

**CIVIL LITIGATION DEPARTMENT
EMPLOYMENT LAW
MARCH 2011
AGENCY WORKERS**

THE AGENCY WORKERS REGULATIONS 2010

These Regulations come into effect on **1 October 2011**. They provide that an agency worker will be entitled to the same basic working conditions as people taken on by the hirer relating to:

- The duration of working time.
- Night work.
- Rest periods (in a week) or rest breaks (in a day).
- Annual leave.
- Pay (any fee, bonus, commission, holiday pay or other emolument referable to employment) BUT NOT INCLUDING occupational sick pay; occupational retirement benefits; payments for maternity, adoption or paternity leave; redundancy or guarantee payments; payments for participation in financial schemes (e.g. share options) or loyalty bonus schemes; payments for time off to undertake trade union duties or payments for loans or expenses.

An agency worker must work *in the same role* with *the same hirer* for *12 continuous calendar weeks* to qualify for these basic working conditions. Certain absences will not break continuity including:

- Any break of less than 6 weeks.
- Sickness absence of 28 weeks or less.
- Breaks related to maternity, childbirth or pregnancy.
- Jury service.
- Temporary shut down.
- Industrial action.

Agency workers have the right to be treated no less favourably than a comparable worker in relation to collective facilities (like the canteen, child care or transport). They are also entitled to be told about any vacancies with the hirer. These rights apply from day one of the assignment.

If an agency worker thinks that there might have been a breach of their rights, they can ask for a written statement containing information about the treatment in question. There is an obligation to respond.

Agency employees and workers can make claims in the employment tribunal for breaches of their rights. The agency (or, in some circumstances, the hirer) might be ordered to pay compensation as a result and this will cover *any loss* which is attributable to the infringement. In addition, if the tribunal decides that assignments have been structured in a particular way in an attempt to deny the agency worker of their rights, a further penalty of up to £5,000 can be awarded.

**If you require any advice or assistance about an employment matter,
please contact Julie Granger or Daniel Crook in our Civil Litigation
Department.**

Disclaimer

The content of this article is intended for general information purposes only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at March 2011 and it may be affected by subsequent changes in the law. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of this article.