

Agency Worker Regulations 2010 Management Guidance Note

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Management Guidance Note

1 Summary of the Regulations

The Agency Worker Regulations 2010 (the Regulations) provide protective employment rights for agency workers after they have been working with the same employer for a qualifying period of 12 weeks.

Agency workers are defined as ‘an individual who is supplied by a temporary work agency to work temporarily for and under the supervision of the hirer.’ As such the individual will have a contract with the agency that is either a contract of employment or a contract to perform work and services personally for the agency and will not be in business on his or her own account. Under the Regulations agency workers are eligible to be granted equal treatment in terms of basic employment conditions as if they had been employed directly by the hirer (the University) to do the same job. The Regulations do not however affect the employment status of agency workers and so cannot be a means by which such workers gain rights that are dependent on being an employee.

The Regulations take effect from 1 October 2011 and the first 12 week qualifying period commences from then so the first date that rights can be claimed is 24 December 2011.

1.1 Rights acquired from Day 1

- Access to collective facilities and amenities (Regulation 12)
(this is unlikely to include facilities such as gym access but rather facilities that facilitate an agency worker’s ability to do their job, e.g. childcare facilities, canteen or transport services, car parking etc.)
- Rights in relation to access to employment (Regulation 13)
(the right to be informed by the University of any relevant vacant posts within the University.)

1.2 Equal treatment after 12 week qualifying period

Agency workers have the right to receive the same basic working and employment conditions as those directly employed to carry out work that is the same or broadly similar. These rights apply providing that the agency worker has worked in the same role with the University for 12 continuous calendar weeks during one or more assignments. A week will count as a calendar week if the worker works any part of it.

The relevant terms and conditions are those that apply at the start of the qualifying period. This includes the following employment terms:

- Pay (includes overtime, shift or unsocial hours payments and bonus payments that may be awarded in the context of a performance appraisal system.)
- Duration of working time
- Rest periods and breaks
- Annual leave and public holidays

Once the agency worker qualifies for equal treatment, this will include any subsequent enhancements to terms and conditions, e.g. incremental pay increases.

In relation to annual leave, it is possible for entitlements above the statutory minimum to be dealt with as a one-off payment at the end of an assignment or “rolled up” into the worker’s hourly or daily rate.

The Regulations **do not** include any rights with regard to the following:

- Occupational sick pay
- Occupational pensions
- Occupational maternity, paternity or adoption pay (the Regulations do not affect an agency worker's statutory entitlements)
- Redundancy pay (statutory and contractual)
- Notice pay (statutory and contractual linked to loss of employment)

There is an exception to the right to equal treatment. This applies where the agency worker has a permanent contract of employment with the agency that provides for pay between assignments. In such cases the right to equality will continue to apply in respect of the Regulations' provisions on working time, annual leave and public holidays.

1.3 Qualifying Period

It is recognised that the working pattern of agency workers can be irregular. The Regulations therefore provide for a number of circumstances in which breaks do not prevent agency workers from completing the qualifying period. In general terms breaks between assignments will need to be more than 6 calendar weeks for the qualifying period to begin again. Further information on this is available from your HR team.

1.4 Maternity and Antenatal

The Regulations give the right to reasonable time off to attend ante-natal appointments and the right to be suspended from work if an unsuitable risk related to pregnancy is identified and no alternative assignment can be offered.

2 Breaches of the Regulations

The temporary work agency/University shall be liable for any breach of the Regulations to the extent that it is responsible for that breach. The work agency will not however be liable where it has:

- Obtained, or has taken reasonable steps to obtain, relevant information from the University about the basic working and employment conditions of the University.
- Where it has received such information, has acted reasonably in determining what the agency worker's basic working and employment conditions should be at the end of the qualifying period; and
- Ensured that where it has responsibility for applying those basic working and employment conditions to the agency worker, the agency worker has been treated in accordance with them.

The University will be liable for any breaches regarding access to collective facilities and permanent employment.

3 Anti-avoidance

The Regulations contain an "anti-avoidance" provision designed to prevent the work agency and/or the hirer putting in place arrangements intentionally designed to circumvent the Regulations. Such arrangements could include breaks of 6 calendar weeks or more, changes in job role and/or moves between associated companies within a group. Where an employment tribunal determines such internal arrangements to be a breach of the Regulations it may award a penalty of up to £5,000 against the work agency or the hirer or split between the parties.

4 Response to a Breach

In a situation where an agency worker feels they have been treated by the University or the temporary work agency in a way which infringes their rights under the Regulations they may make a written request to the temporary work agency for a written statement containing information relating to the treatment in question.

Where a temporary work agency receives such a request they must provide the worker with the information within 28 days. If an agency worker does not receive the information requested after 30 days they may make a written request to the University for a written statement containing information relating to the relevant basic working and employment conditions of the workers of the University. Where the University receives such a request they must provide the agency worker with the information within 28 days. In any such circumstances guidance should be sought from your HR team.

5 What does this mean for me as a Head of Department/Hiring Manager?

When contacting an agency about your temporary staffing needs you need to consider:

- The likely duration of the assignment and whether it will extend beyond 12 weeks. Temporary agency staff should normally be used to provide immediate additional support in cases of sickness absence, to help address short term increases in workload or to provide support to special projects. The use of agency staff is not designed for longer term staffing requirements which should be addressed through normal University recruitment procedures.
- Whether there is someone directly employed by the University carrying out work that is the same or broadly similar and, if so, the grade and salary applicable to the agency worker after the 12 week qualifying period. The Advanced Procurement for Universities and Colleges (APUC) Framework Agreement and the Procurement Scotland Agreement (available on the [University's procurement website](#)) identifies Blue Arrow and Pertemps as the two main suppliers of temporary administrative, manual and catering staff. Both these agencies will ask you for this information at the outset of the placement. A one page general information sheet for temporary agency workers has been produced and is available from your HR team. Advice and guidance on appropriate grade and salary placing is also available.
- The costs of engaging agency workers, particularly after the 12 week qualifying period, and whether this represents value for money for the University.