

Labour and Employment Client Service Group

From Bryan Cave, London

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The Agency Workers Regulations 2010

This briefing sets out the main provisions of the UK's new Agency Workers Regulations, which come into force on 1 October 2011.

The regulations are intended to give agency workers the same basic employment rights and conditions as permanent staff employed directly by the relevant company.

Who is covered?

The regulations will apply to individuals who work as temporary agency workers, their temporary work agencies, and the companies who hire them (referred to as the "hirer" in the legislation).

Agency workers who are already working on 1 October 2011 will be treated as if they have been hired with effect from the day the regulations commence operation (i.e. 1 October 2011).

Rights from day one

From the first day an agency worker is hired, he/she must be treated no less favourably than permanent employees in relation to:

- access to the collective facilities and amenities of the hirer (such as child care facilities, canteen or catering facilities, common rooms, bathrooms and car parking); and
- access to information on job vacancies at the workplace.

After a 12 week period

More importantly, once an agency worker has completed a continuous 12-week period in the same role for the hirer, he/she is entitled to the same basic working and employment conditions as he/she would have been entitled to had the agency worker been recruited directly by the hirer.

The "basic" working and employment conditions are as follows:

- key elements of pay (such as basic pay rate, overtime rate, shift allowances, holiday pay, individual performance bonus or commission opportunity);
- arrangements for weekly work hours, night-work and rest breaks; and
- annual leave entitlements.

In addition, pregnant agency workers who have completed 12 weeks of service will be entitled to paid time off for ante-natal appointments.

What makes the clock stop?

The 12-week qualifying period will reset to zero when any of the following occur:

- the agency worker starts an assignment with a new hirer;
- the agency worker remains with same hirer but takes a substantially different role; or
- there is a break between assignments with the same hirer longer than six weeks.

Continuity will not be broken where the worker is off for less than six weeks, is unable to work due to sickness or injury for up to 28 weeks, or for jury service for up to 28 weeks (however the weeks off will not count towards the qualifying period).

If an agency worker takes maternity leave she can take up to 28 weeks without breaking continuity and the period still counts to the qualifying period.

It will not be unlawful to terminate an assignment before the agency worker reaches 12 weeks of service. However, there are anti-avoidance measures preventing a business from depriving an agency worker from his or her rights by repeatedly trying to reset the qualifying clock.

Government guidance

The Department for Business Innovation & Skills published useful guidance (in May of this year) which can be found at:

<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf>

Practical HR measures

- If your business uses agency workers, consider the changes required to ensure the agency workers' current terms will match the terms that would apply if they were permanent members of staff (after 12 weeks).
- Consider whether your business would be better off using workers who are similar to agency workers, but who are not covered by the regulations (such as a bank of "zero hour" or casual direct-hires, or greater use of independent contractors).
- Take into account the option of directly recruiting permanent staff - even if they are on flexible hours and longer probation periods.

To discuss how the Agency Worker Regulations 2010 may impact your business or for guidance on implementing practical HR measures, please speak to your Bryan Cave contact or:

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