

AWR? Agency Workers Regulations

A Brief Outline from Bucks and Berks Recruitment

The notes below do not constitute advice or a legal interpretation of the Regulations. They are intended to provide a brief overview. You will need to take your own advice in their implementation, although we will be pleased to supply you with more information, on request.

The Regulations are in force from 1st October 2011 and will have the following impact:

who qualifies?

After a 12 week qualifying period in a temporary assignment, a temporary worker will be entitled to certain terms and conditions including working time, holiday and pay, to which they would have been entitled had they been recruited directly by you to carry out the same job, when compared with employees or workers in your organisation that get those terms and conditions.

Important to remember

The 12 week period commences on 1st October 2011. The qualifying period is broken by, a break of over 6 weeks or a change to a substantially different role and paused by certain events, such as sickness and holiday. There are no minimum working hours in a week for it to be a qualifying week. If the same agency temporary worker is supplied through agencies, other than Bucks and Berks Recruitment, into the same role then their separate periods of work will count towards the 12 weeks, subject to the breaks and pauses.

after the qualifying period, what terms and conditions are they entitled to?

Any comparable sums payable in connection with the worker's engagement or employment including:

1. Basic pay, overtime, shift premiums and unsocial hours payments.
2. Commission, bonuses determined by personal performance.
3. Holiday pay in excess of the statutory minimum.
4. Vouchers with a transferable cash value – luncheon vouchers, for example.

Important to remember

This does not include:

1. Your contractual sick pay, pension, maternity or paternity pay, expenses, redundancy payments, and benefits in kind.
2. Bonuses other than directly attributable to the amount or quality of the work done by someone, e.g. loyalty.
3. Payments related to a pension or compensation for loss of office.
4. Payments made under a 'financial participation scheme' – a scheme that offers workers a share in your profits.
5. Payments for time off work made in accordance with certain statutory rights.

Qualifying temporary workers are also entitled to the same terms and conditions relating to:

1. The duration of working time.
2. Night work.
3. Rest periods.
4. Rest breaks.

what is a comparator?

In most cases equal treatment can be simply established by giving the same relevant entitlements 'as if' the temporary worker had been recruited directly by you as an employee or worker, to the same job. This can be done by asking the question ***'what pay and holidays would he/she be entitled to, given a particular role and his/her particular skills and qualifications?'***

Even if there are no obvious comparators, an agency worker can seek to establish that he or she would have been engaged on better terms, had they been directly employed, when they started in your organisation. This means that a hypothetical question is sufficient to establish equality. Someone will not be a comparable employee if they are no longer in your employ.

what happens now with pregnant temporary workers?

Two rights that previously applied only to employees are also extended to pregnant temporary workers who have completed the qualifying period:

1. The right to reasonable paid time off to attend ante-natal appointments.
2. The right to be suspended from work if a risk related to pregnancy is identified that cannot be avoided, and an alternative assignment cannot be found for her.

Important to remember

Responsibility for the compliance with these new rights requires cooperation between the hirer and the agency.

how long is a temporary worker entitled to equal treatment?

Once a temporary worker has completed the qualifying period, they continue to be entitled to equal treatment for the duration of the assignment and any subsequent assignment, if one of the provisions preserving continuity between assignments applies. Once entitled to equal treatment, a temporary worker is entitled to the same uplifts in pay and holiday that are given to comparable employees or workers.

what else happens from 1st October?

From 1st October 2011, without any qualifying period, temporary workers supplied by any agency, are entitled to the same treatment as your employees in respect of 'collective facilities' such as car parking, staff restaurants, crèches, on site gyms, subject to any waiting lists, service qualifications or any other 'objective justification' for denying equal treatment. They are also entitled to have access to information on any 'relevant' vacant job vacancies so as to give them the same opportunity as a comparable worker, to find permanent employment with you.

anti-avoidance – what does that mean?

There are 'anti-avoidance' measures which would apply if it is clear that either Bucks and Berks or you, or both, prevent temporary workers from qualifying or continuing to qualify for equal treatment by structuring assignments in certain ways.

Examples of preventing a temp qualifying could be:

1. Terminating all assignments at 10 or 11 weeks (although it is still possible to have an assignment that for justifiable reasons lasts for either of those periods).
2. Deliberately altering the duties without justification (this does not prevent a genuinely new role being offered to a temporary worker).

what will bucks and berks do?

To comply with the Regulations we will:

1. Ask for information about comparators at the time of agreeing the detail of a temporary assignment.
2. Make it clear what impact this may have on the fees for the supply of a temporary worker.
3. Work with you to reduce the risk of a claim of unequal treatment.

Important to remember

If we are unable to get information that we request from you, and a temporary worker claims they are being denied equal treatment, then they have a statutory right to ask for that information from you directly and you may become liable for that failure.

where to get more information

The official guidance on the Regulations is available at:

<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agencyworkers-regulations-guidance.pdf>