

## **AGENCY WORKER REGULATIONS**

### **Who qualifies as being an Agency Worker?**

For the purposes of adhering to the new Agency Worker Regulations, any person who is placed by a third party to work within the hirers business may be regarded as an Agency Worker. This includes those placed by; agencies who supply the worker direct to the hirer, any intermediaries in the supply chain including umbrella companies, or any master or neutral vendors. It does not include workers who have been hired on a temporary basis by the hirer directly, or contractors or consultants who have either a short term or long term contract/agreement with the hirers business.

### **What do the regulations require the hirer to do?**

Following 12 consecutive weeks work for the hirer, in the same or similar role, the agency worker is entitled to equal treatment in terms of pay and some benefits as if they were working for the hirer direct. However, there are some things that apply from day one of the temporary assignment.

#### **From day one:**

Hirers must ensure their internal vacancy opportunities are available to be seen by agency workers, and that they have the right to apply for these vacancies, in the same way they are available to directly employed staff. This may mean posting vacancies on a notice board in communal areas, or ensuring agency workers have access to the intranet etc.

Agency workers are also entitled to benefit from the use of the hirers facilities under the same management process of facilities as direct employees. For example, this includes canteen, crèche, car parking, and the provision of transport services.

#### **Following 12 weeks continuous service:**

The agency worker is entitled to receive equal pay to their directly employed counterparts for the work they carry out. The entitlements include pay, duration of working time, night work, rest periods, rest breaks and annual leave. It also includes any bonus that is payable as a direct result of the amount or quality of individual work. However, the agency worker is not entitled to benefits such as occupational sick pay, company pension schemes, share options schemes, loans, expenses, health/life insurance, financial participation schemes and bonus payments based upon organisational or company performance.

### **What happens if there is a break to continuous service?**

Continuous service will not apply if there is a break of more than 6 weeks, when working in the same or similar role for the hirer. If there is a significant change to the role being carried out by the Agency Worker, during the 12 weeks continuous service, this must be discussed with the Agency. A significant change may be that the Agency Worker was originally taken on to work on a production line, but is then assigned to work in the Accounts department. Just changing production lines, would not necessarily constitute a significant change.

The 'continuous service' element may be paused rather than stopped in the following circumstances;

- a break of six weeks or less; or

- certified sick leave for no more than 28 weeks; or
- statutory/contractual maternity, adoption or paternity leave; or
- time off for public duties (including jury service up to 28 weeks).

The Agency Worker could also accumulate the 12 weeks continuous service by performing the same role, for the same hirer, for a number of different agencies. For example, the worker works for the hirer via agency 1 for 2 weeks. After a week not performing work for the hirer, is re-introduced to the hirer via agency 2, and works a further 10 weeks. Even though there has been one week break, the Agency Worker has now achieved 12 weeks 'continuous' service in the same role.

Where an Agency Worker takes a break which is related to pregnancy or childbirth (up to 26 weeks after childbirth), or takes maternity, adoption or paternity leave, the agency worker will be treated as if he or she has continued working in an assignment. Therefore because the assignment is neither stopped nor suspended, if the worker returns after 26 weeks maternity leave they will automatically have achieved the 12 week continuous service.

#### **Can the regulations be avoided?**

The Regulations contain anti-avoidance measures to prevent agencies and hirers from structuring assignments in a way to prevent the agency workers from reaching the 12 week qualifying period. This includes rotating workers or repeatedly terminating and recommencing assignments. This may be regarded as a direct attempt to prevent the agency worker from achieving 12 weeks continuous service. In the event that the Tribunal finds that the Regulations have been deliberately avoided they can award an agency worker compensation of up to £5000.

#### **Who has responsibility for ensuring compliance with the regulations?**

The hirer and agency must work together to ensure compliance with the regulations. The agency must show they have asked the right questions and have actively attempted to gain information from the hirer. The hirer must ensure they have completed their own due diligence by reviewing pay and other benefits enjoyed by regular, directly employed staff in the same or comparative role as the Agency Worker.

The hirer is directly responsible for ensuring compliance with entitlements that should be available to the Agency Worker from day one.

For further information or advice regarding the Agency Worker Regulations please contact us;

T: 0115 9728708

E: [info@hrresponse.co.uk](mailto:info@hrresponse.co.uk)

W: [www.hrresponse.co.uk](http://www.hrresponse.co.uk)