



UNIVERSITY OF  
LINCOLN

# Agency Worker Regulation Manager Guidelines

## **AGENCY WORKER REGULATIONS 2011 (AWR)**

These regulations came into force on 1 October 2011 and mean that agency workers receive “equal treatment” compared to permanent staff after being employed for 12 weeks. The following guide will help you to understand these regulations and what it means us.

Critical to complying with these regulations and controlling agency staffing costs is the management of agency staff within the qualifying period.

### **What it means for employers?**

In summary, the regulations mean that from 1 October 2011, agency workers in the UK receive “equal treatment” compared to permanent staff after being employed for 12 weeks.

This means agency workers:

- Are entitled to the same pay, holidays, working time, overtime, breaks and rest periods as comparable to permanent workers
- Have equal access to collective facilities (e.g. canteen, childcare facilities, transport services)
- Have access to information about permanent employment opportunities.

The regulations do not cover occupational sick pay or pensions.

This guide is divided into a number of sections:



### [The regulations](#)

Find out more about the general scope of the regulations.



### [Definitions](#)

Read the definitions of temporary work agencies and an agency worker.



### [New entitlements from day one](#)

Find out what agency workers will be entitled to under the new regulations.



### [New entitlements after 12 weeks](#)

Find out what agency workers will be entitled to after 12 weeks in employment.



### [Equal treatment](#)

Find out how the regulations affect pay, holiday entitlements and maternity rights.



### [Frequently asked questions](#)

A series of FAQs to help you understand and implement the new regulations.

## **Agency Workers Regulations (AWR)**

The regulations came into effect on 1 October 2011, giving agency workers the entitlement to equal treatment with respect to basic employment and working conditions if and when they complete a qualifying period of 12 weeks in a particular job.

In other words, their basic terms and conditions of employment must be no less favourable than the terms they would have been entitled to had they been recruited directly by the University of Lincoln.

AWR is not retrospective and for those agency workers already on assignment, the 12 week qualifying period started on 1 October 2011. Agency workers will also be entitled to access on-site facilities and information on job vacancies from day one of their assignment.

### **Definitions**

Who do these Regulations apply to?

- Individuals who work as temporary agency workers
- Individuals or companies (private, public and third sector) involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer
- And the hirers themselves (private, public and third sector)

### **New entitlements – from Day 1**

The regulations provide new entitlements giving agency workers the same access to certain facilities provided by the hirer and information on job vacancies as comparable permanent workers and employees from the first day of their assignment.

These are:

- Access to facilities; such as the staff canteen, transport facilities and car parking
- Access to vacancies; the right to be notified of any job vacancies

### **New entitlements – after 12 weeks**

Under the new regulations, after 12 weeks employment additional entitlements come into force.

These additional new equal treatment entitlements relate to relevant terms and conditions, namely pay and other basic working conditions and will only come into effect after an agency worker completes a 12 week qualifying period with the same hirer, in the same role.

Information within this section includes:

[The entitlements](#)

[Calculating the 12 week qualification](#)

[The qualifying clock](#)

[Meaning of the same role](#)

[Breaks between assignments](#)

[Working for multiple hirers](#)

[Working through multiple agencies](#)

### The entitlements

These entitlements include:

- Key aspects of pay related to work undertaken on assignment
- Duration of working time
- Night work
- Rest periods
- Rest breaks
- Annual leave
- Ante-natal appointments

All agencies and hiring line managers need to understand what agency workers would have received in terms of pay and basic working conditions as if they had been recruited directly.

The right to equal treatment will not apply until an agency worker has worked in the same role for the university for 12 continuous weeks.

There is no minimum amount of work that needs to be completed in order for a week to count as one of the 12 for qualification purposes.

Pregnant agency workers will now be allowed to take paid time off for ante-natal appointments during any assignment.

### Calculating the 12 week qualification

The 12 week qualifying period is triggered by working in the same job with the same hirer (University of Lincoln) for 12 calendar weeks.

A calendar week is accrued regardless of how many hours the worker does on a weekly basis.

A new qualifying period will only begin if the new assignment with the university is substantively different and/or there has been a minimum of six weeks break between assignments.

An agency worker can qualify for equal treatment after 12 weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

#### Reasons for the qualifying clock to reset to zero

Most commonly it will be because an agency worker begins a new assignment with a new hirer.

Where an agency worker remains with the same hirer but is no longer in the same role. The circumstances in which an agency worker is regarded as no longer working in the same role are considered below.

If there is a break between assignments with the same hirer of 6 weeks or more (which is not one that 'pauses' the clock or during which it continues to 'tick').

### Types of break that will cause the qualifying clock to 'pause'

A break for any reason where the break is no more than six calendar weeks.

A break of up to 28 weeks because the agency worker is incapable of work because of sickness or injury.

Any break which is for the purpose of taking leave to which the agency worker is entitled, including annual leave.

A break up to 28 calendar weeks to allow the agency worker to perform jury service.

A break caused by a regular and planned shutdown of the workplace by the hirer (for example at Christmas).

A break caused by a strike, lock out or other industrial action .

### Breaks where the clock continues to 'tick'

Breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth.

Any breaks due to the worker taking maternity leave, adoption leave or paternity leave.

(In each of these cases the clock will continue to tick for the originally intended duration of the assignment, or the likely duration of the assignment (whichever is longer).

### Meaning of the same role

If a change in position is to require an agency worker to re-qualify for equal treatment, the whole or main part of the new role must be 'substantively different' from the previous role.

A further requirement is that the agency must have notified the worker in writing of the type of work they will be required to carry out in the new role.

### Breaks between assignments

The general rule under the Regulations is that any break between assignments of six weeks or less, in the same role, shall not break 'continuity' for qualification purposes.

### Working for multiple hirers

Any agency worker might work for more than one hirer during a week. They may therefore have more than one qualifying period running at any one time.

### Working through multiple agencies

An agency worker might work for a hirer for 6 weeks with one agency and is placed with the same hirer three weeks later by another for a further eight weeks. As there has not been a six week break between the assignments, the agency worker will be entitled to equal treatment after 6 weeks on the second assignment.



## **Equal treatment – what does it mean?**

Importantly, unlike the regulations concerning the rights of part-time workers and fixed term employees, the right to equal treatment under the Agency Workers Regulations is not a general right not to be treated less favourably on the grounds that an individual is an agency worker; instead, the principle of equal treatment will apply only to certain terms and conditions relating to working time, holiday entitlement and pay.

- [Pay](#)

How the regulations affect an agency worker's pay; including a list of what is covered, what is excluded

- [Holiday entitlements](#)

How holiday entitlements are affected by the regulations, how holiday entitlements are calculated and the payment in lieu option

- [Pregnant workers and new mothers](#)

How the regulations affect these workers including the responsibilities of the agency and of the hirer

### Pay

The definition of pay for the purposes of these Regulations is defined as basic pay plus other contractual entitlements that are directly linked to the work done by the agency worker whilst on assignment.

What is included in the definition of pay?

- Basic pay – based on the annual salary an agency worker would have received if recruited directly (usually converted into hourly or daily rate)
- Overtime payments – if qualifying hours have been completed
- Annual pay award – where a hirer gives an annual pay increment, an agency worker should receive the same pay increment as if recruited directly
- Payment for annual leave – where the entitlement is above the statutory minimum of 5.6 weeks (at a fulltime equivalent rate) which can be added to the hourly or

daily rate

What is excluded?

- Occupational sick pay - the regulations do not affect an agency worker's entitlement to **statutory** sick pay. If an agency worker has a contract of employment with the agency, and depending on qualifying service, they may be entitled to such payments from the agency
- Occupational pensions
- Occupational maternity, paternity or adoption pay
- Redundancy pay (statutory and contractual)
- Notice pay (statutory and contractual)
- Expenses
- Overtime or similar payments – where the agency worker has not fulfilled qualifying conditions that a permanent member of staff would have to fulfil.

#### Holiday entitlements

After 12 weeks an agency worker will be entitled to the same treatment in relation to the duration of working time, night work, rest periods and rest breaks as he or she would have received if recruited directly by the hirer to the same job.

### Pregnant workers and new mothers

The right to reasonable paid time off to attend ante-natal appointments and the right to be suspended from work if an insurmountable risk related to pregnancy is identified and an alternative assignment cannot be found.

Although as the 'hirer' we will have general responsibilities towards agency workers under health and safety legislation, responsibility for these new rights will, in the main, lie with the agency.

The agency will need to ask the hirer to perform a workplace risk assessment and make a reasonable adjustment if necessary. If this is not possible, the agency will need to seek alternative suitable work and ensure that the agency worker is paid for any period of the assignment when she could not work due to a health and safety risk.

It is the University's responsibility to carry out a workplace risk assessment and where a risk is identified, the hirer is obliged to make adjustments to remove the risk. If an adjustment is not possible or reasonable and would not remove the risk, the University should inform the agency who will endeavour to find suitable alternative work.

## Frequently Asked Questions

1. What is the purpose of the Agency Workers Directive?

Its purpose is to give agency workers entitlement to equal treatment with respect to basic employment and working conditions if and when they complete a qualifying period of 12 weeks on a particular job. In other words, their basic terms and conditions of employment must be no less favourable than the terms they would have been entitled to had they been recruited directly by the university.

2. When do the new regulations come into force?

1 October 2011

3. What about agency workers already on assignment with us on 1 October 2011?

The Regulations are not retrospective and if you have agency staff already working for you on 1 October, their 12 week qualifying period, access to on-site facilities and job vacancies will start from that date.

4. Who do these regulations apply to?

The Regulations apply to individuals who have a contract with a temporary work agency and who are supplied by that agency to work temporarily under the supervision and direction of a 'hirer' – the client.

5. When do agency workers qualify for equal treatment?

From the first day of employment, the following entitlements apply:

- a. Access to facilities; such as the staff canteen, transport facilities, car parking and child-care facilities
- b. Access to vacancies; the right to be notified of any job vacancies within the hirer

6. Do the new regulations include car parking?

Yes access to equal treatment regarding car parking is included.

7. Where we have a vacancy that is restricted to internal applicants' only would we have to include agency workers within the definition of internal applicant?

Yes, all advertised vacancies with the University must be easily accessible to qualifying agency workers.

This obligation relates only to the information about vacancies and does not significantly constrain employers' freedom regarding how they treat applications, experience requirements etc.

This right will not apply in the context of a genuine 'headcount freeze' where organisational restructuring is in place to avoid redundancies. The right extends only to vacancies in this context.

After 12 weeks in the same role, these additional new equal treatment entitlements relate to 'relevant terms and conditions', namely pay and other basic working conditions and will only come into effect after an agency worker completes a 12 week qualifying period with the same hirer, in the same role.

The right to equal treatment will not apply until an agency worker has worked in the same role for a hirer for 12 continuous weeks. Importantly, any change of agency during the 12 week period will not affect qualification.

Pregnant agency workers will now be allowed to take paid time off for ante-natal appointments during any assignment.

8. What does the 'same role' mean?

If a change in position is to require an agency worker to re-qualify for equal treatment, the whole or main part of the new role must be 'substantively different' from the previous role. A further requirement is that the agency must have notified the worker in writing of the type of work they will be required to carry out in the new role.

9. How many working hours per week are required for qualification?

There is no minimum amount of work that needs to be completed in order for a week to count as one of the 12 for qualification purposes.

10. Is the 12 week qualifying period continuous?

Any break between assignments of six weeks or less, in the same role, shall not break 'continuity' for qualification purposes.

Any agency worker might work for more than one hirer during a week. They may therefore have more than one qualifying period running at any one time.