

E-bulletin: Employment Update



AGENCY WORKERS

New rights are now effective

New laws protecting agency workers came into force on 1 October 2011. Keep this checklist to hand so you understand the new rights now available to agency workers.

Who is an agency worker?

An agency worker is any individual who:

- Is supplied by a temporary work agency (TWA) to work temporarily for and under the supervision and direction of your business; and
- Has a contract with the TWA, which is either: a contract of employment with the TWA; or any other contract to perform work and services personally for the TWA.

A TWA is an employment business that supplies workers to hirers for temporary work

(as opposed to an employment agency, which finds permanent employment for individuals).

The right to equal treatment

An agency worker is now entitled to the same "basic working and employment conditions" that they would have been entitled to had they been directly recruited by your business. This entitlement will not apply until an agency worker has undertaken the same role (whether on one or more assignments) within your business for a 12-week qualifying period. Basic working and employment conditions relate to:

- Pay (including basic pay, overtime pay, holiday pay, bonuses for individual performance and vouchers with a monetary value, such as childcare vouchers).
- Working time.
- Night work.

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- Rest periods and breaks.
- Contractual annual leave.
- A pregnant worker will also have the right to receive various enhanced entitlements, including paid time off for antenatal care.

How to calculate the qualifying period

The qualifying period accrues on a weekly basis, regardless of the hours the worker works in each week.

Continuity will be broken and an agency worker will have to

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start their 12-week qualifying period again when:

- They start a new substantively different role within your business (for example, moving from a production line to an admin role).
- There is a break of at least six calendar weeks between assignments that the agency worker undertakes within your business.
- Continuity will continue to accrue where a break is due to:
- Pregnancy, childbirth or maternity that take place during pregnancy and for up to 26 weeks after childbirth.
- The agency worker taking maternity, paternity or adoption leave.

Some periods away from work, whether between assignments or during an assignment, will merely suspend continuity (neither counting towards continuity nor breaking it), for example:

- Sickness absence of up to 28 weeks.
- Annual leave.
- Jury service of up to 28 weeks.

A worker who changes agency during an assignment will continue to accrue service with your business.

What are the penalties for breaching the new laws?

If your business breaches its obligations under the new laws an employment tribunal can award compensation, taking into account the agency worker's losses.

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A tribunal can also award compensation of up to **£5,000** against your business if it decides you have attempted to structure an assignment in order to avoid the qualifying period.

If you would like some specific advice on action required let us know.

ADDENDUM

At the recent Conservative Conference in Manchester, Chancellor George Osborne announced two important changes in employment law, intended to reduce the number of employment tribunal claims and boost the economy.

- First, the qualifying period for unfair dismissal will be increased from one year to two year with effect from 1 April 2012.
- Second, fees will be introduced for tribunal claims.

The Government is currently undertaking an Employment Law Review, we will keep you up to date on any changes that may affect your business areas.