



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

### **Breaching the Regulations – Liability Issues**

This Information Sheet looks at various issues that relate to breaches of the Regulations by agencies. We outline how agencies can minimise their liability and steps that agency workers can take when they are a victim of breaches in the Regulations.

In particular, we look at the following seven issues surrounding the enforcement of the Regulations:

- Not providing 'Equal Treatment'
- Not providing access to a client's on-site facilities and information about vacancies
- Steps an agency worker can take before seeking remedies through an Employment Tribunal
- Not complying with the terms of an agency worker's contract
- Protection for agency workers against unfair dismissal
- Potential liability for breaching provisions in the Regulations associated with the 12-week Qualifying Period
- Client indemnity for breaches of the Regulations

#### **1. Not providing 'Equal Treatment'**

Qualifying agency workers who do not receive 'Equal Treatment' (relating to the working and employment conditions set out in the Regulations) are entitled to lodge a claim with an Employment Tribunal against an agency and/or its client.

The compensation awarded in the event of a successful claim will be obtained from the party responsible for the failure to provide Equal Treatment. In reality, this is likely to be the agency because they usually have the primary responsibility for paying the worker and agreeing terms and conditions with the worker and client.

The onus is therefore on the agency to ensure that the client provides full information that will relate to a worker's terms and conditions.

#### **The Regulations provide a defence for agencies**

An agency will not be liable if its workers do not receive Equal Treatment, providing it complies with the provisions below:

- If information is obtained from the client that relates to the worker's terms and conditions as they apply to that business.



- If the agency 'acts reasonably' in setting out a worker's terms and conditions once the 12-week Qualifying Period has been completed
- If the agency ensures that the worker is supplied with those terms and conditions of employment

#### **Agencies should obtain the following information from a client:**

- Is there a 'comparable employee' in their business? If so, what are the terms under which they are employed?
- If there is no 'comparable employee', what terms would the client have offered had the worker been employed directly?
- On the issue of 'Pay' (see Information Sheet 4)...
- What are the hourly rates paid to a 'comparable employee'?
- If commission is paid, how is it calculated?
- What bonuses are paid?
- What rates are paid for overtime and unsocial hours?
- On the issue of 'Working Time'...
- What are the anticipated hours of work?
- What rest breaks are given to other workers?
- How much annual leave is a 'comparable employee' entitled to? Is it equal to the statutory minimum period – or longer?
- On the issue of 'Previous time working for the client'...
- Has the agency worker worked in the same role previously – including working via another agency? This can affect time accrued towards reaching the 12-week Qualifying Period. (See Information Sheet 3)

#### **The liability of intermediaries**

When an agency supplies agency workers through intermediaries such as umbrella companies and master or neutral vendors, they are also regarded as 'Temporary Work Agencies' by the Regulations.

When more than one agency is involved – and where a worker makes a claim with an Employment Tribunal alleging they didn't receive Equal Treatment – the extent of liability of each intermediary involved will be assessed when the tribunal is making its award.

#### **2. Not providing access to a client's facilities – or information about vacancies**

From Day One of an agency worker's assignment, they will be entitled to full access to the collective on-site facilities provided by a client to its full-time employees, as well as the right to information about the vacancies in the client's company. Failure to meet these obligations represents a breach of the Regulations.



## Helping clients to meet their obligations

Agencies have no responsibility for ensuring that clients provide workers with access to its collective on-site facilities or information about vacancies. However, they can help clients meet their obligations by asking for relevant information when supplying an agency worker. Questions should include:

- What collective facilities are available to your own workers? (Examples include childcare facilities, canteens and transport services.)
- On objective grounds, is there any reason why you could justify withholding your collective facilities from an agency worker?
- How do you advertise any vacancies which arise?

### 3. The steps an agency worker can take before seeking remedies from an Employment tribunal

Where an agency worker feels they have not received 'Equal Treatment', the Regulations allow them to request a written statement from the agency providing information about their treatment.

The agency has 28 days to provide a written response. This must include:

- Information detailing the working and employment conditions of the hirer.
- Factors the agency considered when setting out the working and employment conditions at the time they applied to the alleged breach of the Equal Treatment Regulations
- Information about the terms and conditions associated with the client's 'comparable employee'.

If the agency does not provide the information requested, the agency worker can request a similar written statement from the client 30 days after the request to the agency have passed.

When neither the agency nor the client provides the requested information, the agency worker can take up the matter at an Employment Tribunal. If it is found that an agency or client has deliberately failed to provide the information requested, or that they have been evasive, the conclusion will be that the worker's rights have been infringed.

### 4. Not complying with the terms of an agency worker's contract

Agency workers engaged under a permanent contract of employment (that provides for pay between assignments) will not be entitled to equal pay provisions under the Regulations, providing certain conditions are met. (See Information Sheet 7.)

When an agency breaches any of the terms and conditions of the agency worker's contract, they will be liable under the Regulations.



## 5. Protection for agency workers against unfair dismissal

When an agency worker is dismissed for trying to assert certain rights associated with the Regulations, this will be treated as 'unfair dismissal' by an Employment Tribunal.

The Regulations provide protection against unfair dismissal when an agency worker:

- Brings proceedings under the Regulations
- Gives evidence or provides information in connection with proceedings under the Regulations brought by another agency worker
- Requests a written statement on treatment received or should have received
- Alleges that an agency or client breached the Regulations
- Refuses to give up any of their rights under the Regulations
- Is suspected by either the agency or client to have done (or proposed) any of the above.

In addition, where an agency worker is subjected to a detriment by an agency or client as a result of any of the grounds for unfair dismissal already mentioned, the worker can make a claim against the party causing the detriment.

## 6. Agency liability for avoiding terms of the Qualifying Period

When the Regulations were being drafted, it was clear there was a risk that agencies and clients could try to prevent agency workers from receiving Equal Treatment by structuring assignments in such a way that it would be difficult to complete the 12-week Qualifying Period.

To overcome this, the Regulations include specific provisions that entitle the agency worker to be given Equal Treatment even when the 12-week Qualifying Period has not been completed. The provisions also cover cases where the 12-week period has been completed but the assignment is structured so that the Equal Treatment entitlement comes to an end.

A successful claim at an Employment Tribunal by an agency worker against an agency or client for failing to provide Equal Treatment – by seeking to arrange assignments in such a way as to contravene anti-avoidance provisions within the Regulations – can result in compensation awards of up to £5,000.

## 7. Client indemnity for breaches of the Regulations

Liability for breaches of the Regulations will rest with clients, agencies or other intermediaries involved with supplying agency workers. It is almost inevitable, therefore, that these parties will try to limit their liability through the use of indemnity clauses in contracts.

Haupt Recruitment UK Ltd  
81 Oxford Street  
London  
W1D 2EU

T: 020 7903 5268  
F: 020 8338 3981  
E: [info@hauptrecruitment.co.uk](mailto:info@hauptrecruitment.co.uk)  
W: [www.hauptrecruitment.co.uk](http://www.hauptrecruitment.co.uk)



These can relate specifically to the Regulations or to more general provisions which, in effect, cancel out any liability in almost any situation. This practice is seen as bordering on the unethical in certain quarters, especially where agencies indemnify clients or other intermediaries for their own breaches of the Regulations.