

# Beware of 12 Week Temps!

August 2011



## Introduction

The new Agency Workers Regulations (AWR) come into force on 1 October 2011. Employers who traditionally use temporary workers will have to take care to ensure they are not exposed as these workers get new rights to the same basic pay and employment conditions as employees hired to do the job directly.

## Who does it cover?

It covers those working temporarily for an agency; under the direction of a hirer; or on a contract to perform work personally for the agency. This includes 'umbrella companies' providing the PAYE service for those working as freelancers, contractors or temps.

## What's changing?

From Day 1, the worker is entitled to access information on vacancies and to certain facilities (i.e. canteen, childcare, transport services and car parking) as a comparable worker.

After 12 weeks (the qualifying period) in a role with the same organisation, the worker is entitled to the same basic pay and working conditions including:

- Duration of working time
- Annual leave or payments for leave
- Rest periods and breaks
- Length of night work
- Basic pay, overtime and allowances
- Bonuses or commission linked to the amount or quality of work
- Discretionary bonuses that over time have become custom and practice.

## Contact HR Insight

Offices in Romford, London (City & West End), St Albans, Hayes and Redhill.

## Cost of getting it wrong?

Express anti-avoidance measures have been put in place to address concerns that businesses might rotate agency workers to avoid the provisions. Tribunals will be able to make awards of up to £5000 if a hirer is found to be in breach of the provisions.

## Adding up the weeks

Watch this carefully. Continuity is only broken when the worker starts with a new hirer, or they take on a substantially different role in your organisation or there is a break of more than 6 weeks.

Continuity is not broken, but the weeks don't count, when there is a break for leave, sickness, shutdown or a strike.

Continuity continues to accrue for the likely duration of the assignment when a break is due to maternity, adoption or paternity leave.

Using different agencies to appoint the same worker does not affect continuity. If there is a gap of less than 6 weeks between the worker leaving and becoming re-engaged, the working weeks need to be added together.

## What should hirers do?

Although there are no firm requirements, it makes sense for those using workers covered by the Regulations to identify a "comparable employee" to enable a direct comparison of the basic terms. It makes sense to do this now for all workers who are currently working in your business and who are expected to continue past 1 October 2011.

General Enquiries  
[enquiries@hrinsight.co.uk](mailto:enquiries@hrinsight.co.uk)

Legal Support with HRi Legal  
[legal@hrinsight.co.uk](mailto:legal@hrinsight.co.uk)

## ANNOUNCEMENTS

### Open Seminars

HR Insight will be holding a number of free seminars about the new Agency Worker Regulations during September, October and November 2011.

If you have received this Factsheet, an invitation to attend a seminar will be forwarded to you shortly. If you have received this indirectly and want to attend a seminar, please let Alex Webb know on [awebb@hrinsight.co.uk](mailto:awebb@hrinsight.co.uk).

## STOP PRESS

### Holiday Requests

Who gets first refusal to time off during the school holidays?

Prioritising employees with school age children could lead to claims of direct and indirect sex discrimination. Always consider holiday requests on a case-by-case, first-come first-served basis. Providing clarity around your procedure for booking holidays and the grounds for approving or refusing holiday requests will minimise the risk of claims.

## Can We Help?

If you have any questions about the content of this Factsheet or any specific concerns about any individual employee or the processes to follow in dealing with a specific situation, please contact us on **01708 758 958** or visit us at [www.hrinsight.co.uk](http://www.hrinsight.co.uk).

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