

Agency Workers Regulations Effective 1st October 2011

Linda Marshall

Head of HR

Reed Specialist Recruitment

What is the purpose of the AWR?

- 'Equal treatment' for Agency Workers v those recruited directly by the hirer.
- There is a 12 week qualification period before the entitlement to 'equal treatment' comes into effect.
- 'Equal treatment' is limited to basic terms and conditions of work, and the AWR define what is covered in this.
- The AWR does not impose employment status between the Agency Worker and the hirer.



Who is protected by the AWR?

- The AWR is intended to protect Agency Workers, described as:
 - Supplied to hirer via a temporary work agency.
 - Supplied to hirer via an intermediary (i.e. master/neutral vendors and so called 'umbrella' companies).
- The genuinely self employed and limited company contractors are not covered by the AWR.
- It is not possible for an Agency Worker to contract out of the AWR and a fine of up to £5,000 may be issued.



The 12-week qualifying period

- To claim 'equal treatment' the Agency Worker must have worked in the same role with the hirer for 12 continuous calendar weeks (not with the same agency)
- Measured upon weeks, not hours.
- Continuity is broken when:
 - There is a break of six weeks, or more, during or between assignments in the same job.
 - Upon commencement of a new or substantively different role.



The 12-week qualifying period

- The following situations 'pause' the qualifying period:
 - Certified sickness absence
 - Requirement to attend public duties, such as Jury Service
 - Planned workplace closure, such as Christmas shutdown
 - Industrial action
 - Annual leave
- In the case of pregnancy related absence, maternity leave, adoption leave and paternity leave, the qualifying period is not paused.



Rights that are not subject to the 12-week period

The following are effective from day one:



- Agency Workers have a right to be informed of vacant posts within the hirer's organisation.
- Agency Workers have a right to access the same amenities and facilities as direct employees.
- Pregnant Agency Workers have a right to time off for ante-natal appointments.

Equal treatment – what is covered?

- The AWR lists basic working and employment conditions that apply within the definition of ‘equal treatment’.
Examples are:
 - Pay (see guide)
 - Duration of working time
 - Rest periods and breaks
 - Annual leave (can be paid in lieu, subject to WTR)
 - Access to amenities and collective facilities
- Pay, within the AWR, can be described as any pay which is directly linked to work undertaken (e.g. bonus linked to personal output, overtime pay, etc.).



Useful points when considering 'equal treatment' for Agency Workers

- Where bonus is applicable, the same conditions of payment can be applied to the Agency Worker
- The AWR allows for consideration of pay as a whole
- Access to job vacancies with the hirer is necessary, but there is no requirement to change selection procedures.
- Access to amenities and employment arrangements is necessary, but valid reasons for denial exist.



Useful points when considering 'equal treatment' for Agency Workers

- There is no requirement to pay maternity leave benefits to the Agency Worker. However, the following should be noted:
 - There is a right to paid time for ante-natal appointments.
 - Health & Safety duties apply for pregnant Agency Workers or new mothers. This includes provision of reasonable alternative work, if required, or payment for the duration of the assignment if no alternative exists.



Useful points – when defining the ‘comparator’

- Defining the ‘comparator’ is key to enforcement of ‘equal treatment’.
- a ‘comparator’ would be
 - someone directly employed by the hirer in that same job.
 - Doing broadly similar work (level of qualification and skills may be taken into account, if relevant).
- ‘Comparator’ must be employed by the hirer and, if there is no ‘comparator’ on the establishment, then one from a different establishment can be used (except for access to collective facilities and amenities)

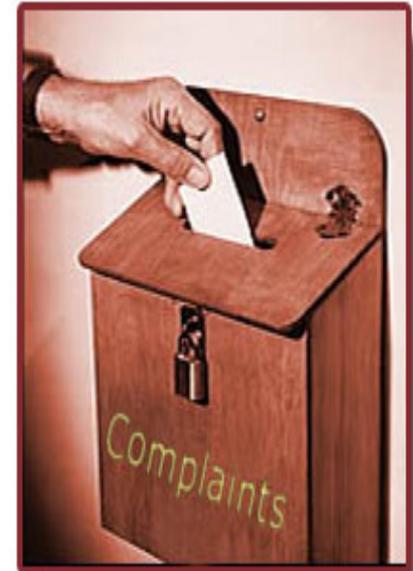
Who is liable in respect of any claim from an Agency Worker?

- Liability for 'equal treatment' lies with the agency.
- Where the agency has taken reasonable steps to obtain relevant information, then liability for breach will lie with the hirer.
- The Employment Tribunal may apportion blame.
- The hirer is liable in respect of access to facilities and job vacancies.



How are complaints handled?

- After completion of the qualifying period, an Agency Worker can submit a written request to their agency
- The agency has 28 days to provide this information.
- After 30 days, if not received, the Agency Worker can request this directly from the hirer. The hirer has 28 days to respond.
- If unresolved, the Agency Worker may bring an Employment Tribunal complaint.



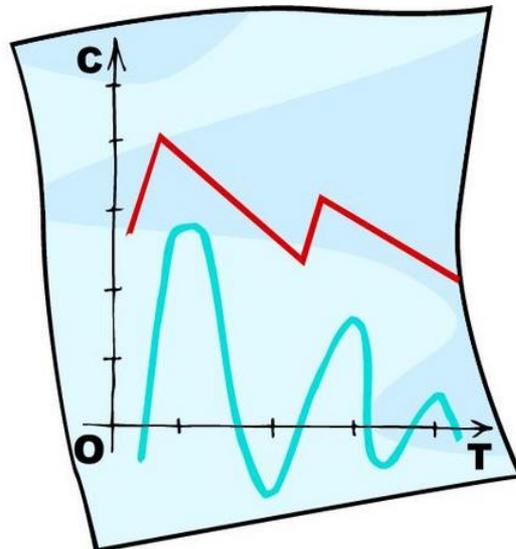
Impact upon headcount information

- Details of Agency Workers must be provided during;
 - Collective redundancy
 - TUPE and other statutory consultations.
 - Collective bargaining

What?

Where?

Who?



What next?

- The Government has indicated that guidance and template documents will be provided prior to October 2011.
- Hirers should prepare for the AWR now, and not wait until nearer to October 2011.
- Reed have set up a link via reed global for queries;

reedglobal.com/awr



Questions?



How can Reed assist clients?

- Hirers must have visibility and understanding of their temporary workforce. Reed can assist with:
 - RPO / Managed Agency solutions
 - Provision of MI
 - Temporary workforce management & efficiencies
 - HR consultancy on Policies and Benefits
- Hirers must be clear on 'comparators' for any Agency Workers and be confident on terms and conditions. Reed can assist with:
 - Audit of the hirer's workforce (e.g. salary benchmarking, job evaluation, defining comparators)
 - Provision of Agency Workers to correct terms and conditions, as agreed with the hirer

