In many cases its impact will be negligible but in others the key to minimising on costs will be advance planning. For example hirers who establish "point of entry" pay rates and formal Pay Bands by role and grade will be in a stronger position should a claim ever be brought.

Conclusion

At Berry Recruitment we recognise the importance of the AWR and of offering the best possible advice to clients as part of our service. We have organised R.E.C. (Recruitment and Employment Confederation) based training to ensure that our Consultants are well placed to answer your questions and offer constructive recommendations.

To learn more about the AWR or to arrange a face to face meeting please phone 01727 898650 and we will be delighted to help.



Combining Talent with Opportunity

