

Agency Worker Regulations (AWR) for Temporary Workers explained**Introduction to the Agency Worker Regulations 2010**

The Agency Workers Regulations 2010 came into force in England, Scotland and Wales on 1 October 2011.

They are designed to tackle discrimination against agency workers in the workplace and the low pay, and holiday and working time conditions they are frequently engaged on. The Regulations give temporary agency workers the following rights.

From day one of an assignment, temporary agency workers have a right to:

- equal access to collective facilities provided by the hirer (such as canteens, staff rooms, toilet and shower facilities, workplace crèches, car parking and transport services); and
- information about, and the opportunity to apply for, vacancies in the hirer's workplace.

After 12 weeks (the 'qualifying period') in the same role with the same hirer, temporary agency workers have the right to:

- equal treatment on pay, holidays and working time; and
- improved pregnancy rights

On the face of it, counting 12 weeks may seem straight forward but there are several factors that will in practice make the 12-week period difficult to measure.

12 weeks with the same client:

The agency worker must complete the 12-week period by working in the same role with the same client (more below). However, the agency worker does not have to work for those 12 weeks through the same agency. This means that an agency worker can complete the qualifying period even if supplied by more than one agency to the same client.

What is the same role?

In some cases, it will be relatively straightforward to identify when the work that the agency worker is doing in a new assignment is “substantively different” but there will be situations when this is not easy to identify. However, the Regulations place the focus on the work and duties performed during the assignment, so if the only difference in a new assignment is that the agency worker moves to a different department or a job title has changed, this will not be a new role.

For example, if an agency worker is supplied to provide admin support (typing, filing, etc.) within a client’s sales team and moves to do the same work for the marketing department for the same client, the work, and duties here are clearly the same and there is no new role.

Questions to consider:

- Are different skills and competences used?
- Is the pay rate different?
- Is the work in a different location/cost centre?
- Is the line manager different?
- Are the working hours different?
- The role requires extra training - and/or a specific qualification that wasn’t needed before?
- Is different equipment involved?

Working in the same role with different clients:

If an agency worker works in the same role but for different clients s/he will have separate qualifying clocks running with each client.

For example, an agency worker who is assigned to drive an HGV 1 lorry one day a week each for four different clients will have four separate qualifying clocks, one for each client.

Breaks in assignments.

Working for 12 continuous weeks:

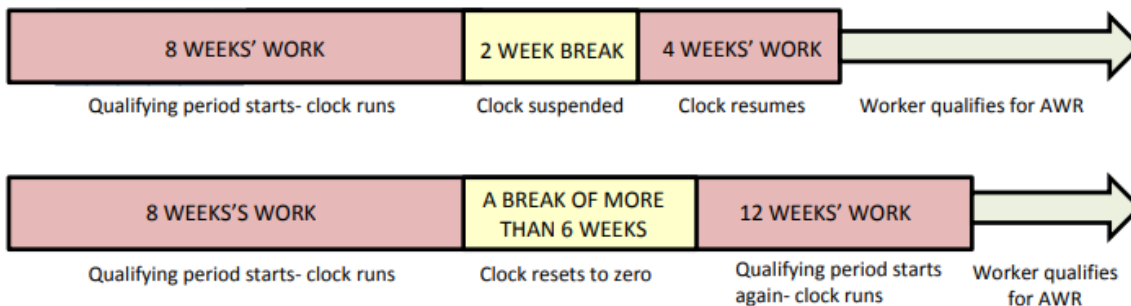
Any week in which the agency worker works for the hirer will count towards the 12-week qualifying period, even if it is for just one day in a week or even 1 hour that week. However, the agency worker does not have to work for 12 continuous weeks to reach the qualifying period.

The Regulations allow the agency worker to have certain breaks in an assignment without having to start counting towards the 12 weeks from scratch. This means that an agency worker’s qualifying period can be accrued over a period which exceeds 12 weeks.

The six-week break:

Regulation 7 provides that if the agency worker takes a break from an assignment for any reason and the break is for six weeks or less, on returning to the same role, the weeks that the agency worker previously worked will be carried forward.

So, for example, if an agency worker works for eight weeks in a role with a client and takes a two week break from the assignment for whatever reason, on returning to the same role with the same client, the agency worker will enter into the ninth week of the count towards 12 weeks. The agency worker will not have to start counting again from zero but will only need a further four weeks to reach the 12-week qualifying period.



Other breaks permitted in the Regulations:

An agency worker having worked in the same role with the same client will also be able to carry forward weeks previously worked towards the qualifying period if they have a break in continuity which is caused by:

- sickness or injury (up to a maximum of 28 weeks and provided evidence is given to the agency where requested);
- pregnancy, childbirth or maternity and the agency worker is within a “protected period” (i.e. from the beginning of pregnancy to 26 weeks from childbirth);
- statutory/contractual maternity, adoption or paternity leave;
- jury service;
- periods when the client does not require the agency worker because of various types of industrial action at the client’s establishment; or

- periods when the client does not require the agency worker because the business has temporarily closed down (e.g. Christmas shut down).

This means that even if the break is for six weeks or more but is for one of the reasons listed above, any weeks worked prior to the break will be carried forward and added to any weeks worked subsequently.

What is equal treatment

A qualifying agency worker is entitled to the “same basic working and employment conditions as [she/he] would be entitled to for doing the same job had [she/he] been recruited by the hirer...”

The right to equal treatment only applies to terms and conditions relating to working time and includes:

- Comparable pay
- Duration of working time
- Overtime and night work
- Breaks and rest periods
- Holiday and public holiday pay
- Collective facilities

The regulations do not extend to:

- Occupational sick pay
- Maternity/paternity pay
- Redundancy and notice pay
- Payments related to pension entitlement
- Bonuses not based on individual performance
- Profit sharing schemes
- Season ticker loans or car allowances

Anti avoidance provisions

There are anti avoidance provisions in place to deter any end of assignment, or change of an assignment, before a worker reaches the 12-week qualifying period just to avoid equal treatment.

However, a client will still retain the flexibility to take on an agency worker to meet its requirements and to terminate an assignment at or before 12 weeks if required.

Extraman recommend to all our clients that they do not replace workers after 12 weeks as this can be seen as avoidance of the legislation and is not in line with Extraman’s treatment of its workers.

Who is liable for failure to provide equal treatment?

- The hirer is solely responsible for any breaches relating to Day 1 rights.
- The agency is responsible for setting the agency worker’s terms and conditions, and it is therefore liable for any breach in relation to the 12-week rights, to the extent that it was responsible for the infringement. However, the hirer is responsible to the extent it was at fault. So, if the hirer gave the agency incorrect information about basic working and employment conditions, or failed to notify the agency of updated information, the liability transfers from the agency to the hirer.

Due Diligence checks

Extraman undertake checks with our clients that will need workers for more than 12 weeks before that point is reached. These checks form the basis of the updated pay and conditions that workers enjoy with the client they are assigned to.