



## **The Agency Worker Regulations (AWR) 2010**

### **Agency Workers: Qualifying Criteria for Equal Treatment**

According to the Regulations, an agency worker will not be entitled to equal treatment on the same basis as a permanent employee until a qualifying period of work has been completed.

More specifically, Regulation 7 states that the 'qualifying period' is achieved by working *"in the same role with the same hirer for 12 continuous calendar weeks, during one or more assignments."*

Although the Regulation looks clear enough, in practice the wording can be interpreted in different ways. Here, we look at the various issues that can arise in this important area for agency workers.

#### **Measuring 12 weeks with 'the same client'**

The qualifying period must be completed by working in the same role with the same client. The agency worker does not, however, have to complete those 12 weeks with the same agency.

Agencies will need to have mechanisms in place to identify agency workers who have already been supplied to a client. Ideally, this information should be provided by the agency worker at the registration stage.

The client should also be asked for this information as the obligation under the Regulations is very much with the agency and client. (See Information Sheet 5.)

#### **Defining 'the same role'**

In most cases, it will be easy to identify whether the duties the agency worker is undertaking in a new assignment are basically the same as previously. Occasionally, however, it will be less clear.

Where the duties are significantly different, the agency worker will still be deemed to be in 'the same role' unless notified in writing by the agency.

If an agency worker starts a new assignment where the duties are broadly similar to the previous assignment, but for a different client, this will NOT be 'the same role' as far as the Regulations are concerned.



A new 'qualifying clock' would be started for this new assignment. Agency workers can have a number of qualifying clocks running at the same time.

### **Twelve continuous weeks – and assignment breaks**

This aspect of the Regulations can be confusing. An agency worker does not have to work for 12 continuous weeks to qualify. Any weeks worked count towards the 12-week period – even if it's only one day per week.

Breaks in an assignment are possible without the worker having to revert to zero. The qualifying period can in fact extend beyond 12 weeks.

Another variation is where a worker takes a break of six weeks or less from an assignment. By returning to the same role, the weeks previously worked will be carried forward.

The Regulations also allow workers to carry forward weeks worked if they have breaks for things like sickness or injury, pregnancy or childbirth, statutory maternity/paternity or adoption leave, jury service, holiday periods and so on.

Weeks also count towards the qualifying period when the worker starts a role but is unable to complete it for reasons such as pregnancy or maternity leave.

### **Issues surrounding qualifying weeks with different agencies**

The 12-week qualifying period can be achieved over a longer period of time under certain circumstances, as mentioned above. To monitor the situation, agencies should have mechanisms in place to identify whether the worker has already worked for the same client in the same role – even if through a different agency.

Where the worker has completed the full 12 weeks, they will be immediately entitled to equal pay and working conditions. In these cases, agencies should ensure they comply fully with the Regulations.

An agency worker's recent work history can be obtained by the agency asking the worker at the registration stage. In support of this, the agency should also ask the client if the worker has previously undertaken any role with them through another agency.

Monitoring the history of agency workers to identify when they've completed the qualifying period can be difficult, especially in sectors where workers are employed by multiple agencies.



However, with the right mechanisms in place and a diligent approach to acquiring agency worker information, agencies can avoid liability under the Regulations. (See Information Sheet 5)

### **Miscellaneous issues about the Qualifying Period**

- The Regulations will not be retrospective. Agency workers cannot count the time they've worked on assignments before the Regulations came into force to qualify for equal treatment.
- To prevent agencies and clients structuring assignments in such a way that the 12-week qualifying period for equal treatment will never be reached, the Regulations include special provisions.
- These entitle the agency worker to be given equal treatment even if the 12-week qualifying period has not been reached. The provisions also protect agency workers who have reached the 12-week qualifying period but their assignment was arranged in such a way that the entitlement to equal treatment was brought to an end.
- The Regulations state that where an agency or client has tried to prevent an agency worker from receiving equal treatment, they will be given the benefit of equal treatment in any case. This principle will be applied in the event of a dispute where the case goes to an Employment Tribunal.
- The anti-avoidance provisions in the Regulations do not, however, restrict clients requesting temporary workers for 12 weeks or less. The provisions only apply where the agency worker has undertaken more than one assignment or more than one role with the same client. A client could still be supplied, for instance, with a series of different agency workers for periods of less than 12 weeks.