

Agency Workers Regulations 2010 – What You Need to Know as a Client

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The Recruitment and Employment Confederation (REC) is the leading trade association for employment agencies and businesses. All members of the REC must pass a compliance test and abide by our Code of Professional Practice. This guide has been produced for REC members for the information of clients.

1. Background

The Agency Workers Regulations 2010 (the Regulations) give temporary agency workers the right to equal treatment in terms of the same basic working and employment conditions as they would have been entitled to had they been recruited directly by the hirer to do the same job. These rights commence after the agency worker has worked in the same role for 12 calendar weeks with the same hirer.

The Regulations came into force in England, Scotland and Wales on 1 October 2011. The REC worked closely with the Department for Business, Innovation and Skills (BIS) on guidance to assist clients and agencies to implement the Regulations correctly.

The Agency Workers (Northern Ireland) Regulations 2011 came into effect on 5 December 2011. The term “Regulations” refers to both sets. Apart from commencement dates, they are the same across the UK.

2. What are the Agency Workers Regulations?

The Regulations derive from the EU Temporary Workers Directive 2008, giving agency workers the right to the same pay and working conditions as a hirer’s own workers. The Regulations do **not** change employment status — agency workers remain employed by the agency, not the hirer.

Unlike in many EU countries, in the UK equal treatment applies only after 12 weeks in the same role with the same hirer (except for Day One rights).

3. Who is an agency worker?

An agency worker is:

- An individual
- Supplied by a temporary work agency to work under the supervision and direction of a hirer
- Who has a contract of employment or another contract to perform work personally with the agency

Genuinely self-employed individuals and workers under managed service contracts are excluded, unless in practice they are supervised by the hirer.

4. What is a temporary work agency?

A “temporary work agency” includes the supplying agency and any intermediaries in the supply chain (such as umbrella companies or master/neutral vendors). All parties in the chain are responsible for ensuring compliance with the Regulations.

5. When does an agency worker qualify for equal treatment?

An agency worker qualifies for equal treatment after 12 weeks in the same role with the same hirer, regardless of working pattern or which agency supplies them.

A new qualifying period starts only if:

- The new assignment is substantively different, and the worker is informed; or
- There is a break of more than six weeks between assignments.

The qualifying period **pauses** (not resets) for short breaks (up to six weeks), sickness (up to 28 weeks), maternity/adoption/paternity leave, or public duties. Time related to pregnancy or maternity counts as continuous service.

6. What does equal treatment mean?

After 12 weeks, an agency worker is entitled to the same basic working and employment conditions as a comparable worker or employee, including:

- Pay (basic pay, holiday pay, shift allowances, overtime rates, performance bonuses, etc.)
- Duration of working time
- Night work
- Rest periods and breaks
- Annual leave

Equal treatment does **not** include rights or benefits reserved for employees, such as:

- Unfair dismissal protection
- Redundancy pay
- Occupational sick pay
- Pensions
- Share schemes, loans, or long-term benefits

Hirers do **not** need to lower or raise pay rates — equality applies only if agency workers are paid less than comparable staff.

7. Day One Rights

From the first day of an assignment, agency workers have:

1. **Access to information on job vacancies** (e.g. via noticeboards or intranet)
2. **Access to on-site facilities** (canteen, childcare, car park, etc.), unless there are objective reasons for refusal (e.g. waiting lists).

These rights are the sole responsibility of the hirer.

8. Who is liable for establishing equal treatment?

Equal treatment must be determined based on a comparable employee or established pay structure.

- **Hirer** – responsible for Day One rights
- **Agency** – responsible for pay and working conditions, but may rely on accurate information from the hirer

If an agency worker believes they are not receiving equal treatment, they may request information from the agency (response due within 30 days) or from the client (within 28 days).

9. Pregnant agency workers

Once they have 12 weeks' qualifying service, pregnant agency workers are entitled to:

- Paid time off for medical appointments and antenatal classes
- Protection from unfair treatment or termination on pregnancy-related health and safety grounds

If an assignment is ended due to health and safety reasons, the agency must find suitable alternative work or continue to pay the worker for the remainder of the assignment.

9.2. Time off for ante-natal appointments

Agency workers who qualify have the right to paid time off for appointments.

Partners or intended parents of a surrogate child may take unpaid time off (up to two appointments, max 6.5 hours each).

10. Are there legitimate ways to derogate from the Regulations?

Yes — under Regulation 10 (“Swedish Derogation” or “Pay Between Assignments” contracts).

Agency workers under such contracts:

- Are employees of the agency
- Are not entitled to equal pay (but do get equal working conditions and Day One rights)
- Must be paid at least 50% of previous pay (and no less than NMW) between assignments for up to four weeks if no new work is available

This model is viable mainly where pay rates are well above NMW or there is guaranteed ongoing work.

11. Anti-avoidance measures

The Regulations prohibit structuring assignments to prevent workers from reaching the 12-week qualifying period (e.g. rotating staff, artificial breaks, or transfers to “connected hirers”).

Tribunals can award compensation of up to **£5,000** where deliberate avoidance is found.

12. Financial penalties

Tribunals can award compensation based on losses suffered by the worker, with a minimum of **two weeks’ pay**.

Hirers and agencies should work together to ensure compliance after the 12-week period.

13. Next Steps

The REC has produced supporting documents for members, including:

- Detailed factsheets
- Model contracts
- Information request forms

Hirers should complete these accurately and promptly to assist compliance.

REC Legal

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