



Company Name	Highgrade Recruitment Ltd
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The agency Workers Regulations 2010 came into force in Wales on October 1st 2011. The Regulations give agency workers the same basic working and employment conditions they would receive if they were engaged directly by and end user client to do the same job; this is limited to conditions that relate to pay and working time.

Agency workers are also entitled to access facilities and amenities that an end user client provides to its own workers and to be advised by a client of vacancies which arise in the hirer's business (*the term "hirer" is used throughout to mean the entity using the services of the agency worker).

A reference to an "agency worker" means the individual engaged by the agency and supplied to work for the client under the client's supervision and control.

The Regulations state that if a qualifying agency worker does not receive equal treatment (basic working and employment conditions), then s/he can pursue a claim in an Employment Tribunal against either the agency or client (or both).

Agency workers must qualify for equal treatment in order to be entitled to receive equal pay and working conditions. Regulation 5 provides that a qualifying agency worker is entitled to the "same basic working and employment conditions as [she/he] would be entitled to for doing the same job had [she/he] been recruited by the hirer..." Regulation 6 then sets out what these basic working and employment conditions are:

- pay; ·
- the duration of working time; ·
- night work; ·
- rest periods; rest breaks; ·
- and annual leave ·

The agency worker must complete the 12 week period by working in the same role with the same client. However, the agency worker does not have to work for those 12 weeks through the same agency. This means that an agency worker can complete the qualifying period even if supplied by more than one agency to the same client. Agencies will therefore need to have mechanisms in place to identify those agency workers who may have already been supplied to a client.

Agency workers' rights

Rights under the AWR fall into two categories:

Day-one rights

With effect from the first day of an assignment (temporary work provided by an agency), supply teachers have the right, under Regulation 12, of equal access to collective facilities and amenities. This includes access to childcare provision, the use of the canteen and staff room, car parking and the provision of a prayer room.

In addition, they also have the right, under Regulation 13, to receive information on vacancies that become available during an assignment and to be given the same opportunity as directly recruited workers to gain permanent employment with the 'hirer'.

Hirers can only refuse supply workers access to facilities if they can justify objectively the refusal. Cost alone is not seen as a reason to justify different treatment to that of directly employed workers. Practical and organisational considerations could also be a factor.

However, even when there is an objective justification, it is good practice for hirers to avoid excluding agency workers altogether.

The hirer is responsible for providing equal treatment for day-one rights and is liable for any breach of this obligation, not the employment agency.

The hirer could either provide agency workers with information about their facilities – for example, as part of an induction pack – or provide information to the employment agency to pass on as part of the information about the assignment. Rights after 12 weeks' employment.

However, Regulation 6 makes it clear that 'basic' does not extend to benefits such as:

- pension;
- occupational sick pay;
- maternity pay;
- adoption pay;
- paid time off for carrying out trade union activities;
- Expenses and other benefits.

Agency supply teachers are still eligible to receive statutory sick, maternity, paternity and adoption pay and still entitled to paid time off for antenatal appointments.

AWR Formal Complaints

Day One rights are the sole responsibility of the client so the agency worker should address requests for information to the client. REC recommends dealing with any other queries about equal treatment on an informal basis. However, if an agency worker believes that s/he has not received his/her equal treatment rights, the Regulations allow the agency worker to request a written statement from an agency requesting information about the treatment that the agency worker has received (**though s/he can only do this once s/he has completed 12 week qualifying period**).

To trigger this formal procedure, the agency worker must make the request in writing. Once the agency receives this request it will have 28 days to respond and in order to comply with the Regulations the written response must include the following information:

- relevant information relating to the basic working and employment conditions of the client's workers
- the factors the agency considered when determining the basic working and employment conditions which applied too the agency worker at the time s/he allegedly did not receive the equal treatment they claim they were entitled to receive
- relevant information which explains the basis on which the client's comparable employee was identified and the relevant terms and conditions applicable to the employee

If the agency does not comply with this request, the agency worker can instead request a written statement from the client as to the information about the relevant basic working and employment conditions that apply to the client's own workers, once 30 days from the date of the original request to the agency has passed.

A 'Request for Information' form is available upon request and a copy is enclosed with this policy.

Requests for information regarding Day One rights (6.2 REC Guidance)

If an agency worker believes that the right to access the client's collective facilities and amenities, or to receive information about relevant client vacancies has been breached, the agency worker can request information directly from the client about the access facilities and vacancies which is offered to the client's own workers. The agency worker can go directly to the client in respect of these rights without contacting the agency in the first instance.

What to do if information is not responded (6.3 REC Guidance)

The failure to respond to an agency worker's request for information by either the agency or client may have serious consequences in the event that an agency worker makes a claim to an Employment Tribunal for either a failure to provide equal treatment (basic working and employment conditions) or a failure to provide access to collective facilities and amenities and vacancies. If an Employment Tribunal finds the agency deliberately and without good reason failed to provide the information requested, or that any written statement in response to an information request is evasive or equivocal, it will be able to draw an inference that the agency worker's rights have been breached.

What we will do:

- we will acknowledge any request for information as soon as possible but within 28 days
- we will respond openly, honestly and constructively
- we will deal with your complaint appropriately, politely, confidentially and in a timely manner, usually within 28 days
- we will adhere to Agency Workers Regulation 2010

Highgrade is committed to fully complying with the Agency Workers Regulations (AWR). We aim to provide schools and the agency worker with clear and unambiguous information to help them work within the law. The staff at Highgrade have carefully studied the regulations and worked with a

leading employment law firm to produce definitive guidance for you and your school.

If you have any questions regarding AWR please contact us on 01495 369889 or email Claire@Highgraderecruitment.com

Please find the Agency Workers Regulation by following this link
<https://www.legislation.gov.uk/uksi/2010/93/contents/made>