AT A GLANCE – THE AGENCY WORKER REGULATIONS 2010

Who is an agency worker under the regulations?

An agency worker (often referred to as a ‘temp’) is someone who has a contract with a temporary work Agency and who is supplied by that Agency to work for, and under the direction and supervision of, a hirer.

HR have a bank of University ‘temps’. Do these regulations apply to them?

No. Where an organisation employs its temporary workers directly, and they are only supplied to work in that same business, the rules will not apply.

What are my obligations as a ‘hirer’ of agency workers?

The University/manager is responsible for ensuring compliance in respect of Day 1 rights: the right to be told of vacancies and to be given access to basic collective facilities and amenities, eg parking, staff room etc that a comparable employee would get. The temporary work Agency is responsible for ensuring that all other rights under the regulations have been complied with.

What collective facilities are available to temporary agency workers from Day 1?

This will vary between campuses, but may include access to on-site facilities such as:
car parking
use of staff rooms
catering
childcare
library
sports facilities

What about access to job vacancies

University posts of 6 months duration more are advertised on the University website and via Department notice boards which are accessible to all workers. The need to inform agency workers of vacancies will not apply where posts are ‘ring fenced’ for redeployment purposes or where restructuring is taking place in order to prevent a redundancy situation.

What basic University terms and conditions must be given after the 12 week ‘qualifying period’?

After an agency worker completes 12 weeks with the same hirer, in the same role, they will be entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. The are:

- key elements of pay
- duration of working time
- shift work
- rest periods
- annual leave
- paid time off for ante natal appointments
What qualifies as a ‘week’?

A week in this context is a calendar week, comprising 7 days starting with the first day of the assignment, regardless of how many hours the worker does on a weekly basis. Therefore, even if a temp works only a couple of hours a week, this will still count as one week in terms of the qualifying period.

Currently, managers negotiate a pay rate with the Agency which is not linked to the University pay scale. Will this still be acceptable after 1 October?

For assignments of less than 12 weeks, there is no requirement for the agency temporary worker to be paid at the substantive rate for the job, and a lower rate can be negotiated. However, if the assignment will meet the 12 week qualifying period, the agency worker rate of pay must align to the University pay spine and grade relevant to the job had they been recruited directly.

What about holiday pay – the University has a generous entitlement above the statutory minimum?

Agency temps are entitled to the statutory minimum 28 days (which includes public holidays) and this entitlement is increased to match the University annual leave entitlement, based on comparator grade, on completion of the 12 week qualifying period. The temporary work Agency will be responsible for managing holiday entitlement, and should agree with the hirer at the start of the assignment whether holiday can be given as leave, paid in lieu as part of the hourly rate, or paid as a lump sum at the end of the assignment.

Does the 12-week qualifying period have to be continuous?

No, most breaks during an assignment (eg holiday or sickness) and any break of less than 6 weeks between the end of one assignment and the start of a new assignment, in the same job, will just cause a ‘pause’ in the 12 week qualifying period.

The qualifying period is not retrospective; an agency worker will only start to accrue the 12 week qualifying period on or after 1 October 2011.

Can we change the job title or duties of the temp to prevent activating the qualifying period?

The Regulations specify a number of anti-avoidance provisions which, if breached, can result in fines up to £5,000 and potential challenge through an Employment Tribunal. The qualifying period may be re-set where the agency worker starts a new or substantially different role. The following factors, in combination, may be used as indicators:

- different skills and competences
- different pay rate
- work at a different location
- work for a different line manager
- work different hours
What is a ‘comparative employee’?

The Regulations aim to ensure an agency worker is provided with the same facilities and engaged on the same relevant terms and conditions as a “comparable employee”.

An employee is a ‘comparable employee’ if

- both employee and agency worker are working for and under the supervision and direction of the hiring manager
- both employee and agency worker are engaged in the same or broadly similar work (this could include qualification and skills)
- the employee works or is based at the same establishment (campus) as the agency worker, or where such an employee cannot be found at the same establishment an employee working or based at a different establishment (campus).

Enforcement – who keeps track of qualifying periods and agency worker rights?

The temporary work Agency should have systems in place to track assignments and flag to hirers when a temp is approaching the 12 week qualifying period.

The hirer is responsible for providing the temporary worker with information relating to Day 1 rights (although the Agency may ask for this information prior to placing the temp).

The temporary work Agency is responsible for gathering information relating to qualifying period entitlements and for providing this to the worker.

What is the penalty for breaking the rules?

Agency workers are entitled to information relating to their equal treatment entitlements. If they believe their entitlements under the Regulations have been infringed the following will apply:

In respect of Day 1 entitlements, information can be requested of the hirer by the temporary worker any time after the start of the assignment. They can approach the hirer direct with a written request for information and the hirer has 28 days to respond in writing.

Requests for information relating to entitlements after the 12 week qualifying period must be made by the temporary worker to the temporary work Agency and can only be made after 12 weeks has elapsed. The individual can request a written statement about any aspect of equal treatment and the temporary work Agency has 28 days to respond in writing.

In either case, if an agency worker is unsatisfied with the response they can bring a claim at an Employment Tribunal within 3 months of the actual breach.

Human Resources
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