
Factsheet 1 - An introduction to the Agency Workers Regulations

The Agency Workers Regulations 2010

The Agency Workers Regulations 2010 came into force in England, Scotland and Wales on 1 October 2011. The Agency Workers (Northern Ireland) Regulations 2011 came into effect in Northern Ireland on 5 December 2011. In this Factsheet we use the term “the Regulations” to refer to both sets of Regulations. Save for the commencement dates, the Regulations are the same in all of England, Scotland, Wales and Northern Ireland.

The Regulations will give agency workers the right to the same basic working and employment conditions they would receive if they were engaged directly by an end user client to do the same job; this is limited to conditions that relate to pay and working time. Agency workers will also be entitled to access facilities and amenities that an end user client provides to its own workers and to be advised by a client of vacancies which arise in the client’s business.

This Factsheet is the first in a series of 7 which will look at the Regulations in detail. They have been written for REC Members that operate as employment businesses.

Factsheet summary

In this Factsheet we explain some of the important definitions which agencies will need to be familiar with in order to better understand how the Regulations apply and who they will affect.

1. Who is an agency worker?

For the purpose of the Regulations, an agency worker is:

- an individual;
- who is supplied by a temporary work agency to work temporarily under the supervision and direction of a client; and who
- has a contract of employment or any other type of contract (a contract for services for example) under which they provide their services personally for the agency.

So an agency worker is the individual typically supplied by employment businesses to a client to work under the client's direction and supervision.

The Regulations do not apply to:

- individuals who have found a “perm” job with a client, even if they were introduced by an agency;
- individuals who are genuinely in business on their own account (i.e. genuinely self-employed) will not be within scope. Workers engaged via umbrella companies or other intermediaries will be in scope unless they are genuinely self employed (for further information see Factsheet 2);
- individuals who work in-house temporary staffing banks, this is where an organisation engages its own temporary workers directly;
- individuals on secondment or loan from one organisation to another;
- individuals working for managed service contractors and are not working under the supervision and direction of the hirer.

2. Are self-employed workers and limited company contractors “agency workers”?

The Regulations do not specifically exclude limited company contractors; however individuals who are genuinely self-employed, i.e. in business of their own account (whether by way of a limited company or otherwise) and who do

not work under the supervision and direction of the hirer are not “agency workers.” (See Factsheet 5 for further details).

3. What is a temporary work agency?

The Agency Workers Directive (on which the Regulations are based) applies a different definition to the word “agency” to that which recruiters will be familiar with in the UK. For the purpose of the Regulations a temporary work agency is an undertaking which is in the business of *“supplying individuals to work temporarily for and under the supervision and direction of hirers.”* This definition more accurately describes what recruiters will recognise as an employment business as defined in the Employment Agencies Act 1973 (the EAA) or the Employment Miscellaneous Provisions (Northern Ireland) Order 1981 (the Order). An “employment agency” (as defined in the EAA or Order) which introduces work seekers to clients to be engaged directly by the client (often referred to as “perm” recruitment), is not a “temporary work agency” under the Regulations and therefore is excluded from the provisions.

3.1 “Intermediaries”

The Regulations have been drafted widely to capture other businesses which do not see themselves as, or do not meet the EAA or Order definition of an employment business. The Government is keen to ensure that the Agency Workers Directive is properly implemented and provides protection to everyone who is supposed to be in scope.

The definition of a “temporary work agency” in the Regulations therefore also includes an undertaking which is responsible for *“paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.”*

These conditions ensure that in addition to those businesses which operate as employment businesses, umbrella companies will also fall within the

definition of a temporary work agency. The definition is also wide enough to capture payroll providers which solely handle payments for agency workers.

3.2 Master and neutral vendors:

The definition of “temporary work agency” also includes master and neutral vendors which are involved in the supply of agency workers, although they do not contract directly with the agency workers.

The Regulations contain a number of provisions which are intended to ensure that workers who are supplied by agencies are still afforded equal treatment rights even when there are a number of intermediaries involved in the supply chain.

4. Who is the hirer?

Essentially this is the end user client. The hirer is a company, partnership, sole trader, or a public body which is engaged in economic activity whether or not for profit which is the party to whom the agency worker is ultimately supplied, and under whose direction and supervision the agency worker works.

The anti-avoidance provisions in the Regulations (see Factsheet 5) also refer to “*hirers connected to a hirer.*” Hirers are connected to hirers where one (directly or indirectly) has control of the other or a third party (directly or indirectly) has control of both hirers.

5. Managed services contracts – are these covered by the Regulations?

Whilst an employment business simply provides workers to work under the client’s supervision and control, a managed service contract provider will be responsible for delivering an entire service for a client such as catering, cleaning, IT or Human Resources. The managed service contractor will

supervise and direct the workers itself on a day to day basis. In this sense, a managed service contract provider does not meet the definition of a temporary work agency and will not be required to comply with the same obligations as agencies. However if the managed service contractor uses an agency to supply its workers, the workers may still meet the definition of agency workers for the purpose of the Regulations and the managed service provider may be required to comply with the hirer obligations under the Regulations.

REC Legal

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The Department of Business, Innovation and Skills (BIS) has released guidance on the AWR which can be downloaded here: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance>. The Department of Employment and Learning (DELNI) has also produced guidance on the NI Regulations which is available here: <http://www.delni.gov.uk/awrniguidance>. References to “the guidance” are to both guidance documents.

AWR Factsheets

- Factsheet 1: An introduction to the Agency Workers Regulations.
- Factsheet 2: The application of the Regulations to limited company contractors.
- Factsheet 3: How does an agency worker qualify for equal treatment?
- Factsheet 4: What is equal treatment?
- Factsheet 5: Liability for breach of the Agency Workers Regulations?
- Factsheet 6: Maternity rights under the Agency Workers Regulations.
- Factsheet 7: The “Swedish Derogation” - Employed agency workers – when does equal treatment not apply?

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