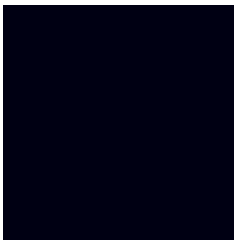




Orgtel in association with DLA Piper presents:
Everything you need to know about the
Agency Workers Regulations



A guide for contractors

Our guides

This guide is part of Orgtel's dedication to supporting our customers and delivering market-leading recruitment solutions. As one of the world's leading recruitment consultancies we pride ourselves on being a key recruitment partner for professionals and organisations across a range of sectors.

Our series of guides offer best practice advice and an insight into the latest recruitment news, whether you are looking to secure your next job or make your next hire.

About Orgtel

Orgtel is a specialist provider of recruitment solutions to the Investment Banking, Financial Markets, Finance and IT sectors. Working with some of the world's leading organisations and with offices across the UK and Europe, Orgtel excels at delivering exceptional recruitment solutions regardless of the size and scope of your project.

As specialists within their field our consultants pride themselves on providing high levels of service; delivering effective recruitment solutions and nurturing successful and rewarding careers. It's this dedication that has helped us gain our prestigious reputation and which has allowed us to become a key partner to companies and professionals within the banking sector.

To find out how we can help you manage your next recruitment challenge visit: www.orgtel.com

Introduction

The Frequently Asked Questions (FAQs) below relate to the Agency Workers Regulations 2010 (AWR), new UK legislation which comes into force from 1 October 2011. The aim of the AWR is to protect temporary agency workers by ensuring through legislation that they have a right to equal treatment in basic working and employment conditions, as if they were employed on a permanent basis after 12 weeks service in the same job. From the 1 October agency workers will also be entitled to access certain client facilities and information on client job vacancies from day one of their assignment. The AWR does not change the employment status of agency workers.

Please note the AWR adopts the term “agency worker” throughout, so the same terminology is used in these FAQs together with the “hirer” to mean the hiring company or end-user.



“Raising awareness of AWR issues with front-line consultants as well as with clients will be critical to the successful implementation of AWR. With the final document now published, recruiters can accelerate their implementation activities and intensify levels of engagement with employers and workers.”

Tom Hadley, REC, Director of Policy and Professional Services



Please use the following links to navigate around the FAQs:

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- [Who is an agency worker? \(Q2-Q3\)](#)
- [Limited company contractors \(Q4-Q6\)](#)
- [Equal treatment rights \(Q7- Q11\)](#)
- [Calculating the qualifying period \(Q12-Q14\)](#)
- [Umbrella companies \(Q15-16\)](#)
- [Remedies \(Q17\)](#)
- [Further information \(Q19\)](#)

FAQs

Q1. What do the Regulations say and when will they come into effect?

A. The AWR comes into effect for the UK on 1 October 2011.

Day one rights

The day one rights give agency workers the same access to certain facilities provided by the client and information on job vacancies as the hirer's comparable permanent workers from the first day of assignment.

An agency worker has the right to be treated no less favourably than a comparable employee doing the same or similar job in the client's establishment in relation to information about vacancies.

An agency worker also has the right to be treated no less favourably in relation to collective facilities and amenities, such as a canteen or other similar facilities, access to childcare facilities and the use of transport services. However, clients can justify less favourable treatment on objective grounds, for example if the hirer is seeking to achieve a genuine business objective and the treatment is a necessary and appropriate way of achieving that objective. Cost may be one factor taken into account but practical and organisational factors will also be considered.

The client is responsible for providing equal treatment for day one rights.

After 12 weeks - right to equal treatment

After 12 weeks in the same job the AWR entitles agency workers to receive the same basic employment and working conditions as permanent

employees. The 12 week qualification period applies even if the worker has been supplied by two different agencies over that 12 week period.

Q2. Who is an agency worker?

A. An "agency worker" is defined as an individual who is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a client and who has a contract of employment or contract to perform work and services personally with the temporary work agency.

Many Orgtel contractors supply their services through one of our preferred supplier management companies, commonly known as "umbrella companies". Umbrella companies enter into an employment contract with agency workers in order to supply them to agencies. They offer compliant payrolls and take the stress out of contracting for many workers. These umbrella workers fall within the scope of AWR. Some umbrellas may offer you a Swedish Derogation option - see Q16.

Q3. I am an agency worker - when will the AWR apply to me?

A. The AWR will apply to all new placements after 1 October 2011. For placements running as of 1 October 2011 it will apply after the 12 week qualification period, i.e. 24 December 2011. This means that your placement will need to be out of scope or compliant before 24 December 2011.

Q4. Will the AWR apply to limited company contractors?

A. The definition of an "agency worker" will exclude the genuinely self-employed working through their own service company (a PSC), but not individuals with their own PSCs who are not in business on their own account (i.e. a genuine business to business relationship).

Therefore, contractors that consider themselves "in business on their account" will fall outside the Regulations. All other temporary agency contractors are protected by the AWR.

If you are a contractor working through a PSC and are genuinely self employed we will collect written confirmation from you of this prior to the start of a placement and treat the placement as outside of the scope of AWR.

The Regulations are unlikely to apply to individuals working for in-house temporary staffing banks where a company employs its temporary workers directly, and they only work for that business, unless that company is specifically set up to run agency workers in which case it may be within scope. The guidance suggests that the Regulations will not apply to workers seconded from one organisation to another but this may depend on the particular circumstances. In practice, whether or not an arrangement falls within scope of the Regulations will depend on the employment and organisational arrangements.

Q5. Can an agency worker contract out of the AWR?

A. No, the AWR expressly prohibits agency workers from contracting out. The Regulations impose a fine of up to £5,000 on the agency or hirer where anti-avoidance arrangements have been put in place to prevent the 12 week qualifying period from being met.

However, a contractor can be out of scope of the AWR either by being genuinely self-employed or because they are employed under a Swedish Derogation contract - see Q16.

Q6. I am a PSC Contractor, what impact does AWR have on my IR35 status?

A. The two pieces of legislation are unrelated - one relates to employment

law rights, the other to tax obligations. However, to be outside of IR35 it is a criterion that you are self-employed and therefore presumably you would see yourself as outside the scope of AWR. If you are unsure as to either your IR35 status generally or how it may be affected by AWR, we recommend that you seek independent professional advice.

Q7. I am an agency worker what type of “equal treatment”/benefits will I be entitled to receive after 12 weeks service?

A. From the 1 October 2011 agency workers who have successfully completed 12 weeks service in the same job, will have a right to equal treatment in basic pay, overtime, bonus and commission related to individual productivity and the right to be paid and take the same holidays as a comparable permanent employee. Agency workers will also be entitled to receive luncheon vouchers and other vouchers with a monetary value (but not those provided through a salary sacrifice scheme such as childcare vouchers). Agency workers will have the right to work the same hours as comparable permanent employees.

Q8. I am an agency worker what benefits will I not be entitled to?

A. Agency workers will not be entitled to equal treatment in relation to occupational pension schemes, share schemes, redundancy pay, maternity/paternity rights or bonuses related to the company’s performance, occupational sick pay, non-cash awards, advances in pay or loans, additional discretionary and non-contractual payments. This will not affect their entitlement to statutory sick pay or statutory maternity pay from the agency if they qualify for these.

Q9. I am an agency worker, will I be entitled to time off for antenatal appointments?

A. After the 12 week qualifying period, a pregnant agency worker will be entitled to paid time off to attend antenatal appointments. Agency workers will not however, be entitled to receive equal treatment with regard to the client’s maternity pay arrangements but may be entitled to statutory maternity pay/maternity allowance from the agency.

Q10. How will Orgtel and the hirer establish the right rate?

A. Firstly, we know that our contractors are at the higher end of the contracting market and there is a natural market premium for your services to reflect that you do not have the security of employment status, you offer specialist skills and flexible services. We are confident that for the vast majority of our placements contractors are already receiving a rate in excess of a comparable permanent package calculated under AWR.

The right to equal treatment is a right to equal treatment measured against a comparable employee of the client (if there is one) doing broadly similar work within the same organisation. The client can take into account the agency worker’s qualifications, experience and expertise and a named comparator is not necessary – the treatment simply has to equal how the client would have treated the agency worker if they had been recruited directly.

Q11. I am an agency worker, from whom can I request information about equal treatment and when?

A. The Regulations give agency workers the right to ask their agency for information relating to their equal treatment rights. After the 12 weeks qualifying period has elapsed, you can request a written statement from the agency (and subsequently from the

client if you do not receive a response from your agency within 28 days).

Q12. I am an agency worker, how is the 12 week qualifying period calculated?

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

Calendar weeks will accrue regardless of how many hours the worker does on a weekly basis - one hour is enough.

From Orgtel’s perspective, we are keen to make the process easier for all parties and where possible will seek to ensure the placement is AWR compliant from day one. This means no worries about when the clock starts for any party.

Q13. I am an agency worker, does the 12 week calendar period apply irrespective of whether I am supplied through different agencies?

A. Yes the clock continues to run. For example, an agency worker working with four different agencies which place him or her with the same hirer for just one day (say for one hour) each in a 12 week period will be protected under the AWR. We will need you to tell us if you have worked in the same or similar role for the same client.

Q14. What can stop, pause or reset the clock?

A. The 12 week qualifying period will be reset to zero in the event of any break of six weeks or more during or between assignments in the same job or upon commencement of a new or “substantively different” role with the same hirer. To satisfy the “substantially different” test there has to be a genuine and real difference to the role. Factors

such as differences in pay; skills; location; reporting lines; equipment and working hours will help to establish if the work or duties are substantially different.

See below quick view table for certain absences that can stop, pause or reset the clock:

Orange Genie Cover Limited
(orangegenie.com)
Parasol Limited
(parasolgroup.co.uk)
Paystream My Max 2 Limited
(paystream.co.uk)
Sybersolve Solutions Limited
(sybersolve.com)

Event	Effect on 12 week period
Agency worker begins a new assignment with new client	Clock resets to zero
Agency worker remains with same client but in a substantively different role	Clock resets to zero
Agency worker has a break of more than 6 weeks between similar assignments with same client	Clock resets to zero
Agency worker has a break of less than 6 weeks between similar assignments with same client	Pauses clock
Sick leave	Pauses clock for up to 28 weeks
Annual leave	Pauses clock
Pregnancy, maternity leave or absence	Clock keeps ticking

Q15. What is Orgtel's preferred supplier umbrella companies doing to be AWR compliant by 1 October 2011?

A. Some umbrella companies were heavily involved in finalising the Regulations and they are all actively making changes to their systems to ensure that they can make payments that will be compliant with the Regulations. Orgtel will be supplying them with the information they need to process your placement in accordance with AWR.

Most umbrella companies on our preferred supplier lists are also looking at the Swedish derogation model - see Q16. A list of our preferred supplier umbrella companies is set out below, and further information about their approach to the AWR can be obtained from them directly:

Freelance Enhance Limited
(freelanceworld.net)
Giant Services Limited
(giantgroup.com)

Q16. I have heard that umbrellas are adopting the "Swedish Derogation Model"; what is it?

A. The Swedish Derogation model engages the agency worker on a more permanent type of contract with a right to some pay between assignments.

In between assignments the agency worker must receive a level of pay of either 50% of the weekly assignment rate or the national minimum wage, whichever is higher. The weekly assignment rate is calculated at the highest pay rate and hours enjoyed over the previous 12 weeks (or the duration of the assignment if it lasted 12 weeks or less). The contract cannot be terminated without the agency worker having received at least 4 weeks' pay between assignments during the contract.

Q17. I am an agency worker, what remedies are available to me where I believe that a breach of the AWR has occurred?

A. An agency worker can bring an Employment Tribunal claim for breach of the AWR. A client is responsible for first day rights and the agency is responsible for other rights, although the agency will have a defence if it took "reasonable steps" to obtain relevant information from the client. In the first instance we recommend that you speak to your contact at the agency if you are concerned that you have not received equal treatment in line with the AWR.

Q18. Who will make sure that Orgtel is compliant with the Regulations?

A. Firstly, we feel a responsibility to our contractors and to our clients to be compliant with the AWR. Secondly, the government department BIS oversees these Regulations; they do monitor us and other agencies and review our systems and processes.

Q19. Where can I find out further information about the AWR?

A. BIS has a dedicated Agency Worker Directive and Regulations web page which provides a link to the government's guidance on the Agency Workers Regulations 2010. Here is the link to the BIS web page <http://www.bis.gov.uk/policies/employment-matters/strategies/awd>.

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"The guidance notes for the AWR will be essential to helping recruiters and their clients comply with the Regulations..."
Ann Swain, Chief Executive APSCo



About the authors

Tania Bowers is Legal Director for Orgtel and, with over ten year's experience, is an expert in the recruitment sector. She has extensive experience of all legal and practical aspects relating to the recruitment process, including employment law, commercial contracts, litigation and other regulatory issues. Tania has been actively involved in representing Orgtel interests during the consultation phase and the implementation of the legislation, communicating extensively with the APSCo leadership and its members, the REC, other major recruiters and industry affiliates, such as umbrella management companies. Accordingly, she is well-placed to advise those that use staffing companies on the steps that need to be taken to ensure they fully understand the implications of the AWR and are ready for 1 October 2011.

Adam Hartley is a Partner at DLA Piper, and has an has in depth expertise of employment issues arising in the financial services sector and in particular Adam specialises in solving employee disputes, injunctions and other high court employment matters both in the UK and throughout Europe. As well as representing financial services clients, Adam also acts for a number of clients in the recruitment, medical, IT, telecommunications, retail and film industry sectors. In addition to providing strategic advice to solve employment disputes he also provides in-house training and coaching to senior managers/directors of large private and public companies on all aspects of employment law.