

Agency Workers Regulations Candidate Information

1. What are the Agency Workers Regulations? When did they come into force?

The Regulations temporary workers parity with employees in basic pay and working conditions . The agency worker must be treated as if he/she had been recruited to do the job . The Regulations came into force on the 1st October 2011.

2. What are the entitlements?

The entitlements are split into two. Day one, and after 12 weeks of continuous service.

Day one entitlements includes

Canteen, workplace creche, transport services (between sites), shower facilities, staff common room, mother and baby room prayer room, food and drinks machines and parking. This list not exhaustive.

Please note that if there is a waiting list, the agency worker will be put on that waiting list (unless the hirer has raised any objections). If the hirer doesn't have certain facilities, there is no obligation on the hirer to provide them.

Week 12 entitlements

After 12 weeks consecutive weeks in the same role for the same hirer, you will be entitled to the same basic working and employment conditions as if you had been directly hired by the hirer (as long there is a flesh and comparator or set evidence (such as pay scales). These basic working and employment conditions are:

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

3. What constitutes as 'Pay' - Pay includes the following:

- Hourly rate
- Commission
- Overtime
- Shift allowances
- Unsocial hour premiums

- Payment for difficult or dangerous duties
- Vouchers or stamps which have monetary value and are not "salary sacrifice schemes" e.g. luncheon vouchers, child care vouchers .
- Bonuses which are directly attributable to the quality of work done by the worker (not long term company wide bonuses or share schemes)

Pay **excludes** the following:

- Redundancy pay
- Enhanced maternity pay
- Company/occupational sick pay Company pensions schemes
- Financial participation schemes (i.e. Share save)
- Bonus payments (aimed at long term management and retention of staff) Unfair dismissal (unless on a contract of employment with the agency) Private medical
- Life assurance
- Notice Pay (statutory and contractual linked to loss of employment) Payment for time off for Trade Union duties
- Advances in pay or loans e.g. season tickets
- Expenses such as accommodation and travel expenses
- Overtime or similar payments where the agency worker has not fulfilled qualifying conditions required of someone directly recruited
- Any discretionary, non-contractual bonuses
- Guarantee payments as they apply to directly recruited staff if laid off

4. How does the 12 week entitlement work?

Agency workers are entitled to the above entitlements after being in the same role for 12 continuous calendar weeks. Any week or part of a week during which the agency worker is on assignment counts towards calculating this qualifying period. If there is a substantive change in the way the agency worker provides it's services (changes their duties within the same hirer or changes hirer), then the qualifying period would go back to zero.

5. Whilst providing the services, what happens when the agency worker is called up for jury service?

There are certain absences where the qualifying period would be paused. The table below summarises the effect of different types of absences :

Type of absence that affects the 12 week qualifying period	Effect on 12 week qualifying period
Agency worker begins a new assignment with a new hirer	Clock resets
Agency worker remains with the same hirer but is no longer in the same role	Clock resets
Break between assignments of 6 weeks or more (which is not one which 'pauses' the clock or during which it continues to tick)	Clock resets
Any reason where the break is less than six weeks	Pauses the clock
Sickness absence	Pauses the clock for up to 28 weeks
Annual leave	Pauses the clock
Shut down e.g. factory closure, school	Pauses the clock
Jury service	Pauses the clock for up to 28 weeks
Industrial action	Pauses the clock
Pregnancy and maternity related	Clock keeps ticking*
Statutory maternity, paternity or adoption	Clock keeps ticking* *
<p>* The protected period for a pregnant agency worker begins at the start of the pregnancy and ends 26 weeks after childbirth (or earlier if she returns to work)</p> <p>** Where an agency worker has a contract of employment with an agency or their umbrella company and is entitled to this type of leave.</p>	

6. If the agency worker provides its services to the hirer via a different agency, does the 12 week qualifying period restart?

No. For example - If the agency worker provided its services to ABC services for 2 weeks at Worldwide Shop Ltd, then provided its services via XYZ services at Worldwide Shop Ltd, the agency worker will be into their third week as part of the qualifying period.

7. Can an agency worker opt out of the Regulations?

No, however this is an exception (now known as the "Swedish Derogation") which would avoid having to provide equivalent pay. All other rights provided under the Regulations would still stand. A "Swedish Derogation" model contract would be a permanent contract of employment made between the umbrella company and the agency worker. The agency worker would be entitled to 50% of their average previous weeks pay or NMW for a minimum of 4 weeks while they are not working. Please seek more advice from an umbrella company on this route.

If the agency worker is providing its services under a managed service contract then that agency worker is exempt from the Regulations.

And finally, if the agency worker provides its services via a personal services company and they deem themselves genuinely self employed, they are also exempt from the Regulations.

8. What are the entitlements for pregnant workers?

The hirer must allow agency workers to take time off work to attend ante-natal appointments. As with permanent employees, it can ask for written permission of the appointment if required.

The hirer must also make adjustments to their role which are required to protect them from identified risks if they are pregnant, recently given birth or if they are breastfeeding. Risk assessments should therefore be carried out for pregnant agency workers in the same way that they are for permanent employees.

9. Does any work that Agency Worker provided prior to the 1st October count towards the 12 week qualifying period?

No. It all commences from the 1st October.

10. What does the Agency Worker need to do if they feel their rights have not been met?

They would need to put their concerns in writing to the agency in the first instance, of which they will have 30 days to respond.

Servoca PLC believes that all the information contained within this document was correct at the time of publication. This document is non contractual and is for guidance purposes only and does not replace the need to obtain professional advice in relation to the Agency Workers Regulations. Servoca PLC cannot accept liability for any errors or omissions in the information or loss suffered directly or indirectly by any reader as a result of action taken or not taken as a result of reading of this publication.