

A Guide for Clients



An Introduction to AWR

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, with certain other rights, which might be considered as minor, commencing on Day 1 of temporary employment..

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 next page) when a temporary worker has worked with you in the same job for 12 weeks, they will qualify for equal treatment in respect of pay and basic working conditions. These weeks can be accumulated even if they work a few hours a week.

Are the benefits retrospective?

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

Day 1 Rights

Your temporary worker will be entitled to access certain facilities provided by you which are offered to permanent members of staff from day 1 (not from week 12). 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 this is not a Day 1 right. They will also be able to have access to internal job vacancies from Day 1.

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

Facilities can include:

- 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
- staff common room
- waiting room
- mother and baby room
- prayer room
- food and drinks machines
- car parking

Please remember: Access to facilities is not:

The temporary worker will not be given 'enhanced' access rights, for example, where access to a crèche involves joining a waiting list, they 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 your company 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 your temporary worker has completed a 12 week qualifying period with you, 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 you. They are;

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

Calculating the 12 week qualifying period

The 12 week qualifying period is triggered by working in the same job with you for 12 calendar weeks. A calendar week in this context will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis. Therefore, even if the agency worker is on assignment for only a couple of hours a week, it will still count as a week and they will still be entitled to equal treatment after 12 calendar weeks calculated in this way.

For example, an agency worker begins work on a Tuesday so all work done up to and including the following Monday will count as one calendar week.

Your Responsibilities

An agency worker can qualify for equal treatment after 12 weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency.

This means that even if the temporary worker has just joined us, Uxbridge Employment Agency, they may have already completed the qualifying period with you, or at least have accrued a number of weeks towards completing it, whilst supplied through another agency.

In order to ensure that temporary workers receive their correct entitlement, we ask for you to inform us immediately if a temporary worker has been in your role previously.

**Before the start of the placement you need to inform us
if a temporary worker has worked with you previously**

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.

Reasons for the qualifying clock to reset to zero;

- Most commonly it will be because an **agency worker begins a new assignment with a new hirer**
- Where an **agency worker remains with the same hirer but is no longer in the same role.**
- If there is a **break between assignments with the same hirer of more than 6 weeks** (which is not one which 'pauses' the clock or during which it continues to 'tick')

“pause” and “continue to tick” breaks

Types of break that will cause the qualifying clock to “pause”

- A break for **any reason** where the break is **no more than six calendar weeks** and the agency worker returns to the same role with the same hirer
- A break of up to 28 weeks because the agency worker is incapable of work because of **sickness or injury**
- Any break which is for the purpose of **taking leave** to which the agency worker is entitled, **including annual leave**
- A break up to 28 calendar weeks to allow the agency worker to perform **jury service**
- A break caused by a **regular and planned shutdown** of the workplace by the hirer (for example at Christmas)
- A break caused by a **strike, lock out or other industrial action** at the hirer's establishment

Breaks where the clock continues to tick

- Breaks due to **pregnancy, childbirth or maternity** which take place during pregnancy and up to 26 weeks after childbirth.
- Any breaks due to the worker taking **maternity leave, adoption leave or paternity leave.**

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, a temporary worker will be entitled to the same basic terms and conditions that they 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.

What is included and excluded in the definition of 'pay'?

'Pay' includes

- basic pay based on the annual salary an agency worker would have received if recruited directly (usually converted into hourly or daily rate, taking into account any pay increments)
- overtime payments, subject to any requirements regarding the number of qualifying hours
- shift/unsocial hours allowances, risk payments for hazardous duties
- payment for annual leave (any entitlement above the statutory minimum of 5.6 weeks can be added to the hourly or daily rate) – to avoid confusion this should be identified separately on the agency worker's payslip
- 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 (agency workers will be covered by new automatic pension enrolment which will be phased in from October 2012 – see website for more details www.dwp.gov.uk/policy/pensions-reform)
- 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. For example, an agency worker would have to be doing work over and above standard hours to qualify for overtime, not just working a shift that permanent staff tend to work on an overtime basis
- the majority of benefits in kind (see reference to vouchers in stamps which have a monetary value and are included on previous page), 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, if not met by the agency worker (same treatment as if directly recruited) or if the agency worker is no longer on assignment when the bonus is paid (if the same applies to those directly recruited i.e. no longer working for the hirer)
- 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 – see section above on bonuses and commission payments