




AGENCY WORKERS REGULATIONS Policy

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INTRODUCTION

The **Agency Workers Regulations 2010** is a UK legislation that aims to protect temporary agency workers by ensuring they receive equal treatment in terms of pay, working hours, and basic employment conditions. The regulations require employers to treat agency workers and permanent staff equally in their contract terms on various aspects such as hours, holiday time, pay, and time off for parenting. The regulations also aim to combat discrimination against agency workers by ensuring they are no less favourably treated than their full-time counterparts.

1 Purpose

The purpose of the Agency Workers Regulations (AWR) is to ensure that people who work through staffing agencies have the same rights as those who are directly employed by a company. This policy is designed to ensure that agency workers are treated fairly and in accordance with EU Agency Workers Directive and came into effect in October 2011

It helps to establish clear expectations and responsibilities for Cucumber Recruitment and its agency workers. It is the responsibility of all managers to ensure compliance with this process.

1.1 From day one of an assignment

Access to collective facilities

All agency workers will be given the same access to Cucumber Recruitment's collective facilities and amenities as a comparable worker who is recruited directly. This access will be given from the first day of the agency worker's assignment with Cucumber Recruitment. Cucumber Recruitment will provide details to agency workers of Cucumber Recruitment's facilities on the first day of their assignment. Agency workers will have access to:

- the canteen
 - the workplace crèche
 - transport services
 - all toilet and shower facilities in the relevant area of work
 - the staff common room
 - breastfeeding facilities
 - the prayer room
 - vending machines
 - the staff car parking

Information on relevant vacancies

From day one of an assignment with Cucumber Recruitment, agency workers will be provided with information about any relevant job vacancies within Cucumber Recruitment.

Cucumber Recruitment will provide information about relevant vacancies. This will be explained to agency workers on their first day of an assignment with Cucumber Recruitment.

1.2 After 12 weeks of an assignment

Equal treatment

Once an agency worker has completed 12 weeks with Cucumber Recruitment in the same role, he/she will be entitled to the same basic working and employment conditions that would apply to employees or workers who have been directly recruited to the same job. This includes pay, duration of working time, rest periods and breaks, and annual leave. Cucumber Recruitment will liaise with the agency to ensure that the agency worker receives equal treatment.

Pay

All agency workers will be entitled to the same basic pay to which an employee or worker who has been directly recruited to the same job would be entitled. This includes pro rated salary and [additional risk payments for hazardous duties/overtime pay/unsocial-hours allowance/shift allowance/bonuses/commission]. It does not include any bonus or reward given to employees or workers for a reason that is not directly attributable to the amount or quality of the work that they have done.

Annual leave

Agency workers will be entitled to the same paid annual leave to which an employee or worker who is recruited directly to the same job would be entitled. This leave entitlement will be pro rated to the length of the assignment.

Working hours

Agency workers will work the same basic working hours as an employee or worker who is recruited directly to the same job. There may be circumstances in which agency workers will, if they wish, be able to opt out of the maximum 48-hour working week under the Working Time Regulations 1998. Any worker who has not signed the opt-out or who has revoked his/her opt-out will not be requested or permitted to work more than the maximum number of working hours permitted under the Working Time Regulations 1998.

Rest periods

Agency workers will be entitled to the same rest periods and breaks to which an employee or worker who is recruited directly to the same job would be entitled.

Night work

Agency workers will be entitled to the same arrangements for night work to which an employee or worker who is recruited directly to the same job would be entitled.

1.3 Information for agency workers

Facilities and relevant vacancies

An agency worker who believes that he/she has not been provided with equal access to collective facilities or relevant vacancies may make a written request to Cucumber Recruitment for information about such access.

Within 28 days of receiving such a request, Cucumber Recruitment will provide the agency worker in writing with the:

- relevant information about access to collective facilities and/or access to vacancies; and
- reasons for the treatment of the agency worker in relation to access to collective facilities and/or access to vacancies.

Equal treatment

An agency worker who believes that he/she may not have been treated equally in respect of basic employment and working conditions (after 12 weeks in the same assignment) should, in the first instance, make a written request to his/her agency for further information. The agency is required to provide a written statement to the agency worker setting out the relevant information relating to the basic working and employment conditions of Cucumber Recruitment's employees and workers. The agency has to do this within 28 days of receiving the request.

If the agency worker has not been provided with a statement from his/her agency within 30 days of making the request, he/she can make a written request to Cucumber Recruitment for a statement setting out the relevant information relating to the basic working and employment conditions of Cucumber Recruitment's employees and workers.

In these circumstances, Cucumber Recruitment will provide a written statement within 28 days of receiving the agency worker's request containing information relating to the relevant basic working and employment conditions of Cucumber Recruitment's workers.

1.4 Moving agency workers to new assignments/roles

If a manager requires an agency worker to take on a new assignment within Cucumber Recruitment or a manager is re-engaging an agency worker who has been used before, the manager should seek prior approval.

If the agency worker is simply undertaking a new assignment within the same role, the agency worker's qualifying period will continue to accrue. The agency worker will be deemed to be continuing to work in the same role unless:

- the work or duties that make up the new role (or the main part of it) are substantially different from the work or duties that made up the previous role (or the main part of it); and
- the agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role.

If the new assignment is a different role or there is a break of more than six weeks between assignments, the agency worker's qualifying period will accrue from the start date of the new assignment for the purposes of calculating the agency worker's qualifying period. However, this is subject to certain exceptions, which are set out below.

We will notify the agency worker if their work or duties have changed and this information must be passed to the agency worker. It will be up to the agency to provide the agency worker in writing with:

- notification that the role is a new one that is substantially different from the previous role;
- a description of the new role; and
- an explanation that the qualifying period will start again.

1.5 Absences

There are exceptions where a break of more than six weeks between assignments "pauses" the qualifying period (ie the qualifying period does not continue, but picks up where it left off when the agency worker returns). Reasons for the agency worker's qualifying period to "pause" include that he/she has a break:

- of up to 28 weeks because he/she is incapable of work due to sickness or injury;
- for the purpose of taking annual leave;
- of up to 28 calendar weeks to allow him/her to perform jury service;
- caused by a regular and planned shutdown of the workplace, which for this organisation is [state the periods relevant to the industry in which Cucumber Recruitment operates]; or
- caused by industrial action, for example a strike within Cucumber Recruitment.

1.6 Family-friendly rights

The agency worker's qualifying period continues to run (ie the qualifying period continues to accrue during the absence) if the break is due to pregnancy, childbirth or maternity and takes place during pregnancy or up to 26 weeks after childbirth (for example, pregnancy-related sickness absence or absence because there is a health and safety reason why the employee cannot carry out the role). The agency worker's qualifying period continues to run during any breaks that occur because the worker is taking maternity leave, adoption leave or paternity leave from the agency.

If an agency worker is pregnant, has given birth within the previous six months or is breastfeeding, she should inform her agency and Cucumber Recruitment in writing as soon as possible. Cucumber Recruitment will carry out a risk assessment in relation to the role carried out by any agency worker who is pregnant, has given birth within the previous six months, or is breastfeeding.

If any potential risk to health and safety is identified, Cucumber Recruitment will, where possible, make reasonable adjustments to the role. If it is not possible to make reasonable adjustments to the role to remove the identified risk, Cucumber Recruitment will inform the agency and the agency should seek alternative work for the agency worker.

A pregnant agency worker who has completed 12 weeks with Cucumber Recruitment in the same assignment is entitled to paid time off for antenatal appointments. All workers are encouraged to arrange antenatal appointments outside working hours where possible. Cucumber Recruitment may request written evidence of the antenatal appointment (except for the first appointment).

1.7 Responsibility

The HR department has overall responsibility for ensuring that agency workers receive the correct access to collective staff facilities, information on vacancies and other entitlements under this policy.

However, it is the responsibility of all managers to ensure that this policy is implemented.

1.8 Law relating to this document

Leading statutory authority

Agency Workers Regulations 2010 (SI 2010/93)
Temporary Agency Work Directive (2008/104/EC)
Working Time Regulations 1998 (SI 1998/1833)

The Agency Workers Regulations 2010, in force from 1 October 2011, give effect to the Temporary Agency Work Directive. The broad purpose of the Directive is to give basic working and employment conditions to temporary agency workers that are no less favourable than if they had been recruited directly by the hirer. This includes equal access to employment, collective facilities and vocational training. The Regulations apply to agency workers who are assigned to do temporary work for hirers through temporary work agencies.

Although temporary agency workers were already protected in relation to their status as workers (for example, in relation to working-time limits), the Agency Workers Regulations 2010 provide additional protection.

Under the Agency Workers Regulations 2010, an agency worker is defined as a person who is supplied by a temporary work agency to “work temporarily for, and under the supervision and direction of, a hirer” and who has a contract of employment or any other contract to perform work and services personally.

A hirer is defined as “a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person”. A temporary work agency is defined in reg.4(1) 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.”

A comparable employee or worker to an agency worker will be someone who is

- working for and under the supervision and direction of the hirer; and
- engaged in the same or broadly similar work having regard, where relevant, to whether or not they have a similar level of qualification and skills.

The comparator will be based at the same establishment as the agency worker or, where there is no comparable individual working or based at that establishment, will work or be based at a different establishment and satisfy the two requirements above. An employee is not a comparable employee if that employee's employment has ceased.

1.9 Access to collective facilities

Regulation 12 requires hirers to provide agency workers with access to collective facilities that are offered to its comparable workers who are recruited directly. However, agency workers are not entitled to enhanced access rights. For example, where access to a facility (for example, a crèche) involves a waiting list, agency workers will be permitted to join the waiting list and are not entitled to immediate access to the facility.

Agency workers are not entitled to off-site facilities that are not provided by the hirer. Off-site facilities to which agency workers are not entitled might include subsidised access to an off-site gym.

The guidance to the Regulations suggests that hirers could provide agency workers with details about their facilities as part of an induction pack or provide these details to agencies to pass on to agency workers.

1.10 Objective justification

If there is a good reason why a hirer cannot provide equal access to collective facilities to temporary agency workers, it may be able to use the defence of objective justification. The hirer must be able to show that it is seeking to achieve a genuine business objective and the less favourable treatment (ie not offering equal access) is a necessary and appropriate way of achieving that objective. Hirers may be able to argue that there are strong practical reasons why the facilities cannot be offered to agency workers.

Where full access is not possible, hirers may wish to provide access to collective facilities on a partial basis.

The defence of objective justification may be used only in relation to access to collective facilities and not to any other rights set out in this policy.

1.11 Vacancies

Regulation 13 requires hirers to provide all agency workers, from the start of their assignment, with information about relevant vacancies within Cucumber Recruitment to enable them to have the same opportunity as a comparable worker to find permanent employment with the hirer. Ways in which the agency worker can access information about vacancies could be covered during an agency worker's induction.

Hirers may retain their requirements for certain qualifications or experience in the vacant roles advertised, even if only permanent staff will, in practice, be able to meet these requirements.

1.12 Equal treatment

Basic working and employment conditions

Under reg.5, following the completion of the 12-week qualifying period, agency workers will be entitled to the same basic working and employment conditions had they been directly recruited to the same job, ie those that are ordinarily included in the contracts of employees or workers of the hirer.

Equal treatment does not apply to one-off arrangements, if there are genuinely no "basic working and employment conditions" that apply generally to employees (for example, pay scales), or where there are no comparable employees or workers.

Basic working and employment conditions include key elements of pay and duration of working time, night work, rest periods, rest breaks, and annual leave.

The guidance to the Regulations states that an agency worker is not required to use a comparator if he or she is able to identify the appropriate basic working and employment conditions without one (for example, by reviewing the contracts and pay scales within Cucumber Recruitment).

However, if the hirer can show that an agency worker is working under the same relevant terms and conditions as an actual comparator and those terms and conditions are ordinarily included in the contracts issued to individuals in the comparator's position, the hirer will have complied with the requirement of equal treatment.

Pay

In the Agency Workers Regulations 2010, the right to equal pay on completion of the 12-week qualifying period is based on the concept of pay for actual work done.

This includes the right to basic pay, overtime payments, unsocial hours, risk payments for hazardous duties, holiday pay (any entitlement above the statutory minimum), and bonus or commission payments directly attributable to the amount or quality of the work done by the individual. This can include commission linked to sales or production targets and payments related to the quality of personal performance.

The guidance to the Regulations states that this does not mean that an agency worker will be entitled to the same bonus as a comparable employee or worker who is recruited directly,

but that he or she should have the same opportunity to achieve the bonus, based on his or her personal performance and contribution.

The right to equal pay does not include occupational sick pay, occupational pensions, maternity, paternity or adoption pay (the Regulations do not affect an agency worker's statutory entitlements), redundancy pay (statutory or contractual), benefits in kind, or benefits requiring an eligibility period, bonuses that are not linked directly to the contribution of the individual (for example, a flat-rate bonus that is given to all direct recruits to encourage loyalty or long-term service), additional occasional discretionary bonuses, or the right to participate in salary-sacrifice schemes such as childcare vouchers.

To reward an agency worker fairly for the work that he or she has done, and to ensure equal pay, it may be necessary for the hirer to introduce performance appraisals. The hirer can use either Cucumber Recruitment's appraisal system for employees or introduce a modified appraisal. Temporary agency workers will be subject to the same eligibility criteria relating to a bonus as comparable directly recruited staff, but will not be entitled to any bonus that is not based on individual contribution.

Working time/holiday

Subject to completion of the 12-week qualifying period, agency workers are entitled to the same terms and conditions relating to the duration of working time, night work, rest periods and rest breaks, and annual leave, and to be paid at the appropriate overtime rate that they would have received as a comparable employee or worker who is recruited directly.

The guidance to the Regulations suggests that hirers consider dealing with any extra contractual holiday entitlement (above the statutory minimum of 5.6 weeks) by making a payment at the end of an assignment or as part of the worker's daily or hourly rate in lieu of the annual leave.

1.13 Qualifying period

Under reg.7, the qualifying period for any agency worker will not commence before 1 October 2011 (the date from which the Regulations are in force), irrespective of whether or not the worker is already on assignment before this date. The 12-week qualifying period is based on the agency worker carrying out the same role for the same hirer for 12 calendar weeks. Any week during the whole or part of which an agency worker is engaged on an assignment is counted as a calendar week.

An agency worker's qualifying period will continue to run if he or she undertakes a new assignment within the same role. The agency worker will be deemed to be continuing to work in the same role unless:

- the work or duties that make up the new role (or the main part of it) are substantially different from the work or duties that made up the previous role (or the main part of it); and
- the agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role.

If the new assignment is a different role or there is a break of more than six weeks between assignments, the agency worker's qualifying period will accrue from the first date of the new assignment for the purposes of calculating the agency worker's qualifying period.

If the agency worker's work or duties have changed, the agency is required to pass on this information to the agency worker. The agency must provide the agency worker in writing with:

- notification that the role is a new one that is substantively different from the previous role;
- a description of the new role; and
- an explanation that the qualifying period will start again.

There are exceptions where a break of more than six weeks between assignments "pauses" the qualifying period (ie the qualifying period does not continue, but picks up where it was left off when the agency worker returns). Reasons for the agency worker's qualifying period to "pause" include that he or she has a break:

- of up to 28 weeks because he or she is incapable of work due to sickness or injury;
- for the purpose of taking annual leave;
- of up to 28 calendar weeks to allow him or her to perform jury service;
- caused by a regular and planned shutdown of the workplace; or
- caused by industrial action, for example a strike within Cucumber Recruitment.

The agency worker's qualifying period continues to run (ie the qualifying period continues to accrue during the absence) if the break is due to pregnancy, childbirth or maternity and takes place during pregnancy or up to 26 weeks after childbirth (for example, pregnancy-related sickness absence). The agency worker's qualifying period also continues to run during any breaks that occur because the worker is taking maternity leave, adoption leave or paternity leave from the agency.

1.14 Maternity

Once a pregnant agency worker has completed the 12-week qualifying period, she will have the right to be given time off for antenatal care by the temporary work agency and the hirer and to be paid for the time off by the agency.

If the agency or hirer unreasonably refuse to allow the agency worker to take time off, an employment tribunal may order either or both parties to pay her the amount to which she would have been entitled, had she not been refused the time off, depending on the extent of their responsibility for the breach.

The hirer should carry out a risk assessment for a pregnant agency worker, in the same way that it would assess the risks for any employee or worker who is directly recruited. If the hirer identifies a risk, it should make any adjustment that is reasonable. If it is not reasonable, the agency should offer suitable alternative work that is available. If alternative work is not available, the agency must pay the worker the same rate until the expected end of the original assignment. The agency worker will not be eligible to be paid if she has unreasonably refused suitable alternative work.

1.15 Information requests

Information on access to facilities and employment

An agency worker who believes that his or her right to access collective facilities under reg.12 or right to information on vacancies under reg.13 has been breached may make a formal written request to the hirer, following the process set out in the policy above.

If the hirer fails to respond to a request or provides an evasive or inadequate response, the tribunal will be entitled to draw adverse inferences against the hirer.

Equal treatment

An agency worker who believes that either the hirer or the agency may have breached his or her right to equal treatment under reg.5 may make a written request to the agency for a written statement containing information relating to the treatment in question.

Adverse inferences

The tribunal will be entitled to draw adverse inferences against an agency or a hirer that fails to respond to a request or provides an evasive or inadequate response. Any information that is provided (whether by way of a written statement or otherwise) is admissible in proceedings under the Regulations.

1.16 Anti-avoidance measures

Temporary agency workers will be treated as entitled to equal treatment if a “structure of assignments” is used that is intended to prevent the agency worker from accruing weeks for his or her qualifying period, entitling him or her to equal treatment. This will apply where the agency worker has:

- completed two or more assignments with a hirer;
- completed at least one assignment with the hirer and one or more earlier assignments with hirers connected to the hirer; or
- worked in more than two roles during an assignment with the hirer, and on at least two occasions has worked in a role that was not the “same role” as the previous role.

For example, if an agency worker is provided with a series of assignments with different companies that are controlled by a parent holding company and the intention is to deprive the worker from receiving equal treatment, this would be a prohibited structure of assignments.

For these purposes, hirers are connected if one hirer (directly or indirectly) has control of the other or a third person (directly or indirectly) has control of both hirers.

The tribunal will consider various factors, including the:

- length of assignments;
- number of assignments with the hirer and connected hirers;
- number of times the agency worker has worked in a new role with the hirer and connected hirers, and whether or not the new role was the “same role”; and

- period of any break between assignments with the hirer and, where applicable, connected hirers.

A tribunal may make an additional award of up to £5,000 where it finds that a hirer and/or agency has structured assignments to prevent an agency worker reaching the qualifying period for equal treatment.

The Agency Workers Regulations 2010 do not prevent an agency worker from being released after 11 weeks or for assignments of just under 12 weeks to be offered to temporary workers.

1.17 Enforcement and remedies

Hirers should be aware that agency workers are protected from any form of detriment for asserting their rights under the Agency Workers Regulations 2010. A detriment could include terminating an assignment.

The time limit for bringing tribunal claims for breach of the Regulations is three months from the date of the breach. Compensation will be awarded on a just and equitable basis, and will factor in the respective responsibility of the hirer and agency, nature of the breach, financial loss and reasonably incurred expenses suffered by the agency worker.

2.0 How we implement the policy

When a concern is raised regarding Agency Workers Regulations 2010 Cucumber Recruitment will ensure it is dealt with in line with the regulations set out above and that it be dealt with efficiently as part of good customer care.

3.0 Review of this policy

This policy will be reviewed and updated on a regular basis to ensure compliance with Agency Workers Regulations 2010, as circumstances change or as the range and level of services develop and will in any event be reviewed no less every three years