



# THE AGENCY WORKERS REGULATIONS 2010 (AWR)

## A GUIDE FOR CUSTOMERS

It's important to note that we are still awaiting further guidance from the Government on the AWR which may have an impact on matters discussed below. This note therefore gives our views based on the information available at present.

### What are the Agency Worker Regulations?

The AWR were published in 2010 and will come into force on the 1<sup>st</sup> October 2011. They seek to give agency workers the same 'basic' working and employment conditions as comparable permanent employees. For clarity, it's important to note an important overarching point; the Regulations do not entitle agency workers to 'full' equality and do not create any contract of employment between the hiring customer and the worker. In that respect, the principle of the flexible workforce remains intact and you can continue to add value to your business using this route. It does mean however that matters between us become a bit more complex to administer and we all have statutory obligations to fulfil.

### What does it mean for the contractual relationship with LEDA?

As we move through 2011 towards the deadline, we should recognise that the AWR affects our contractual relationships. That means when we quote you or we agree terms and sign contracts that cross the October date, those contracts must reflect the statutory requirements of the AWR. In short we need to ensure that both parties are contracted to act in accordance with the AWR. In practice it may mean exchanging information at the appropriate times during a temporary hire arrangement and allowing for contractual changes in rates after qualifying periods. Alternatively it could strengthen the quotation period forcing us to exchange more complete and accurate data to help us fix rates with certainty over a longer period.

Either way the change in statute requires us to insert new clauses to ensure all parties are compliant.

### What happens on 1st October 2011?

From this date and from the commencement date of any agency worker thereafter, agency workers have the right to be treated no less favourably than a comparable worker in relation to any collective facilities and amenities provided by the hiring customer. Specifically mentioned in the AWR are;

- Canteen
- Child care
- Transport facilities

In addition, from this date an agency worker has the right to be informed by the hiring customer of any relevant vacancies for permanent posts. This is to give the agency worker the same opportunity as a comparable worker to find permanent employment with that customer. These rights have often been referred to by commentators as 'day one rights' and are as they suggest, applicable from day one of any assignment with no qualifying period.

### What is the qualifying period for everything else?

A 12 week qualifying period will apply before most of the regulations are applicable to a given assignment. The 12 weeks commences from 1<sup>st</sup> October so none of the extended rights will apply until around the end of this year. Once we reach that point, and if an individual has been on hire to you for a continuous 12 week period, then equal treatment with comparable employees of the customer needs to be addressed.

For more information  
please contact us on  
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and we will be glad to make  
an appointment with you.

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## A GUIDE FOR CUSTOMERS / CONTINUED

### What are comparable workers?

For the purposes of the Regulations a comparable employee is likely to be an individual doing broadly the same work with broadly the same qualifications and experience as the temporary worker. It is these individuals that we would look at in terms of seeking to level up the 'basic' working and employment conditions with. The relevant terms and conditions to be considered will be;

- Pay
- Night work
- Rest Breaks
- Working time
- Rest periods
- Annual leave

Pay includes bonus, commission and holiday pay but specifically excludes;

- Sick pay
- Redundancy
- Maternity, paternity, adoption leave
- Bonuses not attributable to work done
- Pension

These plus certain other exclusions demonstrate the point that 'full' equality is not an entitlement under the Regulations. The work we do together under the Act will be ensuring partial equality covering 'basic' working and employment conditions only.

### What does the hiring customer have to do to ensure compliance?

First of all you have to consider the types of workers on hire from LEDA or another agency. Check if you have comparable workers directly employed and work out the typical length of hire, to see if you are likely to exceed the 12 week qualifying period. We can help you to assess the impact on your business by identifying basic differentials in advance.

Secondly, contracts already in place that cross the October 1<sup>st</sup> point will need to be updated and any new quotes, terms and conditions or sub contracts exchanged between us from now on should take account of the AWR. We can work with you during this period.

Thirdly, once we pass the 1<sup>st</sup> October you will need to make sure that your workplaces are allowing Agency workers access to the necessary facilities and amenities. We can help you keep the necessary records.

Lastly, and following on from the above, you will need to put systems or procedures in place to allow your staff to share specific information with us where we believe that the 12 week period will be exceeded. As we share responsibilities within the Regulations we want to work closely with you to try and achieve a smooth exchange of accurate and timely information.

### Who is not covered by the Regulations?

The AWR does not apply to every arrangement where workers are taken on by a customer. For example they do not apply to:

- Any permanent placements provided by an Agency and directly employed by the customer
- The genuinely self employed
- Those working on contracts that are not under the supervision or direction of a hiring customer such as price work packages.
- Any worker that has a permanent contract of employment with an Agency (subject to certain other conditions). This particular point has a dedicated Regulation (number 10) and has also become known to some as 'Swedish derogation'.

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This has been a simple run through the key points of the regulations to give you an overview. But it does in itself raise many questions about the detail behind the definitions and whether it even applies to your current situation. The best way forward may be for one of our staff to talk to you about the AWR and the implications for your relationship with us and / or other temporary worker agencies. We'll be able to apply the regulations to the particular circumstances and type of service that we have at present or that you intend to develop with us. That way we can see what impact the AWR will have on your business.

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