

The AWR is coming....

From 1st October 2011, the Agency Workers Regulations will come in to effect – here’s what you need to know!

The EU Temporary and Agency Workers Regulations seek to ensure that temporary and agency workers receive equal pay and conditions as permanent staff doing the same work. This new legislation applies when the worker has completed 12 weeks of continuous employment in the same job. After this initial qualifying period, they remain qualified for equal treatment until there is a break in continuity.

What terms and conditions are included?

Pay/benefit	Applicable under the AWR?
Basic Salary	Yes – after 12 weeks
Holiday entitlement	Yes – after 12 weeks
Overtime rates / payments	Yes – after 12 weeks
Restrictions on night work	Yes – after 12 weeks
Rest period and breaks	Yes – after 12 weeks
Personal performance bonus (commission or linked to personal output)	Yes – after 12 weeks
Access to facilities (childcare, transport, car parks etc)	Yes – from day one
Access to internal vacancies in line with the companies policy	Yes – from day one
Bonus based upon organisational performance	No
Company sick pay (in excess of statutory entitlement)	No
Notice periods	No
Redundancy pay	No
Company maternity / paternity / adoption pay (in excess of statutory entitlement)	No
Occupational pension schemes / contributions	No
Long service award schemes	No

How does the qualifying period work?

To be eligible for equal treatment, the Agency Worker must have worked within the same role with a hirer for 12 continuous weeks – this includes part time and “ad hoc” work. It is important to note that the qualifying period is continued regardless of whether the Agency Worker is supplied by different agencies. If the Agency worker commences 2 roles that are substantively different, they will have 2 qualifying periods.

What can affect the qualifying period?

Situations that can affect the qualifying period	How does it affect the qualifying period?
A break less than 6 weeks	Pauses
A break that is 6 weeks or more	Resets
Sickness absence	Pauses – for up to 28 weeks
Annual leave	Pauses
Workplace shut downs (e.g school holidays, Christmas)	Pauses
Jury Service	Pauses – for up to 28 weeks
Industrial action	Pauses
The Agency Worker starts a new substantially different role / assignment	Resets
Pregnancy / Maternity related absence	Continues
Maternity, paternity or adoption leave (providing the Agency worker is entitled to this leave as an employee of the agency)	Continues

What counts as a substantially different role?

If the agency worker transfers to or commences a different role, this can reset the qualifying period – providing the role is substantially different. Factors that need to be considered when identifying whether a role is substantively different include:

Does the role include substantially different skills and competences?

Is the pay rate substantially different?

Does the role require training, or a qualification that wasn't required previously?

Is substantially different equipment involved?

How can OSR help you?

We have spent time to ensure that when the AWR kicks in, the transition will be as smooth as possible – it's doesn't have to be as complicated as it seems! We want to work with you to make sure that everyone has the necessary information – speak to your consultant today to find out more about how we can tailor a process to meet your needs.