



CVS Rochdale **Policy Briefing**

The law on Agency Workers will change in October

The Agency Worker Regulations 2010 come into force on 1 October 2011

If your organisation hires agency workers you need to be aware that from October this year their employment rights and your organisation's responsibilities will be changing.

Regulations will give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.

Employment Tribunals will have the power to impose a fine of up to £5,000 per agency worker on employers found to be involved in illegal avoidance practices (for example hiring workers for up to 12 weeks then re-hiring them).

Agency Workers

Agency workers are classed as "workers" rather than as employees. All workers, including agency workers, are entitled to certain rights which include:

- paid annual leave
- rest breaks and limits on working time
- National Minimum Wage
- no unlawful deductions from wages
- discrimination rights under the Equality Act 2010
- health and safety at work.

Who is covered by the regulations?

The regulations cover agency workers supplied by a temporary work agency to a hirer. This includes most agency workers that people refer to as 'temps'.

The regulations also cover agency workers supplied via intermediaries.

To establish the rights in these regulations, the agency worker needs to be able to identify a comparator.

Who is not covered by the regulations?

The regulations don't cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

What rights will agency workers have?

From Day 1 of their employment, an agency worker will be entitled to:

- the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer
- be informed about job vacancies.

After a 12-week qualifying period, an agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:

- pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
- working time rights - for example, including any annual leave above what is required by law.

Agency Workers (regardless of their employment status) will also be entitled to paid time off to attend **ante-natal appointments** during their working hours.

Does the 12-week qualifying period have to be continuous?

No, most breaks between or during an assignment to the same job that are less than six weeks in length will simply pause the accrual of the 12-week qualifying period. Most breaks between or during an assignment to the same job that are six weeks or more will reset the 12-week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- absences for sickness and jury service (for up to 28 weeks)
- annual leave, shut downs (e.g. factory closures and school holidays) and industrial action (for the duration of the absence).

Pregnancy and maternity-related absences, maternity leave, paternity leave and adoption leave will not pause the 12-week accrual at all - instead the 12-week accrual period will continue throughout the duration of the absence and include these weeks as those counting towards the 12-week total.

What if an agency worker is working on more than one assignment?

If an agency worker is working on more than one assignment the agency worker will have two or more assignments that need to accrue separately. In other words if an agency worker has assignment A and assignment B, they would need to work for 12 weeks on assignment A before their rights apply to assignment A and 12 weeks on assignment B before their rights apply to assignment B.

The regulations require that a new assignment would need to comprise 'substantively different work or duties' for the qualifying period to start again.

What is a 'comparable employee'?

The regulations aim to ensure an agency worker is engaged on the same relevant terms and conditions as a "comparable employee". In other words, "what terms and conditions would the agency worker have got if they had been directly recruited into the role?"

An employee is a 'comparable employee' if at the time of an alleged breach of the regulations:

- both employee and agency worker are working for and under the supervision and direction of the hirer
- both employee and agency worker are engaged in the same or broadly similar work (this could include an examination of qualification and skills)
- the employee works or is based at the same establishment as the agency worker (the employee can work or be based at a different establishment but only where such an employee cannot be found working or based at the same establishment).

The Agency Workers Directive will come into force on 1 October 2011 and the main principle of the directive is to give equal treatment to someone who has been with the hirer for 12 continuous weeks in a given job. The agency worker will be entitled to at least the basic working and employment conditions such as pay and working time which are equal to the hirer's own employees.

Full guidance on the Agency Workers Regulations [PDF, 335kb] can be found on the **Department for Business, Innovation and Skills website**. (Guidance may be subject to change prior to regulations coming into force, please check back regularly for updates.)