

The client, the contractor and the 'Agency Worker Regulation'

What are the Agency Worker Regulations?

The regulations stem from the EU Temporary Workers Directive 2008 which gives agency workers ('MPI Contractors') the right to the same pay and other working conditions received by MPI's clients own workers. Importantly however, the Regulations do not alter MPI Contractors employment status: They will not make an MPI Contractor an employee of either our client, or MPI.

Importantly, an MPI Contractor will only be entitled to equal treatment once they have completed 12 weeks of service in the same role with the same client. There is one exception, the Day One rights, which are detailed later.

Who is an agency worker for the purposes of the Regulations?

The regulations apply to individuals who meet the definition of an agency worker. The regulations define an agency worker as:

- An individual who is supplied by a temporary work agency to work temporarily under the supervision, direction and control of a hirer; and who
- Has a contract for services under which they provide their service personally for the agency, in this case MPI.

Workers who are genuinely in business on their own account (i.e. genuinely self-employed) will not be within scope. Importantly, the guidance on the regulations clearly state that putting earnings through a limited company would not in itself put individuals beyond the scope of the regulations.

MPI Contractors working on managed service contracts (i.e. those where the supplier rather than the hirer, manages or directs staff such as fixed price work packages) are excluded. However, they will be within the Regulations if either (a) in reality, the client, rather than MPI, supervises, directs and controls the staff or (b) they are supplied by another agency to the managed service provider.

What is a 'temporary work agency' for the purposes of the Regulations?

The regulations use the term 'temporary work agency' rather than employment agency or business which is used in other legislation. A temporary work agency includes the agency which supplies the worker to the hirer, any umbrella companies and any master or neutral vendors in the supply chain. This is important for the purposes of liability under the regulations and means that all those suppliers are responsible for ensuring that the Contractor receives their entitlements.



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When does an agency worker qualify for equal treatment?

Except for the Day One rights (detailed below) MPI Contractors will be entitled to equal treatment once they have worked for twelve weeks in the same role. This is irrespective of the working pattern (e.g. full time or part time).

Day One rights

As mentioned above, there are rights to which MPI Contractors are entitled from the first day of an assignment.

MPI Contractors will be entitled to access collective on-site facilities such as

- Canteen
- Car parking
- Wash room and toilet facilities
- Provision of transport services
- Crèche and childcare facilities

Only where these facilities are also available to permanent staff.

However, access to facilities can be refused if there are 'objective grounds' for doing so. In practice this means that if there is a waiting list for childcare facilities or a car park space, an MPI Contractor is not automatically entitled to a place but can be subject to the same criteria to access the facility as someone directly recruited by the hirer. 'Amenities' such as subsidised gym membership and season ticket loans are out of scope as they are considered to be a reflection of the long term relationship between an employee and a hirer which will not be appropriate for MPI Contractors.

Also, a client must inform MPI Contractors of existing vacancies in their organisation. The client will not have to actively seek out each MPI Contractor and tell them individually of the vacancies but they must ensure that they have the same access to information about vacancies as other workers.



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What does the 12 week rule mean?

MPI Contractors will be entitled to the same basic working and employment conditions after 12 weeks of service in the same role. The rule started on the 1st October 2011 and will not take into account any work done for a client prior to this date. The entitlement includes:

- Pay.
- Holiday pay in excess of statutory minimum for PAYE contractors only can be paid in lieu as part of the hourly rate. Limited company contractors will be responsible for administering their own holiday payments from fees received.
- Duration of working time, Night work, Rest periods and rest breaks.

As stated above, the Regulations will not change the employment status of MPI Contractors. Therefore they will still not have the right to claim for unfair dismissal, redundancy pay or maternity leave which are entitlements reserved for employees. Nor will MPI Contractors be entitled to benefits such as occupational sick pay, company pension schemes, share options schemes, loans, expenses, health/life insurance, financial participation schemes and bonus payments based upon organisational or company performance. These are considered a reflection of a long term relationship between an employee and an employer. MPI Contractors will therefore remain a flexible labour resource for hirers.

Who is responsible for establishing equal treatment?

The Regulations will require a qualifying MPI Contractor to be treated as if they had been recruited directly by the hirer to do the same job. On a practical level, this means that equal treatment will need to be established in respect of the terms and conditions that apply to a comparable worker or a comparable employee engaged in the same role or broadly similar work.

MPI and our clients must co-operate with each other to ensure that all MPI Contractors receive their rights. MPI will assist by asking the right questions at the right time.



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Who should MPI contractors be compared to within our client's organisation?

Clients should compare MPI contractors to people employed by the client company engaged on the same or broadly similar work. They should be people employed at the same establishment and the client can take account of differing skill levels.

Anti-avoidance measures

The Regulations contain anti-avoidance measures to prevent agencies and hirers from structuring assignments in a way to prevent the agency workers from reaching 12 week qualifying period.

Further Information

This can be found on the Department for Business Innovation and Skills website: www.bis.gov.uk Search for Agency Worker Regulation.

Alternatively, email awrregulations@mpi.ltd.uk with any further questions.

