

Agency Workers Guide

What do the Agency Workers Regulations mean for you?

From the **1st October 2011**, the new **Agency Workers Regulations** come into force. They give you an entitlement to the same **basic employment and working conditions** as if you had been recruited directly by the hirer, some immediately and some after a **12 week qualifying period** in the same job with the same hirer - **this does not mean however that you become a permanent employee of the hirer after 12 weeks.**

To assist you, we have put together a briefing on the Regulations and how they may effect you. If you have any queries with this document or the Agency Workers Regulations, please do not hesitate to contact us on 01225 777157 and we will be more than happy to help.

Any entitlement will be based on what a comparable employee or worker receives, whether you are working part time or full time. This means there must be someone doing the same job or broadly similar work to you, usually at the same workplace but they may be located elsewhere. If there are no comparable workers or employees there is no entitlement to equal treatment.

The regulations are not retrospective so the 12 week qualifying period is not backdated to before 1 October 2011. Meaning any time spent on an assignment before 1 October 2011 will not count towards the 12 week qualifying period.

Entitlement to equal treatment from day one – “Day One” Rights:

From day one of an assignment you will be entitled to be treated no less favourably than a comparable employee or worker, and as such you will be entitled to:

- **access to collective facilities and amenities provided by your hirer, which can include:**
 - access to a canteen or other similar facilities,
 - a workplace crèche (may be subject to a waiting list – same as for comparable employee or worker),
 - transport services (local pick up service, inter-site transport),
 - toilet/shower facilities,
 - staff common room,
 - mother and baby room,
 - prayer room,
 - car parking (may be subject to certain restrictions which apply to comparable employees or workers,
 - waiting room,
 - food and drinks machines, and;
- **information on job vacancies with the hirer that you are working, though:**
 - where your hirer is redeploying staff to avoid a redundancy situation, it is not necessary to advertise jobs, and;

- the obligation to provide you with information does not mean a hirer cannot decide how they will treat your application or requirements with regard to qualifications or experience and time served in the organisation

Entitlement to equal treatment after 12 weeks:

After 12 weeks in the same job with the same hirer you will be entitled to the same basic terms and conditions as if you had been recruited directly, including:

- **basic pay**, including holiday pay, overtime and bonuses linked to your performance,
- **duration of working time** – for example not being expected to work more than 48 hours a week if those directly recruited are not,
- **annual leave** – where this is above your legal entitlement you may receive an additional payment to cover this as part of the hourly rate or at the end of the assignment,
- **night work**
- **rest breaks and rest periods**
- There will also be an entitlement after 12 weeks in the same job to paid time off for **antenatal appointments for pregnant agency workers**

What is included in Pay?

Once the 12 weeks qualifying period has been reached the following are included in pay:

- **basic pay** based on the annual salary you would have received if you had been recruited directly (usually converted into hourly or daily rate and taking into account any pay increments you would have received),
- **overtime payments** – subject to any requirements regarding the number of hours you would need to have worked if you had been recruited directly,

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- **payment for annual leave,**
- **bonus or commission payments** linked to the amount and quality of work you do eg achievement of sales targets,
- **bonuses linked to personal performance** or non contractual payments that are made with such regularity that they are a matter of custom and practice,
- **vouchers or stamps which have a monetary value** and are capable of being exchanged for money, goods or services, e.g. luncheon vouchers, child care vouchers but not salary sacrifice schemes, and;
- **paid time off for antenatal appointments**

In some circumstances some of the payments will require a period of service. You will be required to have achieved that period of service to become eligible – the same as someone directly recruited.

Payments may not be made if you have left the job unless that is different from how a directly recruited person would have been treated.

For certain bonuses you will need to be 'appraised' to establish what bonus you should receive. You may be fully integrated into your hirer's appraisal system or you may be appraised in a different way.

What is excluded from Pay?

The following are excluded from pay:

- **occupational schemes** – sick pay, maternity, paternity and adoption pay, but you may be entitled to statutory payments – please check with White Horse Employment,
- **redundancy and notice pay,**
- **payment for time off to carry out trade union duties,**
- **guarantee payments,** as they apply to directly recruited staff if laid off,
- **advances in pay,** e.g. for season tickets,
- **payments or rewards linked to financial participation** schemes such as share ownership,
- **majority of benefits in kind** – e.g. reduced-rate mortgages, employer-funded training allowances but excluding those which have monetary value as referred to in 'pay includes' list above,
- **bonuses not linked directly to the contribution of the individual** e.g. flat rate bonus paid to workforce to encourage loyalty or reward long service or based on the hirer's overall performance and there is no recognition of

your personal contribution,

- **additional, non-contractual bonuses** as long as these payments are not made with such regularity that they have become custom and practice

Agency workers will be covered by the new automatic pension enrolment which will be phased in from October 2012.

Working Time Elements

In addition to equal treatment on key aspects of pay you will also be entitled to equal treatment after 12 weeks in the same job in relation to:

- **working time** (for example the same rest periods as those recruited directly),
- **night work,**
- **rest periods and rest breaks** (for example, if you had been directly recruited you would have been entitled to a one hour lunch break), and;
- **annual leave** (where this is above the statutory entitlement of 5.6 weeks which you are already entitled to)

Payment of statutory leave is made when you take the leave. Where your leave entitlement is above the statutory minimum this is taken into consideration by our payroll system and your entitlement is adjusted accordingly throughout your assignment.

Agency workers: qualifying for equal treatment after 12 weeks

In some cases knowing you have qualified for equal treatment will be straightforward. You will have worked in the same job with the same hirer for 12 weeks.

Depending on the circumstances, breaks between assignments can either count towards the qualifying period or cause the qualifying period clock to pause.

White Horse Employment will ask you for information about previous assignments to help decide when or if you are entitled to equal treatment.

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How do you determine your qualifying period?

The reasons why the **qualifying period starts again at zero** are:

- most commonly because you move to a new assignment with a new hirer,
- where you remain with the same hirer but you are no longer in the same role – you are doing a 'substantively different' role,
- where there is a break between assignments with the same hirer of more than six calendar weeks.

The reasons why the **qualifying period pauses** include:

- a break for any reason that is no more than six calendar weeks and you return to the same role at the same hirer,
- a break of up to 28 weeks because you are incapable of work because of sickness or injury,
- any break where you take your leave entitlements, such as annual leave,
- a break which is due to the workplace closing, such as a Christmas shutdown,
- a break caused by a strike or other industrial action at the workplace,
- a break due to attending jury service up to 28 weeks.

Breaks that **count towards your qualifying period** include:

- pregnancy, childbirth or maternity breaks which take place during pregnancy and up to 26 weeks after childbirth,
- any breaks due to taking maternity leave, adoption leave or paternity leave.

When the break counts towards your qualifying period, it will be for the intended or likely length of the assignment (whichever is longer).

If you work for more than one hirer you will be eligible for equal treatment after 12 weeks in each hirer. That may mean you receive different terms and conditions after 12 weeks when on different assignments.

What is a “substantively different” role?

If your job with the same hirer changes a lot, meaning that you are doing different work, it could mean that the role is substantively different. If this is the case the qualifying period will start again.

A 'substantive' change in a role requires duties which make up the whole or main part of your role to be different. It is not enough that only your line manager has changed or you have changed locations. There has to be a genuine and real difference to the role.

A combination of the following characteristics should be in place to make the role substantively different:

- different skills and competences used,
- pay rate different,
- work in different location,
- line manager different,
- working hours different,
- role requires additional or new training,
- different equipment involved

For the qualifying period to be reset to zero, White Horse Employment must tell you in writing that the role has substantively changed and the qualifying period will start again.

Pregnant workers and new mothers

Pregnant agency workers and new mothers already have some employment rights, though new rights from 1 October 2011 will give you further protection to ensure you are not discriminated against because of your pregnancy.

Antenatal Appointments:

If you are a pregnant agency worker on an assignment after completing the 12 week qualifying period you will be allowed paid time off to attend:

- antenatal medical appointments
- antenatal classes

If you need to take time off for antenatal appointments you will continue to be paid at the usual hourly rate after 12 weeks in the same job. This includes the duration of the appointment and time taken to travel to the appointment and back if it is during your normal working hours.

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What information should you get and when

Information on day one rights:

From 1 October 2011 you will be entitled to day one rights from the first day of your assignment. If you do not think you are getting your rights, for example you have been denied access to the staff canteen, you should talk to a member of the White Horse Employment Temporary Division, who will try to resolve the matter informally on your behalf.

If no informal resolution is found, you can request written information from your hirer about your day one rights any time after the start of your assignment.

The hirer has to provide a written statement with all the relevant information relating to:

- the rights of a comparable (similar) worker or employee,
- the reasons for the treatment of agency workers

The hirer has 28 days to reply to your request.

Information on pay and other entitlements after 12 weeks:

After the 12 week qualifying period if you believe you are not getting your rights, for example, if you think you are not receiving equal treatment on pay, holidays etc. please contact a member of the White Horse Employment Temporary Division, who will try to resolve the matter informally.

If an informal resolution is not found, you will be entitled to ask for written information from White Horse Employment. White Horse Employment will reply within 30 days, but if not, you can ask for the same information from your hirer who has 28 days to reply.

White Horse Employment uses Assignment Detail Forms to provide information relating to:

- basic working and employment conditions e.g. rate of pay, number of weeks' annual leave,
- any relevant information or factors that were considered when determining these conditions, for example is there a pay scale which sets the rate of pay,
- the terms and conditions of a relevant comparable employee (if relevant) and any difference in treatment, e.g. a lower rate of pay because you do not have the same qualifications, skills or experience/expertise

What to do if you have a problem

We actively encourage all Agency Workers to seek assistance via the temporary Division at White Horse Employment in the first instance, as many potential issues can be resolved informally to a satisfactory conclusion.

If a resolution cannot be found in all instances, as an Agency Worker, you can bring a claim to an Employment Tribunal if you:

- are not given equal treatment after 12 weeks or,
- are denied access to facilities or information on vacancies from day one

We strongly advise that you try to resolve the situation without going to an Employment Tribunal, Acas (the Advisory, Conciliation and Arbitration Service) may be able to help you before making a claim.

An Employment Tribunal will not consider a complaint unless it is presented within three months of the actual breach.

Useful Contacts

For further information on the contents of this document, what it means for you, or any queries on your entitlements as an Agency Worker contact:

White Horse Employment – Temporary Division

Telephone: 01225 777157

Email: temporary.division@wh-employment.co.uk

For further guidance see:

Directgov:

http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemploymentagencies/DG_198913

ACAS: www.acas.org.uk