

Agency Workers Regulations 2010 - What Do They Mean For Your Business?

If you currently employ agency workers, the new Agency Workers Regulations 2010 coming into force on 1st October this year have the potential to significantly impact on your business. With around 1.3 million agency workers in the UK labour market, these regulations will now offer some of these workers equivalent protection of their employment rights to a permanent employee - and it is for both the agency and the hirer to ensure these are respected.

The traditional tripartite relationship between hirer, agency worker and agency has, in the past, been unclear, typically with the agency worker losing out. However, change is on the horizon. From 1st October 2011 they will have the right to the same access as a comparable worker to certain facilities provided by the hirer; and also information provided on job vacancies. The BIS Guidance published in May 2011 lists a few examples of facilities including canteens, workplace crèches, transport services and car parking. This is the one area of the Regulations which provides an exception for a hirer if they can objectively justify less favourable treatment of agency workers, although cost alone should not be the sole factor. It is important to bear in mind that the hirer alone will be held liable for any breach of these obligations.

The next set of rights will apply after the agency worker has completed 12 calendar weeks in the same job. This provision is not retrospective and the qualifying clock will start to run from 1st October. In summary, these rights include an entitlement to the same basic terms and conditions of employment as if they had been employed directly by the hirer. Most savvy employers may have already spotted an easy way out of these obligations by only contracting agency workers for 10/11 week periods. However, the Government was wise to such a loop-hole and has included anti-avoidance provisions in circumstances where it is evident that a pattern of short assignments is emerging.

Although not a strict requirement, it would be beneficial to the hirer to identify a "comparable employee" to enable a direct comparison of basic terms and conditions between the employee and the agency worker. In terms of the equal treatment required after 12 weeks, a comparable employee is classified as someone who is working for and under the supervision of the hirer, doing the same or broadly similar work to the agency worker - having regard, where relevant, to whether they have a similar level of qualification and skills. They must also work or be based at the same establishment as the agency worker.

In short, the key areas in which agency workers are to be afforded equal treatment are: pay; duration of working time; night work; rest periods; rest breaks; and annual leave. In addition, pregnant agency workers will also be entitled to paid time off for ante natal appointments. The agency worker is entitled to issue requests for information in relation to basic terms and conditions firstly to the agency, failing which, to the hirer and a response must be given within 28 days. Any failure to provide this information will be considered when determining who is ultimately liable for any breach of the obligations to the agency worker.

Notably, the principal change to a hirer's practice will undoubtedly be an increasing need for effective communication between themselves and the agency, which will be fundamental to ensure compliance. Strong relations will be in the interests of both parties, as failure to comply could result in both the agency and hirer being liable should the agency worker raise a claim in the Employment Tribunal.

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