



# The Agency Workers Regulations 2010: A quick guide

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The Agency Workers Regulations 2010 (the “Regulations”) are the UK’s method of implementing the Temporary Agency Workers Directive, designed to protect and grant rights to agency workers. The Regulations come into force on 1 October 2011 and will give agency workers the right to the same basic working and employment conditions as comparable employees of the hirer. They will not give agency workers employee status and agency workers will not have unfair dismissal rights or the right to receive statutory redundancy pay.

## Who is an agency worker?

For the purposes of the Regulations, agency workers are individuals:

- Supplied by a temporary work agency to work temporarily for, and under the supervision or direction of, a hirer; and
- Who have a contract with the temporary work agency, either one of employment or one which obliges the agency worker to perform work or services personally.

## What rights will agency workers have?

### Immediate rights

As soon as they start work with the hirer, agency workers will have the right to access the hirer’s collective facilities and amenities, such as canteen facilities, childcare facilities and transport services. Agency workers will also have the right to be given information about any relevant job vacancies within the hirer that would be available to a comparable employee or worker.

### The qualifying period

The Regulations require an agency worker to complete a qualifying period of twelve weeks in the same role with the hirer before they can take advantage of other rights under the Regulations. For part-time agency workers, any week in which they work will count as a full week for this purpose. An absence from work of up to six weeks for any reason will pause, but not break, continuity for the qualifying period, and there are also situations where the qualifying period will continue to accrue during an absence (for example, where the absence is for maternity leave) or where an absence of longer than six weeks will not break continuity (for example, long-term sick leave, subject to certain conditions).

### Rights after the qualifying period

After completing the qualifying period, the agency worker will have the right to the same basic working and employment conditions as he would have been entitled to had he been directly employed by the hirer to do the same job. The relevant terms and conditions are those relating to pay, duration of working time, night work, rest periods, rest breaks, and annual leave.

## What is included in the definition of “pay”?

Included	Not included
Wages and salary	Sick pay
Holiday pay	Pension – agency workers will be covered by new automatic pension enrolment which will be phased in from October 2012
Paid bank holidays	Maternity, paternity or adoption leave pay
Overtime rates	Redundancy pay or any other compensation for loss of office
Shift allowances	Share, share option or profit-sharing schemes
Unsocial hours premiums	Payments for time off work for trade union duties
Performance-related bonuses	Guarantee payments
	Advances or loans
	Expenses
	Any bonus or incentive or reward not directly attributable to the amount or quality of the work done, and which is given so as to encourage the worker's loyalty or to reward the worker's long-term service
	Any payment to the worker other than in that person's capacity as worker

## What will happen if the Regulations are not complied with?

Agency workers will be able to bring claims against either the temporary work agency or the hirer in the employment tribunals for breaches of the Regulations. The time limit for making a claim will be three months from the date of the alleged infringement.

A tribunal will be able to make a declaration, order payment of compensation and make recommendations for action to be taken. The compensation payable by an agency or hirer will have regard to the extent of their responsibility for the breach, the nature of the breach, any financial loss suffered by the worker and any expenses they have reasonably incurred as a result. There will be a minimum award of two weeks' pay regardless of any loss suffered unless the employment tribunal finds that the worker behaved unreasonably. There will be no maximum award. However, if the tribunal finds that the agency or hirer has intentionally structured the agency worker's assignments in order to avoid the effect of the Regulations, it may award additional compensation of up to £5,000 to the agency worker.

## What should businesses using agency workers do to prepare?

Businesses should examine their current and projected future use of agency workers and consider whether they need to change their current practices in order to comply with the Regulations. Many businesses will adapt to the new regime. Some may decide that it is preferable to avoid using agency workers in the future for periods longer than twelve weeks. Others may reduce their reliance on agency workers by bringing agency workers in-house, or by requiring existing employees to change their working arrangements.

## How can we help?

The Employment team at CMS Cameron McKenna has extensive experience in advising businesses on the use of agency workers and handling associated employment tribunal claims. We can advise on the employment status of workers and on how businesses that will be affected by the Regulations can structure their staffing requirements to minimise employment law risks and maximise cost-efficiency.

## Contacts



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