

Agency Workers Regulations - Keeping things simple

On 1st October 2011 the much heralded **Agency Workers Regulations** come into force.

It is our view that the changes are easily handled so the aim of this newsletter is to cut through all the hype. It represents part of what will be regular dialogue on this subject between us and you, our client.

Key Date - 1st October 2011

Agency workers are immediately entitled to certain rights already afforded to comparable employed staff. Meeting these **'day one rights'** is down to the hirer but the obligations are not onerous.

The principal day one rights are that any agency worker must be afforded access to:

- a) **'collective facilities and amenities'** such as canteen, childcare, transport services (e.g. local pick up, transport between sites), workplace crèche, toilet/shower facilities, food and drinks machines and car parking to the same extent as any comparable employee
- b) any relevant vacancies in order to be given the same opportunity to apply as if an employee. Agency workers should therefore know where and how to access details of vacancies.

Thereafter, agency workers are entitled to additional rights once they have completed twelve weeks of **'qualifying service'** at a hirer. This is twelve weeks after 1st October 2011, so the clocks only starts running from then.

The key to complying with the **'Qualifying Service Rights'** (which won't apply for many agency workers) is to ensure that all qualifying agency workers have the same basic working and employment conditions as if employed full-time. This translates into agency workers being entitled to the same basic pay and pay enhancements (nights, Saturdays etc.) and the same amounts of paid holiday for equivalent employees or as if employed by the hirer. Please refer to the additional details on these matters as described later.

At the A24 Group we will be working closely with clients to manage the impact (if any) of this legislation. We will shortly be issuing revised terms of business and, well in advance of the twelve week period, we will be liaising with clients on collective and individual bases so as to ensure minimum disruption and to manage the transition to this new legislation.

Please contact us

If you have any queries on the changes please do not hesitate to contact our Agency Workers Regulations Team on awr@a24group.com



Penny Streeter
Managing Director



Charles Rees
Finance Director

Our message on the Agency Workers Regulations is one of **'don't panic, we are here to help'** and over the coming weeks we will be working with you to deal with any and all uncertainties. Below we highlight a couple of the

key areas. These are more fully described in guidance published by the government and available from the Department for Business, Innovation and Skills (www.bis.gov.uk).

Explanation of 12 Week Qualifying Period and Equal Treatment

Beyond the **'day one rights'** the major issue arising from the Agency Workers Regulation is the 12 week qualifying period and any pay adjustments which may be necessary.

In a nutshell an agency worker is entitled to **'equal treatment'** (defined below) after a 12 week qualifying period with the hirer but:

- *in order to qualify the agency worker must work in the same role with the same hirer (irrespective of whether it is through different agencies)*
- *any week (irrespective of hours worked) during which the agency worker works is counted*

The 12 week clock is reset to zero:

- *with a new assignment with a new hirer or client*
- *with the same hirer but when the assignment is substantively different*
- *when there is a break of six weeks between assignments (unless for sickness or pregnancy)*

The 12 week clock pauses:

- *for any break of six weeks or less with the same role and the same client*
- *when the role is interrupted by annual leave, sickness or pregnancy/childbirth*

Note that the 12 week qualifying period only starts running from 1st October 2011 so we will be liaising with you over the coming weeks and months to help to ensure that nobody falls foul of the law.

Explanation of 'Equal Treatment'

Essentially this translates as being the same rate of pay (benefits such as sick pay, pensions, etc. are ignored for this purpose) and the same amount of annual leave as if employed directly.

Given the nature of our supply (whereby agency workers are paid an hourly rate) we take the view that **'rate of pay'** is to be regarded as an hourly rate equivalent to what the agency worker would be paid if recruited directly. In other words the hourly rate of pay paid to a qualifying agency worker must be equal to or greater than the equivalent hourly rate of pay of an employed/equivalent worker.

As an example:

Assume your employed care staff have an annual base salary of £16,000 (based on a 40 hour week) and that you pay a 20% shift allowance for nights and weekends, 40% for Sundays and 60% for public holidays. Assume that you also provide 4 weeks paid holiday plus public holidays.

*£16,000 equates to £7.70 per hour (based on 52 weeks worked at 40 hours per week), £9.24 for nights/weekends, £10.78 for Sundays and £12.32 for public holidays. Therefore under the legislation the pay to any agency worker who meets the qualifying period must be greater than or equal to these rates. We already pay agency workers holiday pay equivalent to 4 weeks plus public holiday so no adjustment would be necessary. Should the holiday pay entitlement of an equivalent worker be greater than 4 weeks then this would need to be taken into account by **'uplifting'** the hourly pay.*

As advised we will be in regular contact over the coming weeks but if you have any queries please e-mail awr@a24group.com



92-96 Lind Road, Sutton, Surrey SM1 4PL www.a24group.com

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