

The Agency Worker Regulations 2010 – final guidance published

The government has recently published its long awaited final guidance on the Agency Worker Regulations which will come into force on 1 October 2011.

This article summarises some of the key areas of clarification provided by the final guidance and should be read in conjunction with our previous article - [Why 'it's good to talk' – the Agency Workers Regulation 2010, 29 March 2011.](#)

The final guidance is available on the Department for Business Innovation and Skills' website at the following link -

[http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance)

'Day one rights'

The final guidance provides further details about what is meant by "access to facilities" and "access to information relating to vacancies" are provided, including a more exhaustive list of the types of facilities, which might be covered, for example, access to a prayer room or car parking. It is suggested that hirers could provide agency workers with information about its facilities as part of an induction pack or give the information to the agency for passing on. It is anticipated that the relevant facilities will usually be on the hirer's site, but this may not always be the case.

An agency worker's right is to treatment in relation to relevant facilities that is no less favourable than that given to an actual comparable employee or worker directly employed by the hirer. Therefore if there are no comparable employees or workers there is no entitlement to equal treatment.

Agency workers will not be given 'enhanced' access rights, for example, by being able to 'jump' any queue, which exists for the facilities in question.

It is suggested that hirers need to ask themselves whether there is a good reason for treating the agency worker less favourably, and even if there is objective justification, that they may wish to consider whether they could offer the agency worker access to facilities on a partial basis rather than excluding them entirely.

'Twelve week rights'

The qualifying period is not retrospective, meaning that for those already on assignment it will start from 1 October 2011. A very helpful explanation of the rather complex rules relating to how the qualifying period is calculated is provided in the final guidance, using the analogy of a qualifying clock, which may either be reset to zero, continue to tick or be paused.

It is suggested that an agency worker need not look for a comparator because it will be possible for them to identify the appropriate basic working and employment conditions without one. However, they may find it easier to bring a claim if they are able to point to a comparator. Whilst a comparator needs to be engaged in broadly similar work, it is noted that account can be taken of their skills and qualifications, and that these may justify a higher level of pay for the comparator.

Swedish derogation

Subject to certain being met conditions, where an agency worker has a permanent contract of employment with the agency which was entered into prior to the commencement of their first assignment, the Regulations provide for an exemption to the right to equal provisions of *pay only*. We will examine this complex area in more detail in a future article.

Conclusion

The final guidance, whilst helpful, is non-statutory and has no legal force. Employment Tribunals are, therefore, not obliged to follow it when considering claims brought under the Regulations, although they are likely to do so.

Furthermore, there remain uncertainties regarding how some aspects of the Regulations will operate in practice. Until guidance from the Tribunals is available in the form of case law, prudent agencies and hirers should take a cautious approach and seek legal advice where necessary.

Free breakfast briefings for agencies and hirers

We will be running free breakfast briefings for agencies and hirers in central London in September. These briefings will explore the issues raised by the Regulations in more detail and provide practical guidance on how you can protect your organisation.

To register your interest, please contact Sophie Morrison on 020 7148 7859 or smorrison@levenesemployment.co.uk.

How we can help you

Whether you are an agency, hirer or agency worker, we can help you to –

- Understand your rights and obligations under the Regulations
- Interpret the government's guidance
- Review your contracts, policies and procedures
- Establish effective processes for the timely exchange of relevant information
- Determine how 'day one' and 'twelve week' rights apply in particular situations
- Correctly handle disputes arising from the Regulations
- Provide representation in any claims brought under the Regulations

For further information

Please call us on 0207 148 7850 or email info@leveneseemployment.co.uk.

Alternatively please contact [Armen Acemoglu](#) directly on 020 7148 7847 or email aacemoglu@leveneseemployment.co.uk.

Disclaimer

Our news articles are written to highlight, in general summary form, some of the issues facing employers and employees in the UK. They are not intended to be, and do not constitute either legal advice or an authoritative statement on the law. Advice should always be sought for specific circumstances.

29 July 2011

© Levenes 2011