

What is AWR?

In summary AWR is pan-European legislation adopted by the U.K. government, the aim of which is to ensure that basic equality should exist between temporary workers and their permanent-worker colleague/s with regards to pay, holidays and working conditions once they have completed a 12-week qualifying period.

When did it come into effect?

Legislation came into effect in England, Scotland and Wales from 1 October 2011.

What does this mean to me?

As well as Day 1 rights (see section below) when you have reached the 12-week qualifying period, you will qualify for equal treatment in respect of pay and basic working conditions. You can accumulate these weeks even if you only work a few hours a week.

Are the benefits retrospective?

No. After the 12 week qualifying period your pay and benefits such as annual leave will be adjusted, however these benefits will not be backdated to the start of your assignment.

Day 1 Rights

In simple terms Day 1 rights of your temporary booking can be viewed as follows:

- ❖ **Access to facilities available from Day 1 to permanent members of staff**
- ❖ **Access to information relating to internal vacancies**

In essence the above two points mean that you will be entitled to access certain facilities provided by the hirer which are offered to permanent members of staff from day 1. It is important to understand this definition as some permanent members of staff will be offered collective facilities that are only available once a certain length of service has been completed and as such are not a Day 1 right.

Facilities can include:

- Access to internal job vacancies
- a canteen or other similar facilities
- a workplace crèche
- transport services (e.g. in this context, local pick up and drop offs, transport between sites – but not company car allowances or season ticket loans)
- toilets/shower facilities
- car parking

Please remember you will not be given 'enhanced' access rights', for example, where access to a crèche involves joining a waiting list, you will also be able to join the list and will not be given an automatic right to have a crèche place. Nor are the above rights about access to off-site facilities and amenities which are not provided by the hirer from Day 1, such as subsidised access to an off-site gym as part of a benefit package to reward long term service or loyalty or to other types of benefits such as the ability to purchase discounted company goods in a staff shop or subsidised meals in a canteen.

Week 12 Rights

After you have completed a 12-week qualifying period with the same hirer, in the same role, you will be entitled to have the same basic terms and conditions of employment as if you had been employed directly by the hirer. They are:

- key elements of pay
- duration of working time e.g. if working is limited to a maximum of 48 hours a week
- the right to night work (if applicable)
- rest breaks
- annual leave

Calculating the 12-week qualifying period

The 12-week qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks without pause or stopping the qualifying clock (see The Qualifying Clock section).

Your Responsibilities

It is important to remember that you can qualify for equal treatment after the 12-week qualifying period in the same role with the same hirer, regardless of whether you have been supplied by more than one agency.

This means that even if you have just joined us, you may have already completed the qualifying period in relation to the client we are placing you, or at least have accrued a number of weeks towards completing it.

In order to ensure that you receive your correct entitlement, we ask for your up to date work history to ensure that we have the correct information.

You need to inform us of your complete work history and if we are placing you in a company you have previously worked for you must inform us before the start of your placement

The Qualifying Clock

The working patterns of agency workers can be irregular. The Regulations therefore provide for a number of circumstances in which breaks do not prevent agency workers from completing the qualifying period.

These provisions can best be explained by thinking of the qualifying period as a clock which runs from 0 to 12. Sometimes a gap between assignments – or a move to a new assignment - will mean that the clock is reset to 0 and must start again. In other circumstances a break will merely 'pause' the clock which will then continue to tick when the agency worker returns. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.

IN SUMMARY

Type of absence that affects the 12 week qualifying period	Effect on 12 week qualifying period
Agency worker begins a new assignment with a new hirer	Clock resets to zero
Agency worker remains with the same hirer but is no longer in the same role (substantively different role)	Clock resets to zero
Break between assignments of more than 6 weeks (which is not one which 'pauses' the clock or during which it continues to tick)	Clock resets to zero
Any reason where the break is less than 6 weeks	Pauses the clock
Sickness absence	Pauses the clock for up to 28 weeks
Annual leave	Pauses the clock
Shut downs – e.g. factory closure, school holidays	Pauses the clock
Jury service	Pauses the clock for up to 28 weeks
Industrial action	Pauses the clock
Pregnancy and maternity-related absence	Clock keeps ticking
Statutory maternity, paternity or adoption leave	Clock keeps ticking

What changes after 12 Weeks?

Having completed the 12 week qualifying period, you will be entitled to the same basic terms and conditions that you would have received if recruited directly. This includes terms and conditions relating to key elements of pay. Pay for these purposes means sums of money paid to the worker in connection with the worker's employment.

'Pay' includes

- basic pay based on the annual salary an agency worker would have received if recruited directly
- overtime payments, subject to hirers requirements in place
- payment for annual leave (please see below)
- bonus or commission payments directly attributable to the amount or quality of the work done by the individual. This can include commission linked to sales or production targets and payments related to quality of personal performance (see sections below on bonuses linked to personal performance and performance appraisal systems). This might also include non-contractual payments which have been paid with such regularity that they are a matter of custom and practice.
- vouchers or stamps which have monetary value and are not "salary sacrifice schemes" – e.g. luncheon vouchers, child care vouchers

'Pay' excludes

- occupational sick pay (the Regulations do not affect an agency worker's statutory entitlement to statutory sick pay)
- occupational pensions
- occupational maternity, paternity or adoption pay (the Regulations do not affect an agency worker's statutory entitlements)
- redundancy pay (statutory and contractual)
- notice pay (statutory and contractual linked to loss of employment)
- payment for time off for Trade Union duties
- guarantee payments as they apply to directly recruited staff if laid off
- advances in pay or loans e.g. for season tickets
- expenses such as accommodation and travel expenses
- payments or rewards linked to financial participation schemes such as share ownership schemes, phantom share schemes
- overtime or similar payments where the agency worker has not fulfilled qualifying conditions required of someone directly recruited.
- the majority of benefits in kind, given as an incentive or reward for long-service, for example, where Building Society staff may be given a reduced rate mortgage, employer funded training allowances any payments that require an eligibility period of employment/service
- bonuses which are not directly linked to the contribution of the individual – e.g. a flat rate bonus that is given to all direct recruits to encourage loyalty or long term service
- additional discretionary, non-contractual bonuses, as long as these payments are not made with such regularity that they have become custom and practice.

Other Benefits

Paid Holiday leave

In relation to paid holiday leave, all workers have a statutory entitlement to 5.6 weeks per year (based on their working pattern – somebody working five days a week is entitled to $5.6 \times 5 = 28$ days) which can include bank and public holidays.

As with rest breaks, if a hirer would have given a more generous contractual leave entitlement to the agency worker if recruited directly to fill the same job, the agency worker concerned should receive the same enhanced entitlement once the 12-week qualifying period has elapsed.

We believe this guide provides a good overview of the main benefits in regards to the Agency Workers Regulations, however more comprehensive information can be found at:

http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemployment/agencies/DG_198913