

Guidance notes for departments on the Impact of Agency Workers' Regulations 2010 (AWR) and the supply of workers from TES or external agency's

Introduction

The Agency Workers Regulations comes into force on 1 October 2011.

These regulations require that where an agency worker is provided to a third party client by an employment agency for a period of more than 12 weeks, that agency worker becomes entitled to the same basic pay and conditions, particularly as regards hours and holiday pay as the client's permanent workers. The qualifying period starts on 1 October and is not retrospective

The regulations do not apply to workers who are acting as professionals, such as doctors, accountants, nurses and lawyers or workers who are genuinely self-employed and working through their own account, or who are engaged by companies providing a genuinely out-sourced service to you. Similarly, it does not cover secondees from other organisations.

Practical Implications

Casual workers supplied via TES

As TES is an integral part of the University, the Regulations will not apply where we supply workers to internal Departments. This is because we are operating as an internal casual staff bank and not as an external third party agency. For this reason, there will be no change to our current arrangements when supplying workers to you.

This is not the case regarding our supply of temporary workers to Colleges and other external Institutions. It has been agreed by the HR Committee that from 1 October 2011 TES will only provide short-term cover for assignments of up to a maximum of eight weeks duration to external third party Institutions. Our external customers have been contacted separately.

Workers supplied via external agencies or other organisations

The Regulations will apply to any temporary worker hired by the University from an external agency, including those from the University's preferred suppliers of temporary workers.

It also applies to all workers who are supplied by another organisation to work within your Institution including workers sourced through intermediaries in the supply chain such as master or neutral vend service providers, Umbrella companies and some payroll services.

What will the entitlements be?

Workers will receive equal treatment concerning pay and conditions as if they are directly employed by the University.

Day 1 entitlements are:

- Equal opportunity as permanent staff to access and apply to internal vacancies;
- Equal opportunity to have access to employees' facilities such as canteen, car park or crèche.

Week 12 entitlements are:

- Basic rate of pay
- Overtime and shift premiums if appropriate
- Hour of work, rest and breaks
- Bonuses related to the quality or quantity of work done if appropriate
- Holiday entitlement above the statutory minimum

A worker will be entitled to rights after the 12 week period, provided they have worked for any amount of time for the University for 12 continuous weeks (e.g. even 1 day per week). For example, if an agency worker works even just one day in a particular week, that week will still count as one of the continuous weeks. A break of 6 weeks between assignments will re-start the qualification period and it will pause for any sickness or holiday taken by the temporary worker.

Exclusions to entitlement:

There are exclusions to temporary workers having equal treatment after 12 weeks which cover the following:

- Any benefit which could encourage or reward loyalty or long service
- Bonuses which are not based on the individual's performance
- Financial participation schemes (such as company share options)
- Sick pay above the statutory minimum
- Maternity, paternity or adoption leave
- Company pension scheme
- Redundancy payments
- Non monetary staff discount schemes
- Pay for time on Trade Union duties
- Salary sacrifice, company loan or advance of pay schemes

Recommendation

If you engage temporary workers through external agencies, it is recommended that you contact the agency to discuss how you will manage these changes in entitlements. It is important that you work closely with the agency to ensure that the University is compliant with the new legislation. As the hirer of agency workers, the University could be found liable by an employment tribunal if found to be non-compliant.

For further support and guidance, please contact Katherine Willcox (Temporary workers Team Leader) on 01223 (7) 65876

Supporting documentation

Guidance on AWR published in May 2011 by the UK Department of Business, Innovation & Skills: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf>

<http://www.admin.cam.ac.uk/offices/hr/jobs/tes/>

<http://www.admin.cam.ac.uk/offices/purchasing/>