

Agency Worker Regulations

The Agency Regulations will only apply to workers **who are supplied by a temporary work agency (even if via some sort of intermediary) to work under the direction of the hirer**. There are a couple of categories of workers who, although fitting that definition, are expressly excluded from the Regs, Those excluded are:

- workers who are supplied by an Agency but who are genuinely in business on their own account e.g. individuals with a number of different 'clients'; and
- workers supplied by an Agency but who are engaged on a permanent basis by the Agency and are paid by the Agency in between assignments.

Where the Regs do apply, it means that:

From day one of the assignment the Agency worker is entitled to the same access to collective facilities (such as any staff canteen or childcare facilities) as those directly employed by you to do the same or broadly similar work and to be given information about any relevant vacant posts you have available.

Once the Agency Worker has worked for **12** weeks in the same role, they are entitled to parity of relevant terms and conditions with those directly employed doing the same or broadly similar work. Relevant terms and conditions will include matters such as pay, rest breaks and annual leave but the Regs detail some express exclusions such as occupational sick pay, redundancy pay and pension entitlements.

Not surprisingly, the Government is keen to close any loopholes which could avoid the Regulations e.g. repeated contracts of 11 weeks, a change in role within the 12 weeks. There are therefore complex anti -avoidance provisos which include the following:

- If there is a break of 6 weeks or less between assignments, the clock continues to run after the break and, in cases such as sickness and maternity, there can be much a much longer gap before the clock is reset.
- The 12 week clock only stops ticking if a new assignment is agreed with the Agency (not simply the worker is asked to do a different role).

The message from all these anti avoidance provisions is that, if there is a likelihood that an Agency worker will work for you cumulatively for more than 12 weeks , you need to look very closely at the Regulations before denying them the same relevant terms and conditions as those directly engaged.