

The Agency Workers Regulations 2010

Frequently asked questions for client colleges

What are the Agency Workers Regulations?

The Agency Workers Regulations 2010 (AWR) are derived from European legislation and are designed to give temporary agency workers parity in the basic pay and employment conditions they would be entitled to had they been recruited directly by the hirer to do the same job.

The regulations will be implemented in the UK on 1st October 2011. From this date, Visiting Lecturers will be entitled to access vacancy information and collective facilities as if he or she had been hired directly to do the same job.

What rights will agency workers have effective 1st October 2011?

From Day 1 agency workers will be entitled to access to vacancy information and collective facilities such as staff canteens, childcare facilities and transport services.

After a qualifying period of 12 weeks agency workers will have the right to the same basic employment and working conditions, such as pay and holidays. They should be given the same basic rights as if they had been recruited directly to the job by the hirer.

The Regulations exclude sick pay, maternity/paternity pay, redundancy, notice pay, payments related to pension entitlement, and bonuses not based on individual performance.

What are the college's obligations in supplying comparator data to the agency?

The requirement to provide 'equal treatment' after week 12 means that the hirer should treat the agency worker as if he or she had been recruited directly to do the same job. Equal treatment is not required for all terms and conditions that person would have received if recruited directly – it covers basic pay and employment conditions.

The guidance states that it is not necessary to look for a comparator as it is quite possible to identify the appropriate 'basic working and employment conditions' without one. However where a comparator has been identified then the hirer will be deemed to have complied with the Regulations. A comparator needs to be engaged in broadly similar work, but 'account can be taken of their skills and qualifications as this may justify a higher level of pay for the comparator'. A comparator must work at a hirer's workplace and be currently employed.

What is included in the Day 1 Rights?

Access to Vacancy Information.

Information can be provided via the hirer's systems or via the agency.

Access to vacancies will not apply in the context of a genuine 'headcount Freeze' where posts are ring fenced for redeployment purposes or Redeployment to prevent a redundancy situation.

Access to Facilities

This will be on the same basis as directly hired staff. Agency workers will be entitled to use collective facilities, such as canteens and childcare facilities. Agency workers will not get special accelerated access to staff facilities; they will be subject to the same qualifying criteria such as waiting lists. Also excluded is access to off-site facilities and amenities which are not provided by the hirer, such as subsidised access to an off-site gym or subsidised meals in a canteen.

Examples of Day 1 Rights (this list is not exhaustive)

- Canteen
- Transport / Parking - Excludes company car allowance or season ticket loans
- Staff common room / showers/ prayer room
- Childcare / Workplace Crèche - Excluded if provided by salary sacrifice
- Gym Membership - only if on site and not provided by a 3rd party

How should colleges communicate Day 1 Rights?

Day 1 Rights are the responsibility of the hirer and the guidance leaves it up to hirers to decide how they would want to communicate the information to their agency workers.

Protocol National will display full details of Day 1 entitlements as agreed with each college on each VL Assignment Confirmation Advice notice.

What terms are agency workers entitled to after the 12 week qualifying period?

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

- Key elements of pay
- Annual leave
- Rest periods
- Night work
- Paid time off for ante-natal appointments

How will an individual agency worker know what they are entitled to after the qualifying 12 week period?

Full details will be displayed on their Assignment Confirmation Advice detailing Day 1 and Week 13 fee rates.

Will this have any implications for our current booking process with Protocol National?

No. You will continue to book via the On-Line system. Total costs for the assignment will be quoted at the time of booking subject to final confirmation of suitable candidate selected by Protocol National. Once final verification of AWR criteria against selected candidates is completed final costs will be displayed.

When will the AWR details be displayed on contracts which have been booked prior to 1st October?

From the 1st October Protocol National will notify you if any amendment is required to existing bookings. In the week prior to the 1st October we will be communicating with the Visiting Lecturers to inform them that they will be receiving new Assignment Confirmation Advice from the 1st of October detailing any changes as regards to the AWR.

Where college employees are entitled to annual leave in excess of the statutory minimum, how will this be applied to the agency worker following week 12?

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.

If an agency worker works 12 weeks with the same hirer, after the 12 weeks their holiday pay should be calculated on the same basis as a permanent employee doing the same job engaged directly by the hirer - calculated on a pro-rated basis. The liability to pay holiday pay will be recovered by the agency as part of their fees from the hirer.

What penalties are included in the AWR?

Agency workers are entitled to information relating to equal treatment should they believe their entitlements under the Regulations have not been met. Agency workers are encouraged to speak to their agency in the first instance to resolve any issues. The regulations lay down a timeframe within which information requests should be responded to.

Complaints which have not been resolved informally will be handled by employment tribunals. The agency worker would be compensated for any loss of earnings related to their entitlements under the Regulations. There is no maximum award but there is a minimum award of two weeks of pay regardless of the value of the loss.

Where the tribunal finds that a pattern of bookings are designed to deprive a worker of their rights they may award a penalty of up to £5,000 against the hirer or the agency (or split between them).

Why are individuals contracted by Protocol Assessors 'out of scope'?

People contracted by Protocol Assessors are providing Examining and Assessments Services to the college. As such Protocol Assessors are contracted to the college to provide an Examination or Assessment Service, not an individual to deliver teaching.