



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

### **Employed Agency Workers – ‘Equal Treatment’ does not always apply**

The Regulations (AWR) have given agency workers some important new rights when it comes to receiving ‘Equal Treatment’ for pay and conditions, access to a client’s on-site facilities and receiving notification of client vacancies.

Agency workers who are **employed by an agency** will not, however, benefit from all the new rights. This Information Sheet looks at what rights workers in this category have, and what conditions will exclude them from parts of the regulations.

#### **Employing agency workers under ‘contracts of employment’**

Many agencies employ their agency workers rather than engaging them on ‘contracts for services’. An ‘employed’ worker will typically be required to attend work on a client’s site when work is available. When no work is available, the terms of the employed worker’s contract will usually mean that they will not be paid.

As far as the Regulations are concerned, the right to equal pay will not apply to agency workers engaged under a permanent contract of employment (where certain conditions are met).

However, they will still be entitled to Equal Treatment in respect of working conditions. This includes having access to a client’s on-site facilities and receiving notification of relevant client vacancies.

The conditions which apply to an employed agency worker’s contract of employment will confirm their ineligibility to receive equal rates of pay. The worker’s contract of employment must begin before the assignment starts.

The agency will not therefore be able to engage an agency worker under a ‘contract for services’, but will instead have to transfer the worker to a contract of employment at some stage during the assignment.

Under these circumstances, the agency worker will be entitled to receive equal pay once the 12-week Qualifying Period has been completed. (See Information Sheet 3.)

The agency can, however, engage the agency worker on a ‘contract of employment’ once that assignment has ended, but before another assignment begins.



Once the 'contract of employment' begins, however, the agency worker will not be entitled to equal pay during that assignment (though they will be entitled to other benefits which form part of the Equal Treatment rights under the Regulations).

### **Meeting the requirements of Regulation 10**

The contract of employment must contain certain terms to meet the requirements of Regulation 10. Different rights apply to employed temporary workers and workers employed under 'contracts for services'.

Some agencies use the 'zero hours' contract which allows them to provide the agency worker with whatever hours of work are available in any one week. In addition, the agency can end the contract and avoid paying the worker during the notice period, depending on the contract wording.

These types of contracts do not meet all the conditions set out in Regulation 10. Agencies looking to rely on the exclusion provisions will need to amend their current terms.

They need to offer a minimum of one hour's work per week to the agency worker. Also, when no work is available, they should pay the worker for at least four weeks over the course of the contract period at the minimum rate of pay.

### **The agency's obligations to agency workers**

To comply with Regulation 10, an agency will have two obligations to the agency workers it employs:

- If no work is available and the agency cannot find a suitable alternative assignment, the agency must *"take reasonable steps to seek suitable work for the agency worker and offer the worker to a hirer who is offering such work."*
- When suitable work is not available, the agency must pay the agency worker a minimum amount of pay.

### **Considering the costs of employing agency workers**

Agencies should consider all the cost implications before employing agency workers under terms which comply with Regulation 10. This also applies to agencies already using contracts of employment who may need to adapt their terms to comply with Regulation 10.



The two main cost considerations are:

- The rate of pay which must be paid when the agency worker is not working
- The increased costs associated with employees generally.

### **How much to pay agency workers when they're not working**

Calculating the minimum rate of pay when an agency worker is not working is outlined in Regulation 11 of the AWR. This must be 50% of the highest earnings paid to the agency worker in the 12 weeks prior to the date when the previous assignment ended. The amount cannot be less than the National Minimum Wage rate.

In calculating the rate payable, only 'basic pay' is taken into account. This includes annual salary, payments for actual time worked, or an output/performance-related figure. Bonuses are excluded.

### **Agencies should consider the costs of engaging an agency worker on a 'contract of employment'...**

The Regulations will have a varying impact on agencies, depending on the sectors in which they work and the rates of pay associated with them.

When agency workers' pay rates are on a par with – or higher than – pay received by a client's own employees, it may be unnecessary to change the way in which agency workers are engaged. Switching from paying temps on a 'contract for services' basis could result in lost flexibility and increased liability - with no real benefit.

On the other hand, in sectors where agency workers are paid less than the client's permanent workers, it may be that tight margins and client pressure could lead some agencies to consider the 'employed agency worker' option.

Agencies need to make a careful assessment of whether a 'contract of employment' is a viable option for engaging agency workers. In particular, they need to make sure that margins are adequate enough to cover a range of additional costs:

- The cost of paying the agency worker between assignments when no work is available
- Additional insurance (employers' liability insurance, for example)
- Statutory redundancy payments
- Wages to be paid when training is undertaken for health and safety reasons
- The cost of dealing with additional employee issues such as disciplinary matters and grievances
- Holiday pay