

InnerCircle

Agency Workers' Regulations

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Carlisle Managed Solutions

As you will be aware, the Agency Workers' Regulations will be implemented in the UK from October 2011.

Impellam Group plc, the parent company of Carlisle Managed Solutions, has been involved at all stages of the consultations on behalf of its family of businesses. In addition, the Group has been heavily involved with representative bodies such as the REC, ALP and APSCo in their lobbying and communication.

The final Guidance on the Regulations is expected to be made available by June 2011 but draft copies may be available in March/April. We believe there is sufficient information in the current Regulations to begin to engage with you to share our knowledge and to examine the impact the Regulations will have on everyone involved.

We want to ensure that you are fully aware of the Regulations and that Carlisle is viewed as a reliable source of information. We have therefore launched an awareness campaign to help you understand the Regulations and prepare to implement them whilst retaining the flexibility of labour supply that is acknowledged to be vital to the recovery of the UK economy.

What are the Agency Workers' Regulations?

The Agency Workers' Regulations bring the European Agency Workers' Directive into UK law. They entitle temporary workers to equal treatment with regard to pay and working conditions, as someone recruited to do the same job but on a permanent basis with you. This will apply after 12 weeks of assignment to you.

When do they come into effect?

The Regulations will be implemented from the 1st October 2011, which means that the workers' entitlement will be effective early 2012.

Who do they affect?

All workers who are not directly engaged by you but are supplied by another organisation, such as Carlisle, fall in the scope of the Regulations, regardless of what contract they have with us. You should note, that if you use master or neutral vend service providers, umbrella companies and some payroll services, they may be included.

Who falls outside of the AWR?

Only workers who are genuinely self-employed and working through their own Limited Company are exempt from the Regulations.

What will those covered by the Regulations be entitled to?

Temporary workers are to receive equal treatment in regard to pay and conditions compared to those received by someone directly employed by you, doing the same or broadly similar job with the same experience, qualifications and skills. This is currently interpreted as being in comparison to entry-level pay and conditions for permanent employees.

What is included in 'pay and conditions'?

- Basic rate of pay
- Overtime and shift premiums
- Bonuses related to the quality or quantity of work done
- "Luncheon" vouchers with monetary value
- Hours of work, rest and breaks
- Holiday entitlement above the statutory minimum
- Employees' facilities such as canteen, car park or crèche, unless there is an objective reason for not offering such facilities
- Equal access to apply for internal roles

What is excluded from 'pay and conditions'?

- Bonuses and benefits intended to reward loyalty or long service
- Company share schemes
- Pensions
- Sick, maternity, paternity or adoption pay above the statutory minimum
- Redundancy payments
- Staff discount schemes

When must the entitlement be met?

A temporary worker will be entitled to equal treatment after 12 calendar weeks working for you, in the same or broadly similar job. It does not matter if they are full or part time, nor if they have worked in the job through different agencies.

A break of at least 6 weeks between assignments will restart the qualification clock and it will pause for holiday and sickness absences. It will continue to tick for pregnancy-related sickness or maternity, paternity and adoption leave.

How will complaints about unequal treatment be made?

After their qualifying period, a temporary worker has the right to request from their agency details of how their pay and conditions have been determined and details of your comparable employee (if any) with whom parity is fixed. If the agency does not respond within 28 days the worker can come to you for the same information. Neither have the legal duty to respond but failure to provide the information will be regarded adversely should a claim be made.

If the worker still believes they have not received their entitlement, they must make a claim through the Employment Tribunal system, usually within 3 months of the assignment.

The claim may be against their agency, you as the hirer or any others in the chain, for example a master vendor or Umbrella company, who might be responsible for the detriment. In practice, it is likely to be all the parties involved!

Informal conciliation, or the services of ACAS, might provide resolution, particularly if all the information is on hand and provided promptly but, as with any Employment Tribunal claim, not adhering to procedure will disadvantage a defence.

Both the claimant and any witnesses, such as potential comparators, may not be victimised at any time.

Who is liable?

The Employment Tribunal will assign the liability to whichever organisation(s) it decides has caused the disadvantage to the worker. If the agency can show that it has made all reasonable efforts to establish and apply equal treatment, then the liability must lie with the hirer or some other part of the chain.

What are the penalties?

The immediate award will be to make up the difference (as with National Minimum Wage claims) with a minimum level of 2 weeks' wages.

Should the Employment Tribunal decide that assignments have been deliberately structured to avoid the Regulations, an additional £5,000 penalty can be applied.

What can I do next?

Carlisle Managed Solutions will be pleased to work with you to begin to assess what, if any, impact the Regulations may have on your business. To get in touch with Carlisle, please contact 020 7562 1700.