

Agency Workers Regulations 2010

When the Agency Workers Regulations 2010 comes into effect on 1 October 2011, agency workers will for the first time gain rights to a form of equal treatment; after a qualifying period their basic terms and conditions of employment must be no less favourable than the terms they would have been entitled to had they been hired directly by the organisation for which they are working.

The Regulations apply to individuals who have a contract with a temporary work agency and who are supplied by that agency to work temporarily under the supervision and direction of a “hirer” (that is Great Yarmouth Borough Council as the client).

Day One Rights:

From day one of an assignment, under the Regulations agency workers will be entitled to be treated no less favourably than a comparable direct employee in being given **access to “collective facilities and amenities”** provided by the hirer. Because it is not subject to any qualifying service, this right will apply from 1 October 2011. This could include canteen or other similar facilities, child care facilities, transport services.

Agency workers will also have “...**the right to be informed by the hirer of any relevant vacant posts with the hirer**, to give that agency worker the same opportunity as a comparable worker to find permanent employment with the hirer.” While the Regulations say very little about what this will mean in practice, the intention appears to be that the obligation on hirers is simply to make agency workers aware of the existence of relevant vacancies and not to disallow applications simply on the ground that the individual applying is an agency worker.

Week Twelve Rights:

After twelve weeks in the same role (there is no minimum amount of work that will need to be completed in order for a week to count as one of the 12 for qualification purposes), **the agency worker will be entitled to the same basic terms and conditions** of employment as if they had been employed directly by the hirer. These are:

- Key elements of pay;
- Duration of working time;
- Night work;
- Rest periods;
- Rest breaks;
- Annual leave; and
- Paid time off for ante-natal appointments.

Key Elements of Pay are:

- √ Basic pay based on annual salary
- √ Shift allowance and risk payments
- √ Bonus (attributable to amount/quality of work done)
- √ Overtime (subject to any requirements)
- √ Payment for annual leave entitlement over statutory minimum
- √ Vouchers or stamps – not salary sacrifice schemes

The following are not included:

- X Occupational sick pay
- X Maternity, paternity or adoption pay
- X Redundancy pay
- X Occupational pension
- X Notice pay
- X Expenses
- X Bonus not linked to contribution of individuals
- X Payment for time off for trade union duties

The general rule under the Regulations is that any break between assignments of six weeks or less shall not break “continuity” for qualification purposes. This means that if a worker returns to a role with a hirer within six weeks of their previous assignment, the previous assignment will count towards qualification.

Anti-avoidance

A specific provision of the Regulations is aimed at **deliberate attempts at preventing agency workers from qualifying or continuing to qualify for equal treatment** by structuring assignments in certain ways. This provision may be applicable to the below situations:

- The worker has completed 2 or more assignments with a hirer, and/or
- The worker has completed 1 or more assignments with a hirer and 1 or more assignments with hirers associated with that hirer, and/or
- The worker has worked in more than 2 different roles with the hirer

If the worker presents a claim to an employment tribunal, it will be for the tribunal to decide whether the most likely explanation for the particular pattern of assignments is that it was a deliberate attempt on the part of the agency and/or the hirer to prevent the worker from qualifying for equal treatment. If the tribunal finds that there was a deliberate attempt to frustrate or prevent qualification, it can award compensation of up to £5,000 which can be apportioned as appropriate between hirer and agency.