

The Agency Workers Directive

New regulations under the Agency Workers Directive came into force on 1 October 2011. Following this, UK agency workers are now entitled to the same basic employment and working conditions as if they had been recruited directly by the hirer.

The legislation applies to all employers that take on temporary workers or agency workers through a hirer or intermediary, as well as all temporary work agencies, hirers, vendors or any other individual or business that is engaged in the supply of workers, either directly or indirectly.

The regulations do not cover those that are genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

New entitlements

Under the new regulations, agency workers have the following entitlements from **day one** of their employment:

- use of the same on-site collective facilities as other members of staff - e.g. staff canteens, childcare, parking and transport services
- access to information on relevant job vacancies within the business.

Upon the completion of a **12-week qualifying period**, the worker will then be entitled to the same basic conditions of employment as if they had been directly employed by the hirer, specifically:

- key elements of pay - including salary, overtime pay, shift allowances, bonuses, lunch vouchers, and/or annual leave pay
- working time - including duration of working time, night work, rest periods and breaks and annual leave.

In addition, pregnant agency workers who have completed the 12-week qualifying period will be entitled to paid time off for antenatal appointments.

These rights are in addition to those which already apply to temporary and agency workers under the Working Time Regulations 1998.

However, some benefits such as company pension schemes, occupational sick pay, and health insurance will not be extended to agency workers. Nor will agency workers have the right to claim unfair dismissal, redundancy pay or maternity leave.

The 12-week qualifying period

Employers should note that the 12-week qualifying period is not retrospective and for those agency workers already on assignment, the qualifying period will start from 1 October 2011. An agency worker must remain in the same job with the same hirer to qualify, although he or she will be able to accumulate the 12 weeks even if they only work a few hours a week.

The 12-week period does not need to be continuous, as certain breaks will only pause the time during which the worker accrues service. Such breaks can include: annual leave; absences that last no more than six weeks; sickness (for up to 28 weeks); jury service (up to 28 weeks); industrial action; and temporary factory closures. A worker will then resume the accumulating service on their return.

Employers should ensure that they comply with the new regulations. Failure to do so could result in an employment tribunal, with hirers potentially facing fines of up to £5,000 for each case of unequal treatment.

We recommend that you seek professional advice if you are unsure of your legal obligations.