

Agency Workers Regulations

The Agency Workers Regulations 2010 came into force on 1 October 2011 giving agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly subject to the completion of 12 week qualifying period in the same job.

The 12 weeks was not accrued retrospective therefore any agency workers already on assignment when the regulations come into force, would only start their 12 week qualifying period accrual on 1 October 2011.

The regulations will operate along parallel lines to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Equal Rights

Equality of treatment will be required in respect of pay (including contractual overtime, shift allowances, commission and bonuses based on personal performance), and entitlement to working hours, rest breaks and holidays. Occupational sick pay, redundancy rights, maternity/paternity rights and access to profit-sharing schemes and pension schemes will not be covered.

From day 1 the Regulations give agency workers the same access to certain facilities provided by the hirer and information on job vacancies. Access to facilities could include, for example, shared canteen facilities, toilets/shower facilities, common rooms and transport services (e.g. transport between sites). After an agency worker completes a 12 week qualifying period 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. They are:

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

Pay includes basic pay, overtime payments, shift/unsocial hours allowances and annual leave. The definition of pay excludes aspects such as occupational sick pay, occupational pensions, redundancy, notice pay and payment for time off for Trade Union duties. The Regulations implement the Temporary Agency Workers Directive. The Regulations can be viewed on the OPSI website.

An agency worker who wishes to bring a complaint to tribunal will have to show that he or she would have been treated more favourably if he or she had been recruited directly by the client organisation, for example by identifying a “comparator” within the organisation who is doing the same or broadly similar work and is being paid more.

The regulations contain anti-avoidance measures that will prevent employers refusing agency workers the rights to which they are entitled by engaging them on a series of assignments, each lasting less than 12 weeks.

The primary liability for compliance will lie with employment agencies. However, an agency will have a defence against a claim where it can show it took “reasonable steps” to obtain the information required from its client to ensure equal treatment for the agency worker. Employers should be prepared for enquiries from agencies regarding the pay and contractual benefits they grant their staff. Agency workers will have the right to ask their agency for information relating to their equal treatment rights, and subsequently the hirer if they do not receive a response from the agency. Both hirer and agency will have 28 days in which to respond.

Agency Workers Regulations 2010 – supplementary guidance relating to agency supply teachers

This guidance addresses issues relating to agency supply teachers and the application of the Agency Workers Regulations 2010 which came into force on 1 October 2011. It addresses a limited number of issues which relate only to temporary agency workers who are supply teachers. It is therefore very important that you read this additional guidance in conjunction with the main guidance on the BIS website to understand all the implications of the Regulations. The guidance is at:

<http://www.bis.gov.uk/policies/employment-matters/strategies/awd>

Who is the hirer for agency supply teachers?

According to the Agency Workers Regulations, the “hirer” is a “person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person”.

A “hirer” will have its own legal identity and is responsible for supervising and directing the agency worker while they undertake the assignment. The question of who is the hirer is a matter of fact to be determined in the light of the circumstances of each case.

(a) Maintained schools

In foundation schools, voluntary aided schools and foundation special schools, the “hirer” is the school’s governing body, being the legal entity to whom the worker is supplied and who is responsible for the supervision and direction of that worker.

In community schools, voluntary controlled schools, community special schools and maintained nursery schools, the “hirer” is either the local authority or the school’s governing body. It is a matter of fact to be determined in each

case and depends on to whom the worker is supplied and who supervises and directs that person's work.

An agency supply teacher can move between schools where the same local authority is the hirer without stopping the clock on the qualifying period unless it is a substantively different role. If an agency supply teacher moves to a school where a different local authority or a different governing body is the hirer, the qualifying clock resets to zero.

What is the role of a hirer?

If you hire temporary agency workers through a temporary work agency, you should provide your agency with up to date information on your terms and conditions so that they can ensure an agency worker receives correct and equal treatment as if they had been recruited directly, after 12 weeks in the same job. Hirers are also responsible for ensuring all agency workers can access their facilities and can view job vacancies from the first day of their assignment.

Are there any exemptions for agency supply teachers from the AWR requirements?

The Agency Workers Regulations allow an exemption from equal treatment, as regards pay, where an agency can offer an agency worker a permanent contract of employment. In order for this exemption to apply the contract must provide that the agency continues to pay the worker between assignments when there is no work. This means however that the worker will not, after 12 weeks in the same job, be entitled to the same pay conditions (such as holiday pay) that would ordinarily be included if recruited directly by the hirer. There are various conditions to satisfy for this exemption to apply - the agency worker must agree to sign one of these contracts and these contracts must set out that the agency worker does not have any entitlement to the comparable pay if recruited directly by the hirer. However, an agency worker that signs one of these contracts does still get the day 1 rights of access to facilities and vacancies. After 12 weeks they will also be entitled to equal treatment in relation to the duration of working time, night work, rest periods and rest breaks and annual leave (the right to time off).

Are teachers employed by an umbrella organisation exempt from the AWR requirements?

Where agency teachers are employed by an umbrella company, they are still within scope of the AWR requirements unless they have signed a permanent contract of employment with the agency as detailed in the previous paragraph.

Are teachers exempt from the AWR as a profession?

The definition of agency worker excludes individuals if there is a contract under which the hirer is a client or customer of a profession or business

undertaking carried on by the individual (regulation 3(2)). People in this category are outside the scope of the AWR. The Department's view is that the relationship between hirers and agency teachers is not a "business to business" relationship but that agency teachers are under the supervision and direction of the hiring school. Therefore the AWR apply to agency teachers. However, the Department can only advise on the interpretation of the regulations and it is for the Courts to make an authoritative decision on whether an agency teacher is excluded from the definition of an agency worker.

How is holiday pay accrued?

After the qualifying period, agency supply teachers will be entitled to the same terms and conditions, including working time and annual leave, as direct recruits. It should not be necessary to pay agency supply teachers for additional leave to which direct recruits are not entitled. For permanent teachers in schools maintained by an authority in England and Wales there is no specific provision in the School Teachers' Pay and Conditions Document for holidays or annual leave. Agency supply teachers should receive payment for statutory annual leave when they take the leave in accordance with the Working Time Regulations 1998.

What if a qualified teacher is hired to do a cover supervisor or teaching assistant role?

The relevant rate of pay is determined by the nature of the job, not the qualifications of the teacher.

For example, if a school asks a temporary work agency to provide a Cover Supervisor or a Teaching Assistant, and the person engaged to do the work is a qualified teacher they would be expected to carry out the role of a cover supervisor or a teaching assistant and be paid as cover supervisor or teaching assistant. The role of a cover supervisor is to supervise a class in carrying out a pre-prepared exercise but it does not involve teaching a class. If, however, the person is asked to do specified work as part of this role then after the qualifying period, they must be paid as outlined below.

What if a qualified teacher is hired to do a teaching role in a maintained school?

If the school asks a temporary work agency to provide a teacher to carry out specified work in a school and the person engaged to do the work is a qualified teacher they should be paid as a qualified teacher. If the person engaged to do the specified work is an unqualified teacher they should be paid as an unqualified teacher. "Specified work" means planning, preparing and delivering lessons and courses to pupils and assessing and reporting on the development, progress and attainment of pupils¹. The pay scales for teachers in schools maintained by a local authority are set out in the 2011

¹ Education (Specified Work and Registration) (England) Regulations 2003

School Teachers' Pay and Conditions Document: <https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00072-2011> (this does not cover teaching assistants or other people who are employed to carry out specified work under paragraph 10 of Schedule 2 to the Education (Specified Work and Registration) England Regulations 2003).

What is the impact of school closures?

The Agency Workers Regulations recognise that in some instances a workplace might close due to the temporary cessation in the hirer's requirements for any worker to be at the establishment.

This could be applied to a school closure (for example, summer holidays). If an agency supply teacher is working before and after such a closure and is, for example, 6 weeks into a qualifying period for equal treatment, the qualifying period would pause at the end of one term and start again at the beginning of the next so long as the agency worker returns to the same job with the same hirer.

Where can I obtain written proof of the pay scale point I was on when I last taught in a maintained school?

The Department does not employ teachers in England and Wales and therefore does not hold this information and is **unable** to provide written confirmation of pay scales. Please check your old pay slips from your last period of employment in a maintained school, these will provide the salary you received and possibly the pay scale point. Teachers' Pay scales have changed over the years and paragraph 26 in Section 2 of the 2011 [School Teachers' Pay and Conditions Document](#) will show you how to convert a previous pay point onto the current scale. If you did not keep your payslips you could try your last employer who might be able to help. Alternatively if you are a member of the Teachers' Pension Scheme you could contact Capita Teachers' Pensions to see if they can provide your last salary details, their address is Teachers' Pensions, Mowden Hall, Staindrop Road, Darlington, DL3 9EE or telephone 0845 6066166. The link to the Teachers' Pensions website is: www.teacherspensions.co.uk.

Policy agreed by Governors from 1.9. 19

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signed by the headteacher :

signed by the chair of governors:

