



AWR Agency Worker Regulations Oct 2011

**Not long now.
Do you have the facts?**

If you engage the services of any of the 1.3m temporary Agency workers in the UK, you may be affected. Failure to prepare now could see your business facing heavy costs in 2011. Get the facts on AWR and be ready for the change.

Ten Live contractors should be exempt from the regulations which will be confirmed by the March briefing although we thought it best to update you on the legislation with immediate effect.

See our Ten facts :

1 Agency Workers will be eligible for EQUAL treatment from October 2011

AWR come into effect on 1st October 2011. With 1.3m Agency workers currently on assignment in the UK and smart companies are taking immediate action. Under the new Regulations, Agency workers will – after 12 weeks of working on an assignment – have the right to the same basic working and employment conditions that they would have been entitled to, had they been recruited directly by the organisation to do the same job.

2 The definition of Agency Worker is very broad

The Regulations exclude any individual that provides a service to an organisation as a client of a business run by that individual, i.e. a genuinely self-employed contractor working through their own limited company. Ten Live will have 75% Limited Company Contractors and 25% permanent employees with T&C's guaranteeing hours of work and payment per week by October 2011. We are working towards this currently and the brief in March will confirm if our contractors are 100% exempt. It's important to note that an individual will not be excluded on the basis that their services are provided through an umbrella company.

3 Kicks in after temp completes 12 weeks assignment even if part time

The right to equal treatment (with respect to the relevant terms and conditions) applies once an Agency worker has carried out 12 weeks of work in a particular role only. In general, breaks between assignments of more than 6 weeks may reset the qualification 'clock' although this will be confirmed in March 2011.

4 Basic working & employment conditions are covered

The right to equal treatment applies to terms and conditions relating to working time, holidays and pay only. The Regulations do not extend to sick pay, maternity/paternity pay, redundancy, notice pay, payments related to pension entitlement, or bonuses not based on individual performance.

5 Equal treatment may not be BLACK & WHITE

After 12 weeks on an assignment, the Agency worker's relevant terms and conditions must be no less favourable than if the client had recruited that individual at the same time to do the same job; taking into account qualifications, skills and experience where relevant. Agency workers may have rights that apply from day one of their assignment – such as a right to access "collective facilities" and amenities e.g. a canteen, transport, or a crèche – on the same terms as a comparable direct employee. They will also have a right to be informed of any opportunities for relevant permanent employment.

6 Terms & Conditions can be complex

The relevant terms and conditions concerning working time, holidays and pay, will be any that apply generally to direct employees; either because they are set out in a pay scale or an agreement with a trade union, or because they are given as a matter of 'custom and practice'. If you have a pay scale that sets starting pay for the relevant job, that's the reference point for equal treatment. If there's no pay scale, but as a matter of course pay is set at a particular pay rate and/or there's a certain entitlement to leave, these will be the deciding points of reference.

7 Exceptions to the rule

Agency workers are sometimes taken on to carry out a one-off project, with no directly hired employee carrying out the same job. In the absence of a relevant policy or precedent, the Regulations are unlikely to be relevant to an Agency worker's pay. However, if there is a clear policy on annual leave for directly hired employees, an Agency worker would be entitled to equal treatment in that respect.

8 Regulations not just about pay

If pay is agreed on an individual basis and there is no 'custom and practice', the Regulations are unlikely to be relevant to pay. They would however apply to holiday and working time issues, if an organisation has a common policy on either of these.

9 Direct Employees cannot use this as leverage to increase their pay

The legislation will only apply to Agency workers that are paid less than direct employees. It does not work both ways.

10 Responsibility is shared with Agency

The Regulations make clear that both Agency and hirer can be separately responsible for any failure to provide equal treatment. This means an employer will be liable if they are found to have failed to provide the Agency with accurate and timely information about terms and conditions. Likewise, the Agency will be liable if it has failed to accurately set a worker's pay and conditions in accordance with information received.

If your company is not affected by this particular legislation, you can still benefit from Ten Live's professional expertise. We understand that legislative changes have a significant impact on your organisation and are available immediately to work with you to reduce the impact on your business. www.tenlive.co.uk 01236 702007 contact either Joanne Telfer or Gary Telfer, Joint Managing Directors