

Summary

# Equal treatment rights for agency workers

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Regulations 2010

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Agency workers across the UK face discrimination at work. They are frequently paid less, are required to work excessive hours with no overtime pay, and are entitled to less holiday than directly employed workers doing exactly the same job.

After years of campaigning by trade unions, from 1 October 2011 agency workers have benefited from new equal treatment rights. These new rights are set out in the Agency Worker Regulations 2010 (AWR).

The rights contained in the AWR can be summarised as follows:

**From day one** of an assignment agency workers will have a right to:

- » equal access to collective facilities provided by the hirer
- » information about vacancies in the hirer's workplace and the opportunity to apply for them.

**After 12 weeks** in the same role with the same hirer agency workers will have the right to:

- » equal treatment on pay, holidays and working time
- » improved pregnancy rights.

As the rights are not retrospective the first day that an agency worker could qualify for equal treatment on pay, holidays and working time entitlements will be 24 December 2011.

## Overview of the new rights

### Who has these rights?

The AWR apply to all agencies when they supply agency workers to work temporarily for a hirer in the private, public and voluntary sectors.

The new rights will apply to individuals who are an "employee" or a "worker". The rights also apply to agency workers supplied through an umbrella company or via a chain of agencies.

The rights do not apply where:

- » agency workers are self-employed and are running their own business
- » a worker uses an agency to find permanent work with a hirer.

### Equal treatment on pay, holidays and working time

After the 12-week qualifying period, agency workers have the right to the same pay, holiday and working time entitlements as workers recruited directly by the hirer to do the same job. Agency workers only have the right to equal treatment on pay and conditions ordinarily contained in the contracts of the hirers' employees or workers.

In most workplaces it will be easy to assess whether an agency worker is receiving equal treatment by comparing their pay and conditions with those set out in collective agreements, staff handbooks, pay scales or standard contracts of the hirers' employees or workers.

But where a hirer employs staff on genuinely individualised pay rates, agency workers may not be covered by equal treatment rights.

A hirer or agency can defend a claim for unequal treatment if they can identify a comparable employee on the same pay and conditions as the agency worker.

### Equal treatment on pay

Agency workers have the right to the same pay as anyone recruited directly by the hirer to do the same job.

Pay includes hourly or weekly pay; salaries; piece rates; holiday pay; overtime pay; shift, unsocial hours and risk rates; and bonuses, and performance-related pay connected to the individual's work.

But it does not include equal treatment on pensions; sick pay; maternity, paternity or adoption pay; bonuses linked to company performance and which reward loyalty or length of service; redundancy pay or expenses.

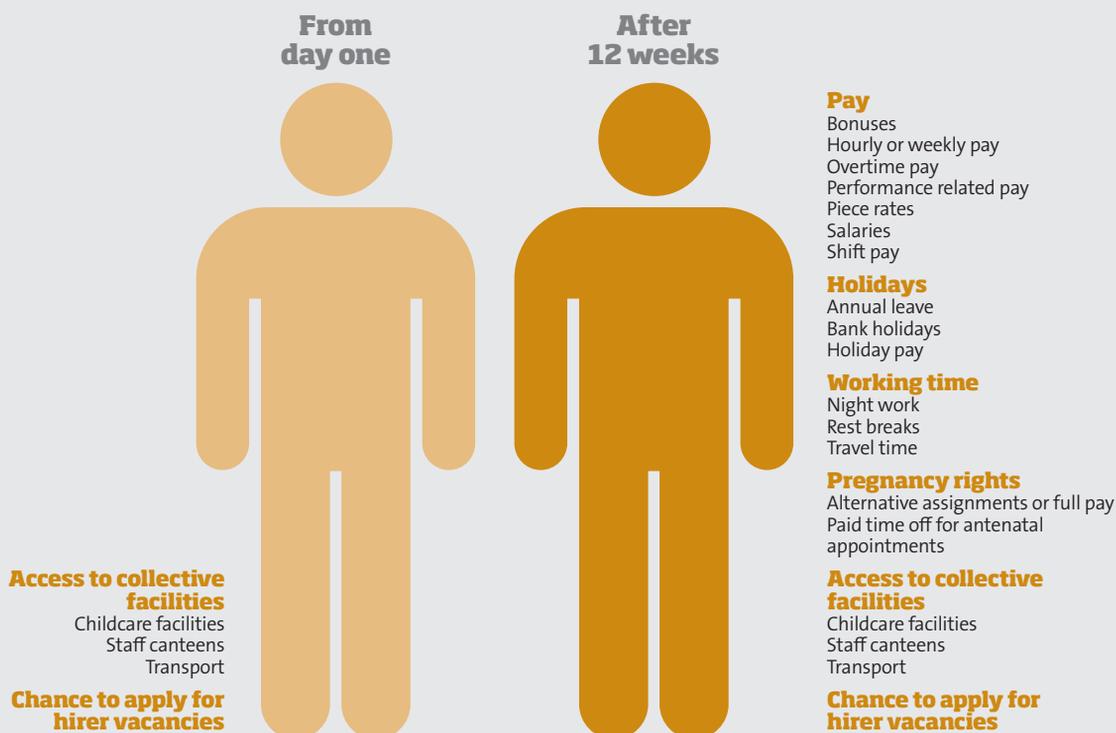
### Equal treatment on holiday and working time entitlements

Agency workers have the right to the same holiday and working time entitlements as anyone recruited directly by the hirer to do the same job.

This includes the same:

- » annual leave and holiday pay, including entitlements above the statutory minimum
- » bank or public holidays, including rights to time off or enhanced pay for working on a bank or public holiday.

## Entitlements to equal treatment rights for agency workers



Agency workers also have the right to equal treatment regarding working time entitlements, including:

- » duration of working time, including travel time related to work and on-call pay
- » rest breaks
- » night work, including enhanced pay rates.

### Agency workers on permanent contracts (the 'Swedish derogation')

There is one major exception to the right to equal pay. Agency workers who have a contract of employment with an agency and are paid between assignments will not be entitled to equal pay even after 12 weeks on an assignment.

In order for this exception to apply, the agency worker must have a contract of employment with the agency. They cannot be employed on a zero hours' contract. Their contract must also guarantee them a minimum number of hours work each week.

When an agency worker is not working on an assignment they must also be paid at least 50 per cent of the pay they received on their last assignment or the national minimum wage, whichever is the greater. They also have a right to be paid for at least four weeks between assignments before being dismissed.

Although agency workers employed on pay between assignment contracts will not have a right to equal pay,

they will have a right to equal treatment on holiday and working time entitlements after completing the 12-week qualifying period.

They will also be entitled to statutory rights enjoyed by other employees including rights to notice, paid time off for trade union duties, unfair dismissal protection (if they have been employed by the agency for more than 12 months) and statutory redundancy pay (if they have been employed by the agency for more than two years).

### Qualifying for equal treatment

In order to qualify for equal treatment an agency worker must work for the same hirer in the same role for 12 calendar weeks.

Where an agency worker does any work for a hirer in a week that week will count towards the 12 week qualifying period. It makes no difference if the agency worker only works for a couple of days or a couple of hours, the week will still count.

It is easiest to think of the 12 week qualifying period as a "stopwatch". Certain breaks during or between assignments or changes in the agency worker's role will mean that an agency worker's "stopwatch" is **reset to zero** and the qualifying period will start again.

However some breaks during the qualifying period will not reset the “stopwatch” to zero. Instead they will **pause** the “stopwatch”. Some breaks for family related leave mean the “stopwatch” will **continue to tick** even though an individual is absent from work. In summary:

The stopwatch will be **reset to zero** if the agency worker:

- » starts a new role with the hirer involving substantively different work or duties and if they are informed in writing by the agency about the new role, or
- » has a break of more than six weeks from work for the hirer, unless their absence is due to a permitted reason (see below)

An agency worker’s stopwatch will **pause** if they are absent for less than six weeks or because of:

- » sick leave for up to 28 weeks
- » annual leave or other time off agreed with the employer, e.g. time off for trade union duties or training
- » Jury service for up to 28 weeks
- » A pre-planned workplace closure, e.g. school vacation or summer-time factory closure
- » Industrial action at the hirer’s workplace

The stopwatch will start ticking again if the agency worker returns to the same role with the hirer.

If an agency worker’s absence is due to family-related leave, the ‘stopwatch’ will **continue to tick** during their absence for as long as their assignment would have or was expected to last. This includes where the agency worker is absent because of pregnancy/maternity leave for up to 26 weeks, or for statutory or contractual maternity leave above 26 weeks, or contractual or statutory paternity or adoption leave.

### Anti-avoidance provisions

The Regulations contain anti-avoidance measures aimed at preventing agencies or hirers from intentionally rotating agency workers to avoid equal treatment rights.

An agency worker will be deemed to have qualified for equal treatment if they are rotated in more than two different roles or hired on more than two assignments with the hirer (or an associated company).

### Pregnancy rights

After completing the 12-week qualifying period, an agency worker has the right:

- » to paid time off for ante-natal appointments
- » to be offered an alternative assignment on at least the same pay and conditions if they cannot complete their current assignment because of pregnancy related health and safety risks. If the agency cannot find another assignment the agency worker has a right to continue to be paid on full pay for as long as the original assignment would have lasted.

Agency workers who are employees of the agency will be entitled to these pregnancy-related rights from day one of any assignment.

### Key information rights

Union reps in recognised workplaces have the right to be provided with information by the employer about the number, location, and type of work being done by agency workers in their workplace. This should assist union reps to represent, organise and to bargain for a better deal at work for agency workers.

### Enforcing equal treatment rights

New equal treatment rights will be principally enforced through employment tribunals. While agencies will be primarily responsible for ensuring agency workers receive equal treatment on pay and holiday and working time entitlements, hirers will be liable in some circumstances. Hirers will be solely responsible for ensuring agency workers receive equal access to collective facilities and information about vacancies. Agencies are responsible for new pregnancy rights.

Agency workers will be entitled to at least two weeks’ pay in compensation for any breach of equal treatment rights and up to £5,000 compensation where the anti-avoidance provisions are breached.



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