

Agency Works Regulation Guidance

AWR Policy

To provide employees categorised as 'agency workers' entitlement to the same basic employment and working conditions as other employees directly recruited by the company, if and when they complete a 12-week qualifying period in the same job with the same employer.

Day 1 rights for all 'agency workers'

From the first day of an assignment, agency workers are entitled to the same access to information and facilities such as:

- Knowledge of internal vacancies *
- Crèche **
- Canteen
- Food and drink machines
- Toilets/shower facilities
- Common room
- Car parking **
- Prayer room
- Local pick-up/drop-off **

* This does not mean that you will automatically have the right to be employed by the hirer. You will still need to follow their usual recruitment process.

** If there is a waiting list you will not automatically be entitled to a place but can apply and join the waiting list.

Your contact at the school will be able to advise you exactly which facilities apply as they will vary from school to school.

Day 1 rights do not include 'enhanced' access rights that are given as part of a benefit package to reward long term service and loyalty e.g. subsidised access to an off -site gym, subsidised meals in the canteen or discounted company goods in a staff shop.

After 12 weeks

After a 12-week qualifying period in the same job with the same employer, an agency worker will be entitled to the same basic working and employment conditions as a directly employed member of staff in the same job. These include:

- Pay
- Duration of working time
- Night work
- Rest periods
- Break periods

- Annual leave
- Paid time off for ante-natal appointments
- Access to training

Equal pay includes: basic salary, bonuses or commission payments related to the quantity and quality of your work, shift allowance, overtime payments, holiday pay and vouchers (provided they have a fixed monetary value and are not part of a salary sacrifice scheme).

Equal pay does NOT include: benefits in kind, vouchers which are a salary sacrifice, pension payments, occupational sick pay, redundancy pay, notice pay, advances and loans, share and option schemes, maternity, paternity and adoption pay (over and above the statutory entitlement), bonus payments which are not directly attributed to your performance, guarantee payments, expenses or health/life insurance.

12 week qualifying period

The 12-week qualifying period is activated by working in the same job with the same hirer (school) for 12 calendar weeks, irrespective of your working pattern (e.g. full time or part time) and irrespective of which or how many agencies supplied you to the same role with the same hirer.

A calendar week will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will accumulate even if you only work for a few hours a week.

Because the 12-week qualifying period can be accumulated through more than one agency (for the same job with the same employer), Supreme will need to know if we send an employee to a school they have worked at in the previous 7 days through another agency for the same job.

The following details how the 12 week qualifying period will be reset or paused.

Reasons the 12 calendar weeks will be reset to 0:

- Most commonly a new assignment with a new employer.
- An agency worker remains with the same employer but is no longer in the same role.
- A break between assignments with the same employer of more than 6 weeks (which is not outlined in the reasons the 12 week period will be paused below)

Reasons the 12 calendar weeks will be paused:

- A break for any reason that is no more than 6 calendar weeks where the agency worker returns to the same role with the same employer.
- A break of up to 28 weeks because the agency worker is incapable of work due to sickness or injury
- Any break for annual leave which the agency worker is entitled to.
- A break of up to 28 calendar weeks for the agency worker to perform jury service.

- A break caused by regular and planned shutdown of the workplace by the hirer (e.g. Christmas).
- A break caused by a strike, lock out or other industrial action at the hirer's establishment.
- Reasons the 12 calendar weeks will continue to tick:
- Breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth.
- Any breaks due to maternity, paternity and adoption leave.

If an agency employee believes they are not getting their day 1 entitlement, they need to speak to their contact at the school.

If they believe they are not receiving their 12-week entitlement, then they should speak to their consultant.

For more information on AWR:

http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemploymentagencies/DG_198913

<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance>

Paid Annual Leave

Agency workers are entitled to the minimum statutory paid annual leave as stated by the Working Time Regulations. Entitlement for paid annual leave accrues in proportion to the amount of time worked and so is included in their daily rate. Any annual leave should be taken during school holidays.

Some umbrella companies offer the option to hold holiday pay back until requested. Agency employees should contact the umbrella company or look at their payslip. It may state "Accrued holiday pay this period" and "Holiday paid out". If they are holding holiday pay, agency employees need to follow their procedure to request paid holiday. They must claim it before the end of the financial year (March) each year as it will not be rolled over.

The annual leave entitlement to which the AWR is referring after the 12-week qualifying period is any annual leave scheme offered to a directly employed member of staff in the same job if that equates to more than the minimum statutory entitlement. In most cases this will be linked to length of service.

Sick Pay

There are two types of sick pay:

1. Occupational sick pay (also known as company or contractual sick pay)
2. Statutory sick pay

Employers do not have to offer an occupational sick pay scheme. If they do offer a sick pay scheme to a directly employed member of staff in the same job, the AWR does not give access to it.

Agency employees may be able to claim Statutory Sick Pay (SSP) if you meet the following qualifying conditions:

- They are sick for at least four days in a row (including weekends and bank holidays and days that you do not normally work).
- They have average weekly earnings of at least £107 a week (before tax and National Insurance deductions).

Average weekly earnings are calculated using earnings in the eight weeks before the period of sickness began.

If agency employees qualify for SSP it remains payable while they are working on an assignment or under contract with the agency. It is payable for up to 28 weeks. Whoever is responsible for the deduction of National Insurance contributions is also responsible for the payment of SSP (this includes umbrella companies).

To claim SSP employees must inform their employer (and the umbrella company they are paid through) and provide some form of medical evidence from the eighth day of illness.

SSP is usually paid on the normal payday in the same way as normal earnings and is subject to tax and NI deductions. If employees are only receiving SSP, earnings may not be high enough for any deductions.

The standard weekly rate for SSP is £92.05 a week. Employers will work out a daily rate of SSP if necessary by dividing the weekly rate by the number of days normally worked in that week.

If they qualify for SSP it will be paid for the days they would normally work. These are called qualifying days. However, it is not payable for the first three qualifying days, which are known as waiting days.

If employees do not qualify for SSP or SSP has ended, the employer (or umbrella company) must fill in form SSP1 and give this to them as soon as possible. This form will state why SSP has not been paid or why it is ending, and the last date of payment, and will support a claim for Employment and Support Allowance.

For more information on SSP:

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/Illoinjured/DG_10018786

This policy is valid from November 2018