

The ABC of the Agency Workers' Regulations 2010

The Agency Workers Regulations 2010 ('AWR') came into force on 1 October 2011. The purpose of the AWR is to apply the principle of equal treatment. It does not affect employment status and so normal provisions in determining employee status will apply. The AWR apply to:

- Temporary work agencies – an individual or business engaged in the supply of agency workers to work temporarily under the supervision or direction of a hirer.
- Agency workers – individuals under a contract with a temporary work agency to work temporarily under the supervision or direction of a hirer and not in business on their own account.
- Hirers – end-users, engaged in economic activity, which book agency workers and are responsible for their supervision and direction while on assignment.

The AWR can apply to intermediaries such as umbrella companies or master vendors but will not apply to permanent employees or managed service contracts

AWR from Day One

Agency workers are entitled to the same access to certain collective facilities provided by the hirer and to information on relevant job vacancies as comparable permanent workers and employees from the first day of their assignment. This could include access to a canteen, shower facilities or to a prayer room.

Agency workers are not entitled to enhanced access rights so they will not be able to go to the top of waiting lists.

Hirers are responsible for ensuring that all agency workers can access their facilities and are able to view information on relevant job vacancies from the first day of their assignment. As such hirers might save time by preparing a pack containing information on day one entitlements for agency workers.

Basic Working and Employment Conditions

After completing a 12 week qualifying period in the same job role with the same hirer, agency workers are entitled to equal treatment in relation to basic working and employment conditions. The 'relevant terms and conditions' affected are:

- Key elements of pay
- The duration of working time e.g. if working time is limited to a maximum of 48 hours per week
- Night work
- Rest periods
- Rest breaks
- Annual leave
- Paid time off for ante-natal appointments

If you hire temporary agency workers through an agency, you will need to provide the agency with up-to-date information on your terms and conditions so that they can ensure an

agency worker receives the correct equal treatment, as if they were recruited directly, after 12 weeks in the same job.

Again it will be valuable for hirers to prepare an information pack containing details of terms and conditions and collective facilities that can be provided to employment agencies when taking on agency workers.

Calculating the qualifying period

The 12 week qualifying period is triggered by working in the same job role with the same hirer for 12 continuous calendar weeks, during one or more assignments. A calendar week comprises any period of seven days starting with the first day of the assignment.

Calendar weeks will be accrued regardless of how many hours the worker works each week.

The 12 week qualifying period continues to accrue even if the agency worker has been supplied by more than one temporary work agency during that time.

Only the hirer and the agency worker are relevant in establishing the 12 week qualifying period so using two different agencies to supply the same worker will not avoid the provisions of the AWR.

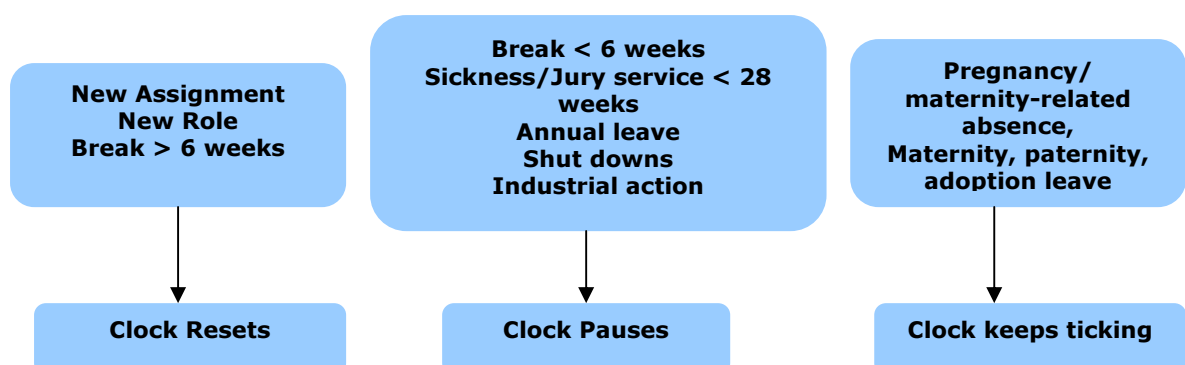
An agency worker might also work for more than one hirer during a week, resulting in more than one qualifying period with different hirers running at any one time.

If the break between assignments (or during an assignment) with the same hirer is not more than six weeks and the role is not substantively different, generally this will not break continuity in calculating the 12 week qualifying period – the clock will 'pause' and then start ticking again when the agency worker resumes work with the hirer.

Similarly, where the absence is related to pregnancy or sickness or is beyond the control of the agency worker, such as a workplace closure, the clock on the qualifying period will either 'pause' or 'continue to tick' depending on the type of absence.

Different types of absence may also run consecutively, so for instance if an agency worker has a break of 4 weeks between assignments and is then off sick for 3 weeks the clock will pause after the 4 week break and so not reset after 6 weeks absence.

Calculating the 12 week qualifying period



Derogations, Enforcement and Family Friendly Rights

If you use agency workers regularly you may wish to speak with your employment agency to see if they would be willing to consider the exemption from equal treatment provisions on pay and holiday pay known as "the Swedish derogation" where the agency offers an agency worker a permanent contract of employment and pays the agency worker between assignments.

In these circumstances entitlement to equal pay after the 12 week qualifying period does not apply. In order for this exemption to apply certain provisions must be met in relation to pay between assignments.

The AWR contain anti-avoidance provisions to address any situation where a pattern of assignments emerge that are designed to prevent an agency worker from completing the qualifying period.

Be careful to avoid repeatedly moving or rotating workers between roles as this is likely to trigger the anti-avoidance provisions of the AWR.

After completing a 12 week qualifying period in a given job, pregnant agency workers are allowed paid time off to attend ante-natal appointments when on assignment. It is the temporary work agency that will be required to pay the agency worker for time off to attend ante-natal appointments. Hirers will be required to carry out risk assessments for pregnant agency workers. If necessary the hirer will be responsible for making any adjustments to the agency worker's role. Where no adjustments can be made the agency will be responsible for providing suitable alternative employment to the agency worker or paying the agency worker until the end of the assignment.

TPP Law is able to provide extensive advice in relation to navigating the Agency Workers' Regulations 2010 and can assist in the production of AWR compliant information packs to save time during the recruitment process.

TPP Law Limited
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For further information, please contact Gemma Brown on
t 020 7620 0888
e gemma@tpplaw.co.uk

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