



Agency Workers Regulations (AWR)

WORKERS REGULATIONS 2011 (AWR)

Summary

REVIEWED: September 2024
DATE OF NEXT REVIEW: September 2025

These regulations came into force in October 2011 and have an impact on all schools that use agencies for staff cover. Under these regulations an agency worker at your school has immediate Day One Rights and Rights after a qualifying period of 12 weeks. This 12-week qualifying period does not have to be continuous.

The greatest impact to your school will be the right to comparator pay after the 12 week qualifying period.

However, allowed under this regulation is the Swedish Derogation contract of employment. The agency worker would be placed on this type of contract at the request of the school where there are no funds available to meet equal pay. In return for accepting this contract the agency worker would forfeit equal pay in return for regular work from the agency.

Bay Resourcing uses state of the art technology and traditional expertise to monitor, calculate and will inform you when an agency worker has completed a 12-week qualifying period. **Refer to Calculating the Qualifying Period.**

Since we also have to include any periods that the agency worker has been supplied to you by another agency, we have amended our Terms and Conditions to include a



clause asking schools to tell us if this is the case. We have also included a new clause in our contract with staff asking them the same thing.

You should be aware that the AWR contains anti-avoidance provisions which prevent a series of assignments being structured in a way that prevents an agency worker from completing the qualifying period which carries a £5,000 fine.

Your school's role 'Day One rights'.

From the first day of an assignment in a school, agency workers have the same rights as permanent staff members such as: canteen or similar, including school meals, Photocopying facilities – for class worksheets etc, Books and other learning resources, Toilet/shower facilities, Staff room, Coffee/tea making facilities or food and drink machines, Car parking if available, School buses, Workplace crèche, Mother and baby room as well as invited to Health and Safety briefings and evacuation procedures.

It does not mean that the agency worker has enhanced rights – for example if there is a waiting list for the car park the agency worker would not have a right to a car parking space but they would have a right to go on the waiting list.

Agency workers will have the right to be provided with information about relevant job vacancies with the school in the same way that existing comparable employees are. Schools will need to ensure that the agency worker knows where to access such information e.g. a noticeboard.



Rights after week 12 – After the agency worker has worked with the same school within the same position for a Qualifying period of *12 weeks, the agency worker is entitled to the same terms and conditions including equal pay and annual leave as school's own employees.

Equal Pay

Teachers with Qualified Teaching Status (QTS) will be entitled to national pay scales in accordance with https://www.gov.wales/sites/default/files/publications/2024-11/school-teachers-pay-and-conditions-wales-document-2024_0.pdf

All support staff will be paid according to the pay structure of the school/local authority in which they are working. The cost of cover will increase in both instances.

Other basic employment conditions include duration of working time, breaks and annual leave. This will not include occupational sick, maternity, paternity or adoption pay, redundancy pay, notice pay for loss of employment, a pension, expenses and time off for Trade Union duties.

After the 12-week qualifying period, pregnant workers are entitled to paid time off



whilst attending ante-natal appointments.

We will meet any additional costs here and provide a replacement worker should the school require one. If risk assessment is required it is the school's responsibility to carry one out and make any adjustments to remove the risk if possible.

Calculating the Qualifying Period

The qualifying period starts with the first day that the agency worker starts at your school. If this is a Wednesday, the qualified period will be Wednesday to Tuesday. As little as half a day a week represents a qualifying period.

The qualifying period does not have to be continuous.

If an agency worker is on assignment to more than one school during a week (or even during a day), this will result in more than one qualifying period running at any one time.

Because the working patterns of agency workers can be irregular, the AWR provide for a number of circumstances in which breaks do not prevent them from completing the qualifying period.

If you think of the qualifying period as a clock which runs from 0 to 12, a gap between assignments – or a move to a new assignment – will sometimes mean that the clock is reset to 0 and must start again. In other circumstances, a break will merely 'pause' the clock, which will then continue to tick when the agency worker resumes the assignment. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.



Most commonly, the clock will be set to zero because:

- an agency worker begins a new assignment with a new school;
- an agency worker remains with the same school but is no longer in the same role; or
- there is a break between assignments with the same school of more than six weeks that is not one which 'pauses' the clock or during which it continues to 'tick'.

The types of breaks that cause the qualifying clock to 'pause' are:

- a break for any reason where the break is no more than six calendar weeks and the agency worker returns to the same role with the same school;
- a break of up to 28 weeks because the agency worker is incapable of working because of sickness or injury;
- any break which is for the purpose of taking leave to which the agency worker is entitled, including annual leave;
- a break of up to 28 calendar weeks to allow the agency worker to perform jury service;
- a break caused by a regular and planned shutdown of the workplace by the school (for example at Christmas); and
- a break caused by a strike, lock out or other industrial action at the school's workplace.
- breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth; and
- any breaks due to the worker taking maternity leave, adoption leave or paternity leave.



Where an agency worker has consecutive absences of different types, whether or not continuity is broken will depend on the type of absence. For example, if an agency worker takes a break of five weeks between assignments and is then absent for two weeks due to sickness, the sickness absence pauses the clock. If the worker, then returns to the same role, the clock resumes ticking. In these circumstances, the break is longer than six weeks but continuity is not broken as the clock is paused after five weeks.

If you would like more information, please do not hesitate to contact:

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