



## Guidance on the Agency Workers Regulations 2010

### Contents

1. Introduction .....	1
2. Definition .....	1
3. Rights under the regulations .....	1
4. Twelve week qualifying period.....	2
5. Anti-avoidance provisions .....	3
6. Concerns of agency workers .....	3
7. Management responsibilities .....	3
8. Management information reports.....	5
9. Further information.....	6

---

### 1. Introduction

- 1.1. From 1 October 2011 the Agency Workers Regulations 2010 came into force. The aim of these regulations is to protect agency workers by giving them the right to the same basic working conditions as if they had been employed directly by the hirer.
- 1.2. This guidance sets out a summary of the main obligations under the Regulations, and the responsibilities of Managers to ensure that the University is legally compliant.

### 2. Definition

- 2.1. The regulations cover agency workers, often referred to as a 'temp', supplied by a temporary worker agency to a hirer.
- 2.2. The genuinely self-employed and employment agencies who introduce workers to employers for permanent employment e.g. head hunters or recruitment agents are excluded from these regulations.
- 2.3. The Agency Workers Regulations will apply to all new placements from 1 October 2011. For agency workers who are already on placements on 1 October 2011, the 12 week qualifying period will commence from this date.

### 3. Rights under the regulations

- 3.1. Entitlements from day 1
  - 3.1.1. From day one of an assignment, agency workers are entitled to be treated no less favourably than a comparable worker or employee in relation to access to collective facilities and amenities provided by the University, as well as information on job

vacancies. The responsibility for ensuring equal treatment from day one lies with the hirer. Examples of the collective facilities may include:

- Canteen or other similar facilities
- Workplace crèche
- Transport services/car parking
- Access to computers
- Toilet/shower facilities
- Staff common room
- Mother and baby room
- Job vacancies (excluding those posts that are ring fenced for redeployment and those which are part of a restructure)

3.1.2. These rights do not mean the agency workers will be given an automatic right to these facilities. Where there are waiting lists for such facilities, the agency worker has the right to be placed on the waiting list, if they so wish.

3.2. Entitlements after 12 weeks

3.2.1. The Regulations provide agency workers who complete a 12 week qualifying period with the same basic terms and conditions of employment as if they had been employed directly by the hirer. These rights include:

- Basic pay, overtime/unsocial hour payments
- Annual increments (where these are qualified by service)
- Duration of working time
- Night work
- Rest periods
- Annual leave
- Paid time off for ante natal appointments and other adjustments for pregnancy

3.2.2. Entitlements do not include:

- Occupational sick pay
- Occupational pension
- Contractual notice periods
- Contractual/statutory redundancy payments
- Benefits of kind, such as car allowances or health insurance

3.3. The responsibility for ensuring agency workers receive equal treatment to the same terms and conditions on completion of the 12 week qualifying period lies with the Agency.

#### **4. Twelve week qualifying period**

4.1. The right to equal treatment will only be triggered when the agency worker has completed 12 continuous calendar weeks of service in the same role. A calendar week starts on the first day of the assignment.

4.2. Most breaks between assignments or during assignments to the same job that are less than six weeks will pause the accrual of the 12 week qualifying period. Most breaks between or during assignments to the same job that are six weeks or more will reset the 12 week qualifying period. The table below shows what events can stop, pause or reset the qualifying clock.

<b>Event</b>	<b>Effect on 12 week qualifying period</b>
Agency worker begins a new assignment with a new client	Clock sets to zero from first day of work or from 1 October 2011 if already working in the University before this date
Agency worker remains with same client but in a substantively different role <sup>1</sup>	Clock resets to zero
Agency worker has a break of more than 6 weeks between similar assignment with the same client	Clock resets to zero
Agency worker has a break of less than 6 weeks between similar assignments with the same client	Clock pauses
Absence for sickness and jury service	Clock pauses for up to 28 weeks
Annual leave, shut downs & industrial action	Clock pauses for the duration of the absence
Pregnancy, maternity, adoption and paternity leave	Clock keeps ticking

## **5. Anti-avoidance provisions**

A hirer can decide not to engage agency workers beyond the 12 week qualifying period and there is nothing in the Regulations to prevent this. However, anti-avoidance provisions will be in place to address any situations where a pattern of assignments emerge that are designed to deliberately deprive an agency worker of their entitlements. If this is found to be the case, financial penalties will apply.

## **6. Concerns of agency workers**

Should the agency worker attain the 12 week qualifying period and have concerns or queries in relation to their terms and conditions, they have the right to raise these informally with the Agency. Should the agency worker remain unsatisfied with the outcome of their query, they have the right to raise their concerns formally in writing to the Agency, who should respond within 28 days of receipt. If the Agency fails to respond to the request within 30 days, or the agency worker is unsatisfied with the response, the agency worker is entitled to raise their concerns with the Hirer who should respond within 28 days.

## **7. Management responsibilities**

7.1. Before hiring an agency worker, managers must obtain approval through the Faculty/Service pre-authorisation process.

---

<sup>1</sup> A combination of the following characteristics can help to establish if the work or duties are substantively different:

- Are different skills and competences used?
- Is the pay rate different?
- Is the work in a different location?
- Is the line manager different?
- Are the working hours different?
- The role requires extra training – and/or a specific qualification that wasn't required before?
- Is different equipment involved?

- 7.2. Managers within the University should give careful consideration whether the use of an agency worker is necessary, particularly where the engagement is likely to last for 12 weeks or more. Alternatives could include the redistribution of activities amongst other employees, offering overtime or making a short-term appointment via the redeployment register. If this is not appropriate, consideration should be given as to whether the appointment should be made directly through the University, for example through the use of a short term fixed-term contract or the engagement of a Worker; depending on the employment relationship. Managers are advised to contact the Faculty/Service HR Manager/Officer to discuss the appropriate option before hiring an agency worker.
- 7.3. When hiring an agency worker, the Agency should be provided with the following information:
- the comparable grade that would be applicable after the 12 week qualifying period;
  - the appropriate level of pay/pay scale
  - a copy of the job description
  - the holiday entitlement of a comparator that would be applicable after the 12 weeks qualifying period e.g. employee/worker.

Faculty/Service HR Managers can advise on all of these parts.

- 7.4. Agencies should check and confirm whether the agency worker has worked on another assignment at the University within the previous 6 weeks and whether that time will count towards the 12 week qualifying period.
- 7.5. All University contracted agencies for the supply of temporary clerical and financial staff have been provided with details of the University's on site facilities, pay scales, annual leave entitlements, generic role descriptions and associated grades (up to approximately UoL Grade 6). Therefore, no further information for these roles provided by these agencies should be required:
- 7.6. The generic role descriptions and associated grades that have been provided are:
- Filing Clerk/Data Entry Clerk
  - Clerical Assistant
  - Clerical Assistant/Projects Clerk
  - Secretary
  - Accounts Payable Clerk
  - Finance Officer

Advice about the generic role descriptions and associated grades can be obtained from the Faculty/Service HR Manager.

- 7.7. The University's preferred suppliers are:
- Hays
  - Reed
  - Search
- 7.8. Although Joblink is not one of the University's preferred suppliers, they have been provided with the same information as the preferred suppliers. They have also been asked to provide the required management information.

7.9. Hiring managers will be responsible for providing information to any other Agency used.

7.10. On day one

The responsibility for ensuring the agency worker has access to the University's facilities from day one lies with the manager. Managers must check that the agency worker has been provided with this information by the Agency. If this is not the case, a copy of the attached information sheet should be provided on the first day of engagement. A copy can also be found here.

7.11. After 12 weeks

7.11.1. The responsibility for ensuring equal treatment after 12 weeks is that of the Agency.

7.11.2. The University's three contracted suppliers have been provided with details of the University's pay scales and generic grade matching guides for typical roles listed above. Therefore, agency workers supplied through these Agencies should already be receiving the appropriate rate of pay.

7.11.3. For assignments with other suppliers, it will be the managers responsibility to provide the Agency with the relevant information.

7.11.4. An agency worker who has a comparable role with an employee at the University (rather than a Worker) will receive an increase in their annual leave allowance in line with the entitlement of University employees. It is the Agencies responsibilities to ensure that the agency worker receives the increase in annual leave upon completing the 12 week qualifying period.

7.12. Assignments in place on 1 October 2011

7.12.1. Entitlement to the increased benefits is not retrospective. For agency workers who are already on assignments on 1 October 2011, the 12 week qualifying period will commence from this date.

7.12.2. To ensure that the University meets its obligation under these Regulations, where an agency worker is not from one of the contracted suppliers (Hays, Reed & Search), and Joblink managers are asked to:

- identify those agency workers already working in their Faculty/School/Service;
- check who is likely to reach the 12 week qualifying period;
- identify the employment relationship had the University made the appointment direct;
- provide the Agency with details of the relevant pay scale, job description and annual leave entitlement.

7.12.3. Once this information has been supplied to the agency, it will be their responsibility for ensuring that the agency worker receives the comparable terms and conditions.

## **8. Management information reports**

In order for the University to monitor the use of agency workers and to ensure that agency workers are not deprived of their entitlements the three contracted suppliers (Hays, Reed &

Search) and Joblink will provide information about agency workers on a monthly basis to central Human Resources, confirming:

- the names of the agency workers;
- the School/Service where they are working;
- how many weeks they have been working at the University;
- the type of work they are contracted to undertake.

## **9. Further information**

- 9.1. Further information about the Agency Worker Regulations can be obtained in the first instance from the Faculty/Service Human Resources Manager/Officer.
- 9.2. If you require this document in an alternative format (for example Braille, large print or e-text) please contact Human Resources at [hr@leeds.ac.uk](mailto:hr@leeds.ac.uk).