



The Agency Worker Regulations (AWR) 2010

Maternity Rights of Agency Workers – and the Implications for Agencies

The Regulations establish the rights of agency workers to Equal Treatment in respect of pay, working conditions, access to a client's on-site facilities and notification of job vacancies.

In addition, the Regulations extend some maternity rights to agency workers which previously have applied only to permanent employees.

Issues covered by this Information Sheet include:

- Time off (with pay) to attend ante-natal clinics.
- The provision of alternative roles for pregnant agency workers.

1. Attending ante-natal appointments

The Regulations state that all pregnant agency workers are entitled to take time off to attend ante-natal appointments when advised by their GP or midwife. The agency will be required to pay the agency worker at the agreed hourly rate for time taken to attend the appointment.

This entitlement only applies after the agency worker has met the 12-week Qualifying Period for Equal Treatment (See Information Sheet 3). However, if the agency worker has a contract of employment with the agency – rather than working under a contract for services – she won't need to meet the qualifying criteria.

Agency considerations

If an agency prevents an agency worker from attending ante-natal appointments during working hours, or does not pay her for the time taken off, they will be in breach of the Regulations.

Similarly, if an agency tries to avoid paying the agency worker by re-arranging the times she would otherwise be working on an assignment, the agency will again be in breach.

The agency worker can then seek a remedy through an Employment Tribunal (see Information Sheet 5).



The costs incurred by an agency in having to pay a pregnant agency worker who attends an ante-natal appointment cannot be recovered automatically from the client. Nor can they be built into the charge-out rate to a client.

Steps need to be taken, therefore, to avoid what could become a confrontational situation between agency and agency worker.

2. Providing alternative roles for pregnant agency workers

Another new right available to pregnant agency workers under the Regulations is their entitlement to being offered an alternative role should their current assignment be unsuitable for a pregnant woman. This right applies even when an assignment has been ended on health and safety grounds.

A 'suitable alternative assignment' needs to be one which has no health and safety risks and is within the capabilities of someone who is pregnant. Also, the terms and conditions associated with the alternative role must be comparable to those of the previous one.

The agency's obligation to provide an alternative role in these circumstances is limited to the intended duration of the initial assignment. Where an assignment has no 'end date', the agency's obligation will continue until an anticipated date. Where this isn't clear, agencies will need to obtain relevant information from the client.

Should no suitable alternative role be available – where the agency worker's assignment was terminated on health and safety grounds – the agency is required to pay the agency worker for the duration of the assignment, or the anticipated 'end date' if no specific date has been set.

The Regulations stipulate that the worker is entitled to one week's contractual pay for each week she was not able to work in the terminated assignment.

Exceptions to the need for agencies to find alternative roles

There are situations where the agency will not have to find an alternative role or pay a pregnant agency worker. If, for example, the worker gives written notice that she no longer wants the agency to provide work-finding services, the agency will not be obliged to find alternative roles.

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Another scenario could be where an agency offers to place an agency worker in an alternative role and is accepted by the client. When the worker turns down the assignment on 'unreasonable' grounds, the agency will not be liable under the Regulations.

Grey areas exist in what may or may not be regarded as a suitable alternative assignment. An agency can overcome this by taking clear details from the worker at the registration stage as to the type of work she is looking for.

Other considerations for agencies

Although the Regulations (AWR) contain nothing new as far as identifying health and safety risks associated with maternity are concerned, agencies need to be aware of certain potential pitfalls that the new provisions have created.

A key challenge is where an agency has found a suitable alternative role for a pregnant agency worker but the client refuses to accept her. Unfortunately, the agency will still have to pay the worker if no other role can be found.

For an agency to find suitable alternative roles is often dependent on the sectors in which they operate. Clearly, there are certain types of work that carry higher health and safety risks than others. When it comes to a placement for a pregnant woman, this is of crucial importance.

The crux of all this is for an agency to find alternative work to cut out the cost of paying a pregnant agency worker while she's not working on an assignment.