

## Agency Workers Regulations - Key Points

- The Agency Workers Regulations come into force on 1<sup>st</sup> October 2011.
- From Day One of an assignment (from 1<sup>st</sup> October 2011) the agency worker is entitled to access to collective facilities and amenities and entitled to be notified of any relevant vacancies the hirer may have.
- The hirer is responsible for providing day one rights.
- After 12 weeks with the same hirer in the same role the agency worker is entitled to equal treatment in relation to :
  - Key elements of pay
  - Duration of working time
  - Night Work
  - Rest Periods
  - Rest Breaks
  - Annual Leave
- The regulations are not retrospective and the qualifying time will only start to accrue after the regulations come into force on 1<sup>st</sup> October 2011 (even if the assignment started before 1<sup>st</sup> October 2011).
- If the Agency worker changes Agency the time spent with the previous agency is still counted towards the qualifying period.
- The calculation of the 12 week qualifying period can be difficult as the qualifying clock can be reset to zero, can be paused or can continue to tick (even when the agency work is not working) in specific circumstances.
- After completing a 12 week qualifying period in a given role, pregnant agency workers will be allowed paid time off to attend antenatal medical appointments.
- If a risk assessment highlights that the agency worker can no longer complete the duties for health and safety reasons the agency worker should be found alternative work (paid at a rate that is no less favourable than the last assignment which was terminated on health and safety grounds related to the pregnancy).
- If alternative work cannot be found, then the pregnant woman will have the right to be paid by the agency for the remaining expected duration of the original assignment.
- The Regulations also include anti avoidance provisions designed to prevent structures of assignments that are put in place to intentionally circumvent the Regulations.
- A hirer or a Temporary Work Agency found to have intentionally structured assignments to avoid the legislation may receive a penalty of up to £5,000. Liability would be determined by the tribunal.
- From 1<sup>st</sup> October 2011 Agency Workers are entitled to information relating to their equal treatment entitlements, if they believe their entitlements under the Regulations have been infringed.
- If the infringement refers to day one entitlements then the agency worker should request information from the hirer.
- If the infringement refers to entitlements after the 12 weeks qualifying period then the agency worker can only request information once the 12 weeks have elapsed and they must ask for the information from the temporary work agency. The Temporary Work Agency has 28 days to respond. If after 30 days there is no response then the agency worker can ask for the information from the hirer.

- The Agency Worker Regulations will be enforced through the Employment Tribunals and the tribunal will determine who is responsible for any breach.
- Day one rights are the responsibility of the hirer, entitlements to rights after the 12 week qualifying period may be the responsibility of either the hirer or the Temporary Work Agency, it is therefore essential that the hirer and the Temporary Work Agency co-operate.
- If a tribunal finds that the agency worker has not received their equal treatment entitlement the agency worker will be compensated for any loss of earnings or receive an appropriate level of compensation, for example if they have been denied access to a facility.
- There is no maximum award the tribunal can make but there is a minimum award of two weeks pay regardless of the value of the loss.
- From 1<sup>st</sup> October 2011 temporary agency workers will count towards the thresholds in Temporary Work Agencies for the purpose of calculating the thresholds above which a representative body may be established.
- Where there is currently an obligation on employers to provide information on the employment situation (e.g. TUPE, Collective Bargaining, European Works Councils etc) employers must from 1<sup>st</sup> October provide workers representatives with relevant information on the use of agency workers.