



The Agency Worker Regulations (AWR) 2010

The Right to Equal Treatment and Pay

To be entitled to equal treatment and pay, agency workers must meet the qualifying criteria of working for 12 weeks for the same client in the same role (See Information Sheet 3).

Definition of 'Equal Treatment'

'Equal Treatment' for an agency worker is described in Regulation 5 of the AWR as having the *"same basic working and employment conditions as he/she would be entitled to for doing the same job had he/she been recruited by the hirer."*

Regulation 6 details the 'basic working and employment conditions.' These are:

- Pay
- The duration of working time
- Night work
- Rest periods
- Rest breaks, and...
- Annual leave

'Equal Treatment' also includes the agency worker's right to access (from Day One) a client's on-site facilities such as childcare facilities, canteen and transport services. They will also be entitled to receive details of the client's permanent vacancies.

Definition of Equal Pay

The AWR defines pay as *"sums payable to a worker of the hirer in connection with the worker's employment including any fee, bonus, commission, holiday pay or other emoluments referable to the employment whether payable under contract or otherwise."*

'Equal Pay' refers to paying an agency worker the same amount as a permanent employee on the payroll (or the equivalent if there is no full-time post with which a comparison can be made).

Aspects of 'Pay'

'Pay' refers to elements other than an agency worker's basic hourly rate. It also includes bonuses, holiday pay, vouchers and stamps.



- **Bonuses**

Clients pay bonuses to their permanent employees using widely differing criteria. Agencies therefore need to consider carefully which bonuses to include in any assessment of 'equal pay'.

A bonus paid in response to a worker's performance, for example, falls within the definition of 'Pay'. Bonuses linked to things like length of service or company performance, on the other hand, fall outside the standard definition of 'Pay'.

This is further complicated when employers combine a variety of criteria in deciding who should be paid bonuses. Agencies would have to rely on their clients' assessment criteria which would vary in each case. Guidance from the BIS has been sought in bringing more clarity to this aspect of 'Pay'.

- **Holiday Pay**

Agency workers who have met the 12-week qualifying period for equal treatment will be entitled to the same holiday pay arrangements as permanent employees. Where clients' holiday pay arrangements are more generous than the recognised statutory allowance, this can, potentially, create administrative problems for agencies. Negotiations are currently ongoing between unions and the BIS.

- **Vouchers & Stamps**

The Regulations include vouchers and stamps given to direct employees within their definition of 'Pay'. The provision of childcare vouchers is more complicated. Initially, it was thought that the 'salary sacrifice mechanism' would mean childcare vouchers were outside the definition of 'Pay'. However, the BIS states that childcare vouchers can be regarded as 'Pay' providing a voucher with a monetary value is issued.

Clarity on 'Pay' is essential

To enable the principle of 'Equal Treatment' to be applied once an agency worker has satisfied the qualifying criteria, it is essential that agencies obtain detailed information about all aspects of 'Pay' as soon as possible.

To calculate equal pay, agencies must be aware of their clients' pay structures. The inclusion of bonuses and holiday pay in the Regulations has given agencies an additional responsibility to measure equal pay accurately and fairly.



What payments are excluded from the definition of 'Pay'?

The agency worker will not be entitled to receive:

- Occupational sick pay
- A pension, allowance or gratuity in relation to retirement or compensation for loss of office
- Payments for occupational maternity, paternity or adoption leave
- Redundancy pay
- Any payment in relation to a 'financial participation scheme' (i.e. a distribution of shares or options or a share of profits)
- Payments that a client pays to its own permanent employees which are not *"directly attributable to the amount or quality of work done by a worker, and which is given to a worker for a reason other than the amount or quality of work done such as to encourage the worker's loyalty or to reward the worker's long term service."*
- Expenses
- Advances and loans
- Health and life insurance
- Other prescribed payments

PLEASE NOTE

Agency workers who have a permanent contract of employment with the agency will not be entitled to equal pay provided certain conditions set out in the Regulations are met. (See Information Sheet 7.)

'Working Time' and 'Annual Leave Entitlement'

Qualifying agency workers will be entitled to:

- Equal treatment regarding 'working time'. This will include the duration of working hours; night work; rest periods and breaks.
- The same annual leave as a client's directly employed workers. Where a client gives a comparable employee more than the statutory entitlement, the agency worker will also be entitled to the additional leave.