

IT contractors' guide to the Agency Workers' Regulations

The AWR - the Agency Workers' Regulations 2010 ('the Regulations') take effect from October 1st 2011. They apply to:

"workers with a contract of employment or employment relationship with a temporary work agency who are assigned to user undertakings to work temporarily under their supervision and direction."

Who's affected?

This means the Regulations will affect agency workers who find temporary work through an agency; they do not apply to self-employed workers or those employed under a managed service contract. But they do apply to agency workers contracted under an umbrella company.

There has been much debate about the inclusion of agency workers who work under an umbrella or personal services company. The **latest guidance** says both umbrella and personal service companies are covered by the Regulations, while those who are "genuinely self-employed" (including those working under a managed service contract) will not be covered. Of course ultimately, it will be for tribunals to decide if the arrangement is genuine self-employment or a sham arrangement designed to avoid the Regulations.

What's a temporary work agency?

A temporary work agency is defined as:

"A person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of -

(a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or

(b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers."

This definition effectively covers agencies that supply workers to hirers for temporary work. Agency workers themselves are, unsurprisingly, those supplied by a temporary work agency for (and under the supervision of) a hirer, who has a contract with the temporary work agency (the contract being either a contract of employment or a contract for services).

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Lawdit is a niche internet law firm with many years' experience assisting IT contractors and freelancers.

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What do the Regulations afford?

Under the Regulations an agency worker is entitled to the same basic working and employment conditions as would be afforded them if they had been employed directly by the hirer. Such rights are granted after the agency worker completes a 12-week qualifying period (that is 12 continuous calendar weeks) in the same role.

In some cases it will be straightforward to compare working and employment conditions. If, for example, someone is directly employed by the hirer in the same role as the agency worker then it's simply a matter of ensuring that pay (among other aspects; listed below) are at the same level. Where no such employees exist, then it becomes harder and the agency worker must be compared with a hypothetical employee.

What entitlements under the Regulations?

The worker is entitled to equal treatment in respect of “*basic working and employment conditions*” - defined in the Regulations (via the Temporary Agency Workers Directive) as: pay, duration of working time; length of night work, rest periods, rest breaks, annual leave and paid time off for ante natal appointments.

Each term/condition could be discussed at length as they cover many different areas. ‘Pay’ alone covers basic pay, overtime, shift allowances - even bonuses, so I recommended looking at each area in detail.

What do the Regulations not allow?

The government has incorporated anti-avoidance measures, designed to prevent an employer simply rotating agency workers in order that they do not reach the 12-week qualifying period. Therefore if an agency worker has completed two or more assignments with a hirer; or completed at least one assignment with a hirer and one or more earlier assignments with a hirer connected to that hirer; or has worked in more than two roles during an assignment with a hirer and on at least two occasions the role was not the same as a previous role; then additional awards could be issued at tribunal.

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Further information for IT Contractors:

IR35
Agency workers directive
IT Contract Guides
IT contracting forum
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Guides to S660/Income Shifting
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This would be the case assuming the likely explanation of the rotation is that the hirer or agency intended to prevent the worker from reaching the qualifying period.

Remember...

This guide merely scratches the surface of a piece of legislation that will have a dramatic impact on temporary agency workers. It is important for all agency and temporary workers to know the law in this area. Helpfully, the government is to release final guidance which you should endeavour to read.

The worker is entitled to equal treatment in respect of “basic working and employment conditions”

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