

A recruitment Agency's Guide to AWR
An Commercial **Drivers** Personnel Solutions Guide



Introduction

On 1st October 2011 Agency Worker Regulations (AWR) comes into force. Designed by the EU to stop vulnerable workers being exploited, this piece of legislation is a game-changer for the temporary worker sector - agencies, hirers and workers.

Despite much coverage in recruitment media channels, many recruiters that will be affected remain unprepared or uncertain about the impact of the legislation. In this paper we explore some real-world scenarios, identify FAQs and briefly explain some obligations for Agencies and Hirers.

AWR, recruitment and agencies

Essentially AWR contains two key elements.

- **Day 1 rights** mean that temporary agency workers must be given access to the same facilities as permanent workers such as parking, catering and crèche, and must have access to job vacancy information from day 1 of assignment.
- **Equal treatment after 12 weeks** means that temporary agency workers are entitled to equality with permanent staff in areas such as pay, conditions, breaks and annual leave. Pregnant temps become entitled to paid time off for ante-natal appointments.

AWR Guidance published by BIS (Dept for Business Innovation and Skills) contains some 'grey' areas that will be ironed out as working practices test compliance in the real world; it is probable that some will be tested in court.

However there is much that is clear-cut. The following scenarios identify some areas where the obligations of Agencies and Hirers are explicit.

Scenarios, FAQs and Explanations

Scenario

The introduction of AWR falls during ongoing temporary worker assignments.

FAQ

How are temp assignments that start before 1st October 2011 counted under AWR?

Explanation: Any weeks worked on temp assignments already commenced as of 1st October 2011 do not count when calculating entitlement for AWR.

Scenario In some sectors workers only do short stints of work.

They might work for a number of different Hirers in any 3 month period.

FAQ

How is the 12 week qualifying period counted?

Explanation: Generally speaking a break of up to 6 weeks means the 12 week count may be 'paused', that is the count stopped and restarted when the worker returns to work for the Hirer. For breaks of greater than 6 weeks the 12 week qualifying period has to be recounted from zero. In some circumstances the count may continue even though the worker is absent.

Scenario Workers often don't have full time working patterns, working part-time or for only a few hours per week.

FAQ

How many hours are used to calculate a working week?

Explanation: There is no minimum number of hours. If a worker has worked 1 hour in a seven day period it counts as one working week.

Scenario Some Agencies recruit workers for Hirers that provide contract services like cleaning and catering to customers.

FAQ

What is the AWR treatment of workers assigned to a customer site as part of a Managed Service Contract?

Explanation: Generally, if workers deployed as part of a Managed Service Contract are permanently employed by the Service Provider, they do not fall within the scope of AWR. The key here is that the workers are permanently employed by the Hirer.

Scenario

Some Agencies recruit workers for Hirers that provide services internally like in-house cleaning and catering.

FAQ

What is the AWR treatment of workers assigned to a Hirer that manages its own services internally?

Explanation: Generally, if workers are supplied to be supervised and directed by the Hirer within its own cleaning or catering teams, they fall within the scope of AWR.

Scenario

Contract, supply and payment of temporary workers is often complex because a web of companies is involved.

FAQ

What is the AWR treatment of workers that are supplied by intermediaries such as umbrella companies or recruited (rather than employed) by neutral and master vendors?

Explanation: Workers recruited through neutral or master vendors and contracted and paid by umbrella companies generally fall within the scope of AWR. Even though workers may have employment contracts with the umbrella company, with full employment rights and pay treated as employment income, they still qualify for AWR entitlement.

Scenario

Agencies sometimes place professionally skilled workers as temps and a direct relationship develops between the worker and Hirer.

FAQ

Do AWR rules apply when placing skilled professionals with Hirers?

Explanation: After finding work through an Agency, if a worker develops a B2B relationship that treats the Hirer as a client for the supply of professional skills or services directly from the worker as a freelance or a contractor, it is regarded as out of the scope of AWR. The key here is that the relationship between the worker and Hirer is direct.

Scenario

Agencies believe Hirers are responsible for providing day 1 entitlements, but Hirers believe it is an Agencies responsibility.

FAQ

Is the Agency or Hirer responsible for providing Day 1 entitlements?

Explanation: The Hirer is responsible. The Agency generally has no control of providing access to facilities to workers on assignment.

Scenario

Workers have not been informed of day 1 entitlements.

FAQ

Who is responsible for providing Day 1 entitlement information to workers?

Explanation: Hirers are obliged to tell workers or Agencies. Hirers can provide company handbooks or induction packs directly to workers. Agencies can use information from Hirers when briefing workers on assignments.

Scenario

Workers are not aware of all the vacancies that a Hirer may have.

FAQ

Do Hirers have to tell workers about every vacancy?

Explanation: Hirers are only obliged to tell workers about comparable jobs at the same site or premises.

Scenario

Temps are not given access to all the facilities of permanent employees.

FAQ

Are all temps eligible for access to all the Hirers staff facilities from day 1?

Explanation: Hirers are only obliged to provide temps with access to the same facilities as comparable permanent workers. So if parking is only available to company Directors, then temps are ineligible for parking facilities - unless working as a company Director.

Scenario

Agencies and Hirers stop observing statutory requirements for National Minimum Wage and Working Time Regulations.

FAQ

Does AWR replace National Minimum Wage and Working Time Regulations for temporary workers?

Explanation: Agencies and Hirers must fulfill all existing statutory Agency worker obligations as well as AWR.

Summary

The scenarios provided in this paper provide some quick explanations for more common questions; however there are likely to be many 'in the wild' examples where the answers are less than straightforward. Expect enforcement of the legislation to be robust. BIS Guidance places an emphasis on anti-avoidance. The desire to combat those that seek to exploit loopholes is strong, and 'grey areas' enable unusual circumstances to be tested by Employment Tribunals or the courts.

Whether you have a simple supply chain with transparent Agency and Hirer relationships, or more complex temporary worker supply interdependencies, ensure that a dialogue is established from end to end. This will help to ensure that Agencies and Hirers are fully compliant.

Disclaimer: E&OE.

Advisory notice:

If you are uncertain of the implications of any part of the legislation on your business *Commercial Drivers Personnel* Ltd strongly advises that Agencies and Hirers seek professional employment law advice. *Commercial Drivers Personnel* strongly recommends that this paper is read in conjunction with AWR Guidance.