

Effective 1st October 2011. Legislation is not retrospective and does not affect the employment status of a temporary worker.

Definitions

Agency Worker: an individual who has a contract with a TWA, who works temporarily for and under the supervision and direction of the hirer, and is not in business on their own account.

Temporary Work Agency (TWA): Supplies agency workers to work temporarily for a third party (the hirer). The agency worker works temporarily under the supervision and direction of the hirer but has a contract with the TWA.

Hirer: The end user. The hirer is responsible for the supervision and direction of the agency worker. A division within a company will not be a separate hirer if it does not have its own legal identity.

Purpose of legislation

The regulations will provide agency workers with equal treatment in relation to a direct recruit of a hirer in terms of:

1. basic working and employment conditions – restricted to pay and basic terms and conditions of employment
2. access to facilities provided by a hirer
3. access to information about job vacancies offered by a hirer

Who is covered?

An individual who is supplied by a TWA to work temporarily under the supervision and direction of a hirer. This includes those engaged through an umbrella company and those supplied through intermediaries (master vend, neutral vend).

Who is not covered

Managed service contractors, perm placements, in-house temporary staffing banks, genuinely self-employed (this may include limited company contractors).

Day 1 rights

These include access to on-site facilities provided by hirer, which will be specific to each client but may typically include a canteen, workplace crèches, toilet/shower facilities, mother & baby rooms, prayer rooms, food & drink machines, car parking etc.

Individuals must also be given access to relevant hirer vacancies.

Qualifying for equal treatment

Agency worker must work for 12 weeks in the same role for the same hirer. The 12 week count towards qualifying for equal treatment can be interrupted in 3 ways.

1. the clock resets to zero e.g. if agency worker begins a new assignment with a new hirer
2. the clock is paused e.g. any reason where the break is 6 weeks or less, sickness absence, jury service, holidays etc
3. the clock keeps ticking e.g. pregnancy or maternity/paternity related matter

What is pay?

Basic pay, plus pay-related elements including overtime payments, shift/unsociable hours allowance, payments for annual leave, bonus/commission payments relating directly to work done by the individual, vouchers or stamps that have a monetary value, payments for difficult or dangerous work, other payment directly linked to work.

What are basic working and employment conditions?

Rest periods, rest breaks, annual leave, duration of working time.

New maternity rights

Agency workers will have the right to time off for ante-natal care and to be paid during the absence to attend. An agency worker is entitled to bring a claim if time off is refused or not paid. The client is obliged to make adjustments to protect against and identify health & safety risks to the pregnant worker. Where she cannot complete her duties, she may be moved to a different assignment or suspended with pay, she will retain her continuity in terms of qualifying service.

Anti-avoidance

Factors which would indicate that a pattern of assignments was structured with the intention to deprive the worker with equal treatment rights could include: The number of assignments, the length of assignments, the number of role changes, whether the role changes were substantially different, the length of break periods.