

BLAKE-TURNER

EMPLOYMENT BULLETIN

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TEMPORARY WORKERS

The Agency Workers Regulations 2010 came into force on 1 October 2011 to give temporary (or agency) workers equal treatment in basic working conditions when compared with their permanent counterparts.

The Regulations are designed to cover the typical tripartite arrangements where a temporary work agency provides a worker to the hirer.

Agency workers are classed as "workers" rather than as employees. All workers, including agency workers, are entitled to certain rights which include:

- Paid annual leave
- Rest breaks and limits on working time
- The National Minimum Wage
- No unlawful deductions from wages
- Discrimination rights under the Equality Act 2010
- Health and safety at work.

Equal Treatment

Day 1 Rights – Collective Facilities

From **Day 1** of their employment a temporary worker is entitled to be treated no less favourably than a comparable permanent worker in relation to:

- (1) collective facilities and amenities which include access to a canteen, workplace, child care facilities, prayer room, mother and baby room etc; and
- (2) the right to be informed of any relevant vacant posts.

So that they are given the same opportunity as a comparable permanent worker to find permanent employment with the hirer, employers will need to think not only about how these vacancies are advertised and give the same access to temporary workers, but also show how they are informed about where to find the vacancies.

Week 12 Rights – Pay and Working Time

At this point – **from week 13** - a temporary worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:

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- pay - including any fee, bonus, commission, or holiday pay relating to the assignment. Redundancy pay, contractual sick pay, and maternity, paternity or adoption pay is not included.
- working time rights - for example, including any annual leave above what is required by law.

Temporary workers (regardless of their employment status) will also be entitled to paid time off to attend ante-natal appointments during their working hours.

The Regulations are not retrospective and so the 12 week qualifying period does not start until 1 October 2011 even if the assignment started before that time.

Continuity of the 12 week period

Most gaps between or during an assignment to the same job that are less than six weeks in length will pause the accrual of the 12-week qualifying period. Most gaps between or during an assignment to the same job that are six weeks or more will reset the 12-week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- absences for sickness and jury service (for up to 28 weeks)
- annual leave, shut downs (e.g. factory closures and school holidays) and industrial action (for the duration of the absence).

Pregnancy and maternity-related absences, maternity leave, paternity leave and adoption leave will not pause the 12-week accrual at all - instead the 12-week accrual period will continue throughout the duration of the absence and include these weeks as those counting towards the 12-week total.

There are further rules in the Regulations concerning what is a 'comparable employee' which can be discussed upon request.

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Rupert Farr October 2011

Rupert Farr is a commercial litigation solicitor of 20 years experience. He qualified and worked at Freshfields for some 7 years before moving on to spend some time outside the law in business. Upon his return to private practice he has worked with leading global law firms and has been with Blake-Turner since 1996. He has in recent years specialised in employment law, general contractual disputes and heavy-weight personal injury litigation.



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