



Coming into effect on the 1st October 2011 - are you prepared?

What are the Agency Workers Regulations?

The AWR bring the European Agency Workers Directive into UK law. They entitle temporary agency workers to equal treatment with regard to basic pay and working conditions, as someone recruited to do the same job but on a permanent basis with you.

When do they come into effect?

The AWR will be effective from the 1st October 2011, meaning that all agency workers will start their Qualifying Period on that date, no matter how long their previous assignment. On that basis, agency workers on continuous assignment with you after the 1st October will be entitled to equal treatment from Christmas Day 2011!

Who do they affect?

All workers who are not directly engaged by you but are supplied by another organisation, such as Celsian Education, to work temporarily under your supervision and control fall in scope of the AWR. You should note that such workers sourced through intermediaries in the supply chain, such as master or neutral vend service providers, Umbrella companies and some payroll services, are included.

Who falls outside of the AWR?

Workers who are working in a profession capacity, or are genuinely self-employed on their own account, are exempt from the AWR, as are those engaged by companies providing a genuinely out-sourced service to you. Similarly, they do not cover permanent employees of the Agency, secondees from other organisations and temporary workers directly engaged by you.

What will those covered by the AWR be entitled to?

Agency workers are to receive equal treatment concerning basic pay and conditions compared to those they would receive if directly employed by you, doing the same or broadly similar job with the same qualifications and skills.

How will equal treatment be determined?

The pay and conditions that ordinarily apply in the workplace to the equivalent employee as set out in employee contracts, pay scales, collective agreements, hand books or are accepted as "Custom and Practice".

Reference to a particular employee or group of employees (the comparator) who enjoys these terms will be deemed to show compliance.

If there is no comparator, the entitlement includes those conditions that apply generally in the workplace and/or at other locations of the hirer.

What is included in 'pay and conditions'?

- Basic rate of pay
- Overtime and shift premiums
- Bonuses related to the quality or quantity of work done
- "Luncheon" vouchers with monetary value
- Hours of work, rest and breaks
- Holiday entitlement above the statutory minimum
- Access to employees' facilities such as canteen, car park or crèche, unless there is an objective reason for not offering such facilities – from day one
- Equal access to apply for internal roles – from day one

What is excluded from 'pay and conditions'?

- Bonuses and benefits intended to reward loyalty or long service
- Company share schemes
- Pensions
- Sick, maternity, paternity or adoption pay above the statutory minimum
- Redundancy payments
- Staff discount schemes

When must the entitlement be met?

Apart from the day one entitlements listed above which apply from the first day of assignment to you, an agency worker will be entitled to equal treatment after 12 weeks of working for you, in the same or broadly similar job. It does not matter if they work for all or part of the week for it to count as a qualifying week, nor if they have worked in the job through different agencies.

A break of at least six weeks between assignments restarts the qualification clock and it pauses for holiday and sickness absences. It continues to tick for pregnancy-related sickness or maternity, paternity and adoption leave.

Who is the Hirer – the School or the Local Authority?

The question of who is the hirer would be determined according to the circumstances of each case. The DfE have produced guidance in relation to supply teachers as follows:

School	The Hirer	Implications for Qualifying Period
Maintained Schools		
a) Foundation, voluntary aided and foundation special schools	The school's governing body.	
b) Community, voluntary controlled and community special schools, and maintained nursery schools.*	Either the local authority or the school's governing body – depending on to whom the worker is supplied and who supervises and directs the work.	It is possible to move between schools where the same local authority is the hirer, without stopping the clock on the qualifying period.
Academies	The Academy Trust.	An agency supply teacher can move between academies where the same academy trust is the hirer without stopping the clock on the qualifying period. If the worker moves to a maintained school or to a different academy trust, the qualification period restarts.
Independent Schools	The proprietor of the school.	A move to any other school will break the qualifying.

* The government guidance as to who is the hirer for these categories of schools is not definitive. Discussions continue nationally and locally as to the interpretation of the guidance. Celsian Education will seek clarification on this when liaising with schools and local authorities.

How will complaints about unequal treatment be made?

After their qualifying period, a temporary worker has the right to request from their agency details of how their pay and conditions have been determined.

If the agency does not respond within 28 days, the worker can come to you for the same information. Neither have the legal duty to respond but failure to provide the information will be regarded adversely should a claim be made.

If the worker still believes they have not received their entitlement, they must make a claim through the Employment Tribunal system, usually within three months of the assignment.

The claim may be against their agency, you as the hirer, or any others in the chain, for example, a master vendor or Umbrella company, who might be responsible for the detriment. In practice, it is likely to be all the parties involved.

Informal conciliation, or the services of ACAS, might provide resolution, particularly if all the information is on hand and provided promptly but, as with any Employment Tribunal claim, not adhering to procedure will disadvantage a defence.

Both the claimant and any witnesses, such as potential comparators, may not be victimised at any time.

Who is liable?

The Employment Tribunal will assign the liability to whichever organisation(s) it decides has caused the disadvantage to the worker. If the agency can show that it has made all reasonable efforts to establish and apply equal treatment, then the liability will lie with the hirer or some other part of the chain. Failure to provide the day one entitlements lies solely with the hirer.

What are the penalties?

The immediate award will be to make up the difference (as with National Minimum Wage claims) with a minimum level of two weeks' wages but, should the Employment Tribunal decide that assignments have been deliberately structured to avoid the AWR, an additional £5,000 penalty can be applied.

If I need further information or assistance regarding the Regulations, who do I contact?

Celsian Education will be pleased to work with you to assess what impact, if any, the AWR may have on your business. To get in touch with Celsian Education, please contact 0845 6060676.

Celsian Education is part of Impellam Group and the Group's specialist AWR team has created a discussion forum on LinkedIn where you are welcome to discuss any concerns you may have regarding the application of the regulations.

To join the group go to :

http://www.linkedin.com/groups?gid=4067434&trk=myg_ugrp_ovr.

This Celsian Education publication provides information on legal issues and developments of interest to our clients and friends. The material is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed in this publication.

The information contained in this document is for general guidance of matters of interest only. While we have made every attempt to ensure that the information contained has been obtained from reliable sources, Impellam Group plc (and its group companies) is not responsible for any errors or omissions or for the results obtained from the use of this information.

