

agency workers regulations

hirer FAQ Sheet

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Following Randstad's successful AWR seminar the Randstad AWR project team has compiled the answers to some of their client's burning questions. For more information please visit: www.randstadstaffing.co.uk/awr

1. What are the Agency Workers Regulations ("the AWR")?

A set of regulations which will, for the first time, provide all agency workers with a right to equal treatment with their directly recruited equivalents employed within a hirer's organisation after 12 weeks in a given job. This is known as "the equal treatment principle".

Some equal treatment rights will apply from day one of an assignment (these are known as "day one rights". See question 9).

2. When will the AWR come into force?

The regulations come into effect on 1st October 2011.

3. Who do the regulations apply to?

All agency workers including those employed via umbrella companies or other intermediaries. Workers who are genuinely self-employed are excluded.

4. What does equal treatment cover?

Equal treatment will apply to the basic working and employment conditions of the agency worker such as:

- duration of working time
- overtime
- breaks
- rest periods
- night work
- holidays
- public holidays
- pay (see question 5 and 6)
- terms and conditions ordinarily included in employee contracts (for example, collective agreements, pay scales, company handbooks)
- other matters of custom and practice in the workplace concerned (for example, access to facilities and permanent employment with the hirer).

These conditions should be the same for an agency worker, as for employees directly recruited by the hirer to do the same role.

5. What does equal treatment in relation to "pay" include?

This includes basic pay, plus other contractual entitlements directly linked to the work undertaken by the agency worker whilst on assignment i.e.

- payment for overtime (subject to any requirements regarding the number of qualifying hours)
- shift allowances
- unsocial hour premiums
- basic pay
- payment for annual leave
- bonuses or commission payments that are directly linked to the quality or quantity of work done by an agency worker
- vouchers or stamps with a monetary value e.g luncheon or transport vouchers. Childcare vouchers are included unless they are funded on a salary sacrifice basis.

6. What is excluded from the meaning of "pay"?

Aspects of pay that are provided to employees in recognition of the long-term relationship between the employer and the employee such as:

- profit sharing schemes
- occupational pension contributions
- occupational sick pay
- redundancy pay
- occupational maternity, paternity or adoption pay
- payment for time off for trade union duties
- notice pay
- advances in pay or loans
- expenses
- the majority of benefits in kind
- any payments that require an eligibility period of employment/service, if not met by the agency worker.



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7. How is the 12 week qualifying period calculated?

It is 12 calendar weeks regardless of working pattern (full-time or part-time). A new qualifying period will begin under the following circumstances:

- a new assignment with a new employer commences
- a new assignment with the same employer is substantively different
- there is a break of more than 6 weeks between assignments in the same role.

The qualifying clock will pause under the following circumstances:

- any reason where there is a break in the assignment for less than 6 weeks
- sickness absence pauses the clock for up to 28 weeks
- annual leave
- shut downs (e.g. school holidays)
- jury service pauses the clock for up to 28 weeks
- industrial action.

The qualifying clock “keeps ticking” during a period of pregnancy and maternity related absence.

8. How do we know if a role is substantively different from a previous one so that the qualifying period begins again?

For this to be the case, the work or duties which make up the whole or main part of a role must be substantively different. Randstad and the hirer should consider a combination of factors such as:

- are the skills and competencies required for the role different?
- is there a change in reporting lines?
- is the location of the assignment different?
- are the working hours different?
- is the pay rate different?
- does the role require extra training – and/or a specific qualification that wasn't needed before?
- is different equipment involved?

If a new role is substantively different Randstad will provide workers with a written description of the new work they will be required to undertake in a new role. The description of the new role will be provided before the new assignment starts.

9. What are “day one rights”?

Some aspects of equal treatment apply before the 12 week qualifying period i.e. from day 1 of the worker's assignment. The regulations give agency workers the same access to certain facilities and information provided by the hirer. These include:

- access to information on job vacancies with the hirer (i.e. vacancy lists) except where the hirer is re-structuring their business as part of an internal re-organisation
- access to collective facilities and amenities (i.e. canteen, childcare, transport).

10. Can we avoid giving the workers equal rights? What are the “anti-avoidance provisions”?

No. Hirers and agencies must not try to avoid equal treatment by rotating workers between a series of 11 week assignments in “substantively different” roles so that the worker never qualifies for equal treatment. The regulations include a series of deterrents, known as the “anti-avoidance provisions”, to avoid abuse of the regulations as follows:

- a worker can bring a claim in the employment tribunal that the hirer and the agency have breached the regulations
- for avoidance claims an award of up to £5000 compensation can be made to the worker.
- there is a minimum award of 2 weeks' pay.

11. Who is liable for a breach of the regulations, the client, the agency or both?

Any party in the chain of relationships can be liable to the extent that they are to blame for the breach. An agency has the defence to a claim by showing that they have taken “reasonable steps” to obtain the necessary information from the hirer.

The hirer will be liable for access to employment and facility claims, as the agency has no control over these points.

For example, an access to employment claim would be based on the worker not being given access to internal vacancy listings. A facility claim could be based on a worker not being granted access to the hirer's crèche facility.

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12. Which employee within the client's organisation should the worker be "compared" to?

The simplest approach is to compare the position of the agency worker with that of permanent employees doing the same or broadly similar work. Equal treatment is based upon the basic terms and conditions of employment for what an entry level permanent employee would receive in that role.

If the hirer's organisation has pay scales or pay policies it should be clear what the worker would have been paid if they had been recruited directly, taking account of skills, qualifications, expertise and experience.

Or, where there are no pay scales, consider: what is the "going rate" in the hirer's organisation for that job?

13. How is equal treatment on pay established where there are no permanent employees within the hirer's business to compare the worker to?

National rates of pay for that role may be useful guidelines. The rate of pay will remain the same during and after the qualifying period of 12 weeks.

However, do not forget to consider the other equal treatment rights, for example, the hirer might give all its permanent employees 6 weeks paid annual leave and paid time off for bank holidays. The agency worker should be entitled to the same treatment on these points, regardless of whether their work is of a similar nature to that of the permanent employees.

14. How do we establish equal treatment on pay where permanent employees negotiate their own individual rate of pay and rates vary considerably?

If there is no established custom and practice as regards pay (and the hirer and the agency would need to expressly agree that this was the case) the rate is agreed in accordance with existing practices (i.e taking account of national rates of pay for the role). The rate would remain the same after 12 weeks.

Again, be cautious, the hirer may have a clear policy on annual leave or other conditions and the worker would be entitled to the same treatment on those points.

15. Does the agency or the hirer have to disclose information relating to its equal treatment information if the worker requests it?

Yes. But only if the worker requests this information after the 12 week qualifying period has elapsed. The agency (and the hirer) will have 28 days to respond to the worker's request from the date it is received.

16. How are performance based bonuses monitored?

This can be done in conjunction with the hirer's existing procedures or by making use of the worker feedback arrangements that Randstad currently has in place.

Applying the hirer process does not affect an agency worker's employment status.

Alternatively, it is possible to include within the hourly rate an amount to cover, over the term of the assignment, a bonus that is to be paid to all satisfactory performers (with later adjustment if the worker over or under performs).

17. Do assignments with other agencies with the same hirer count towards the 12 week qualifying period?

Yes – as per usual practice Randstad will ask the worker about their recent employment history to ascertain whether the worker is nearing the qualifying period for equal treatment.

18. Are there any exceptions to the AWR rules?

Yes, the two main ones are:

- The "derogation contract": If the worker is engaged on a permanent contract of employment with the agency AND the agency pays the worker 4 weeks pay at 50% of their usual hourly rate (provided this is not below the National Minimum Wage) whilst they are not working but are available to work, the worker will not be entitled to equal treatment in relation to pay.
- The Managed Service: This involves the complete outsourcing of a proportion of the hirer's business, for example, the "packing" section of a manufacturing line.

Randstad welcomes these regulations and will comply with the regulations so that they are applied in the spirit in which they are intended.

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