

# DBULLETIN

## Q&A: Agency Worker Regulations

A question and answer guide to the Agency Worker Regulations 2010 which come into effect on 1 October 2011.

### What are the Agency Worker Regulations?

The Agency Worker Regulations 2010 (the Regulations) will give an agency worker the benefit of the same “basic working and employment conditions” as if they had been engaged by the hirer directly to that role. These include:

- Pay (including holiday pay, overtime, individual performance-related bonuses, vouchers/stamps, workplace pension contribution (from 2012))
- Duration of working time
- Length of night work
- Rest periods and rest breaks
- Holiday entitlement

They also enable agency workers to use collective facilities which are made available to other staff and to know what vacancies the hirer has on offer. They also introduce enhanced protection for pregnant agency workers.

### Who do they apply to?

The Regulations apply to:

- ‘Agency workers’ – individuals supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer but who have a contract with the temporary work agency rather than with the hirer. An agency worker is often used where a hirer needs staff

at short notice and its existing workforce cannot cover.

- ‘Temporary work agency’ – the companies who supply the agency workers whether directly or indirectly to the hirer
- ‘Hirer’ – you. The agency worker is supplied to you to work on a temporary basis under your direction and supervision

Those who are outside the scope of the Regulations are:

- Self-employed individuals
- In-house temporary staffing banks
- Individuals working under a managed service contract (i.e. managing and delivering a service, for example, welfare/care, catering or cleaning)

### When do the Regulations come into force?

1 October 2011

### What will an agency worker’s rights be on ‘Day 1’ of the assignment?

From the first day of the assignment, you, as the hirer, are responsible for providing equal treatment to the agency worker in terms of:

- Access to facilities and amenities (e.g. canteens, childcare, local transport pick-up service)
- Notification of ‘relevant’ vacancies within your organisation

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## **When does the agency worker get the right to those “basic working and employment conditions” referred to above?**

The agency worker has to have worked with you for 12 weeks in the same role to benefit from the “basic working and employment conditions”.

However counting those 12 weeks is not always straightforward.

The easiest way that an agency worker can accrue the 12 weeks is if they work for you in the same role for 12 consecutive weeks, even if only for 1 shift per week. When looking at anything more complicated than this, it is useful to think of a clock which counts the weeks of service and can be paused and resumed or reset to zero. Absences and breaks for different reasons and different lengths of time can pause or reset the clock or in some circumstances leave it ticking even if the agency worker isn't working for you at the time.

Here's an example of when the clock would pause and resume:

Agency Worker A (A) is on a 4 week assignment with you. The assignment comes to an end but 5 weeks later you get A back again to do the same role. A starts the second assignment with 4 weeks service already accrued towards the 12.

Here's an example of when the clock would reset to zero:

Agency Worker B (B) does a one-off shift for you and 3 weeks later does another one-off shift. However then you don't need B back again for another 8 weeks after that. At the start of B's third assignment, the clock is reset to zero and B cannot

count 2 weeks towards his 12 weeks.

## **What if we have an agency worker in one role and then we want to move them into another role without any break in-between?**

If the new role is substantively different (and the agency has told the agency worker in writing what the new role entails) then the clock will be reset to zero when the new role starts. However, it appears that substantive difference is not going to be easy to show, to stop hirers from using that as an excuse to stop rights from accruing – a tribunal would look at the main duties and responsibilities of the post and could also look at wider aspects such as location, and line management.

## **Can I terminate an agency worker's assignment after 11 weeks?**

Yes you can. The agency worker would still be entitled to those 'Day 1' rights from the outset of their assignment but it is not unlawful to stop the assignment before 12 weeks even if the only reason for doing so is because you don't want the agency worker to accrue 12 weeks. If you are going to adopt this as your practice, make sure you know how to count the weeks so that you are not caught out by periods of absence. The only time that this practice could be unlawful is if you keep calling the same agency worker back to the same role again and again but leaving just enough time between the assignments to reset their service clock to zero. This looks like you are trying to avoid the application of the Regulations and can be penalised by a £5,000 fine.

However, you should also think about whether it is more important to you to engage someone you can trust, even if that means they end up accruing more than 12 weeks service. In itself the need for someone in such a repeated/long-term way may indicate a medium-term

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staffing need that could be dealt with more appropriately than through the use of agency workers.

## Who will monitor how many weeks of service an agency worker has accrued?

If you have a good relationship with the agency, you should be able to get them to agree to monitor your use of agency workers and to notify you when they are coming up to their 12 week period. Otherwise you will have to get to grips with the rules on counting weeks of service yourself.

## What should we do now?

- Look at your existing use of agency workers – what impact are the Regulations going to have on you?
- Make sure managers know how and when to use agency workers and put systems in place to count weeks of service.
- Consider options to minimise risk and cost when engaging agency workers but also consider solutions to reduce your need to use agency workers by making your existing workforce more flexible, for example nil hour contracts or better training.
- Consider what collective facilities and amenities you will have to make accessible to your agency workers and how you are going to tell them about vacancies.

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