

Agency Workers

Agency workers are generally just that: ‘workers’ rather than ‘employees.’ This means that agency workers are not entitled to the wider range of statutory employment rights that employees are entitled to. But agency workers are entitled to: paid holidays; rest breaks and limits on working time; no unlawful deductions from wages; the National Minimum Wage; not to be discriminated against under any of the equality legislation; protection under health and safety laws. Importantly, agency workers are not entitled to statutory redundancy payments or to make claims for unfair dismissal to employment tribunals.

There are two kinds of ‘agencies:’ an ‘employment agency’ that finds work for work-seekers who are then employed as employees and are paid by employers. The other is what is often colloquially referred to as an ‘agency’ being an ‘employment business’ that employs and engages a work-seeker under a contract whereby the work-seeker works under the supervisor of another person being the ‘end-user.’ This is commonly known as ‘temporary agency work’ or ‘temping.’ Workers recruited and deployed in this way are paid by the employment business (the ‘agency’) instead of directly by the business or end-user to which they are sent.

When confirming offers of work with work-seekers, both employment agencies and employment businesses must give worker-seekers and hirers of the work-seekers services written contracts. These written terms of business must be agreed in advance, either between itself and a work-seeker or between itself and a hirer. A written contract must specify such things as whether it is a contract of service (employee-status) or for services (worker or self-employed status); statutory and contractual holiday entitlement; rate of pay; notice period; and other such details. From the 27 October 2008, agency workers are now entitled to statutory sick pay the same as employees are.

Except for agencies and businesses which operate in the entertainment and modelling sectors, agencies cannot charge worker-seekers fees for finding or seeking work. Neither can they require work-seekers to use fee-paying services, such as CV writing, as a condition of finding work. Where agencies charge work-seekers for supplying services such as accommodation, transport or training, then work-seekers can cancel or withdraw from the service at any time without incurring a penalty; but 10 days’ notice must be given by work-seekers to cancel living accommodation and 5 working days’ notice to cancel other kinds of services.

Agencies and businesses must confirm work-seekers identities and check the on-going suitability of work-seekers is suitable to do the work in question including working with vulnerable persons such as minors, the elderly or infirmed. Agencies must not withhold pay from work-seekers for reasons such as the hirer has not paid the employment business; or the work-seeker cannot produce a timesheet authenticated by the hirer. Where industrial action is taking place, an employment business is prohibited from supplying ‘scab’ labour to the hirer in dispute. Work-seekers have the right to work elsewhere without suffering detriments or threats from the agencies they currently work through nor need they disclose the identity of their future employers.

The tax position of agency workers is that if workers are supplied to hirers/clients by agencies and such workers are subject to the supervision, direction or control as to the manner in which those services are rendered then, for the purposes of the Income Tax Acts, such services are

treated as if they were provided under a contract of employment so that, for tax purposes, workers are treated as 'employees.'

The current law is that a worker recruited through an employment business (an 'agency') and deployed to work in the business or undertaking of an end-user will generally be a 'worker' and not an 'employee.' But circumstances may arise which mean that the worker is, in fact and law, an employee but only if a contract of service can be implied from a number of factors which point to there being a contract of employment including satisfying the 'test of necessity' in order to give 'business efficacy' to the working arrangements.

Agency workers have the protection of the range of anti-discrimination rights and do not need to have been deployed or employed for any minimum period of time to gain this entitlement; indeed, a work-seeker who is applying for work is likewise entitled.

An agreement was reached in May 2008 between the government, trade unions and employers to give increased employment rights to agency workers. These rights are: equal treatment with the employer's permanent employees after 12 weeks in a job (excluding occupational social security schemes such as sick pay and occupational pensions) as to pay, overtime pay, holidays and basic working and employment conditions. This agreement was made in anticipation of the new EC Agency Workers' Directive that was subsequently agreed in principle by Member States in June 2008. EU Member States now have three years in which to transpose and put the Directive into effect.

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