

# AWR Policy

The Agency Workers Regulations 2010 came into force in England, Scotland and Wales on 1 October 2011.

The Regulations give agency workers the right to the same basic working and employment conditions they would receive if they were engaged directly by an end user client to do the same job; this is limited to conditions that relate to pay and working time once a qualifying period of 12 weeks in the same job, with the same hirer has been completed.

The Regulations do mean that agency workers are eligible for certain rights straight away ('Day 1' rights). These rights include equal access to facilities with comparable employees and information about permanent vacancies with the hirer.

Facilities will vary from school to school.

At the start of every assignment, Qualiteach Ltd will request some basic information from the candidate (previous pay scale/salary details) and client (comparable pay of an employee doing a similar job) and will send over relevant forms to clarify this information.

## **Who is an agency worker?**

An agency worker is:

- An individual;
- Who is supplied by a temporary work agency to work temporarily under the supervision and direction of a client; and who has a contract of employment or any other type of contract (a contract for services for example) under which they provide their services personally for the agency.
- The individual typically supplied by employment business (Qualiteach Ltd) to a client to work under the client's direction and supervision

## **The Regulations do not apply to:**

- Individuals who have found a "permanent" job with a client, even if they were introduced by an agency;
- Individuals who are genuinely in business on their own account (i.e. genuinely self employed) and not working under the direction and supervision of the client will not be within scope. Workers engaged via umbrella companies or other intermediaries will be in scope unless they are genuinely self employed.
- Individuals who work for in-house temporary staffing banks, this is where an organisation engages its own temporary workers directly;

- Individuals on secondment or loan from one organisation to another
- Individuals working for managed service contractors and who are not working under the supervision and direction of the client.

## **What is a temporary work agency?**

The Agency Workers Directive (which the Regulations implement) applies a different definition to the word “agency” to that which recruiters will be familiar with in the UK.

For the purpose of the Regulations a temporary work agency is an undertaking which is in the business of “supplying individuals to work temporarily for and under the supervision and direction of hirer”.

This definition more accurately describes what recruiters will recognise as an employment business as defined in the Employment Agencies Act 1973 (the EAA). An “employment agency” (as defined in the EAA) which introduces work seekers to clients to be engaged directly by the client (often referred to as “perm” recruitment), is not “temporary work agency” under the Regulations and therefore is excluded from the provisions.

## **Failure to provide equal treatment:**

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 the client (or both).

An Employment Tribunal will analyse the facts to determine to what extent each party is responsible for the breach of the Regulations.

## **Agency’s statutory defence**

- the agency either obtains information from the end user client about the basic working terms and employment conditions in the client’s business or takes reasonable steps to obtain this information
- acts reasonably in determining what working terms and employment conditions the agency worker should be engaged under once the 12 week qualifying period has been reached
- Ensures that it provides the agency worker with those working and employment conditions.

If the agency complies with the above it will not be liable if the agency worker does not receive equal treatment. If the client is at fault because, for example it has provided incorrect information to the agency, then the client rather than the agency will be liable.

## **Agency worker requesting information from the agency/client**

If an agency worker believes s/he has not received equal treatment rights, the Regulations allow the agency worker to request a written statement from Qualiteach Ltd requesting information about the treatment the agency worker has received. (The Agency worker can only do this once s/he has completed the 12-week qualifying period).

All requests made by the agency worker must be in writing. Once Qualiteach Ltd receives the request we will respond within 28 days and to comply with the Regulations the written response must include the following:

- relevant information to the basic working and employment conditions of the client's workers.
- the factors that Qualiteach Ltd have considered when determining the basic working and employment conditions which applied to 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 that employee.

If Qualiteach Ltd fails to comply with this request, the agency worker can 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 that was sent to Qualiteach Ltd has passed.