

Temporary Workers Regulations Guidance from BIS.gov.uk (0511)

Qualifying for 'Equal Treatment' *Regulations 5-13*

At a glance

This section covers the entitlements that Temporary Workers will receive from the first day of an assignment; entitlements in relation to basic working and employment conditions following a 12 week qualifying period and the timing of the receipt of the entitlements.

Rights under these Regulations:

Day 1; Rights for all Temporary Workers *Regulations 12-13*

The Regulations give Temporary Workers the same access to certain facilities provided by the Hirer and information on job vacancies.

Access to Collective Facilities and Amenities: *Regulation 12*

From day one of an assignment, Temporary Workers are entitled to be treated no less favourably than a comparable worker or employee in relation to access to collective facilities and amenities provided by the Hirer.

This is not intended to extend to all benefits which a Hirer might provide to directly recruited employees; rather, it applies to collective facilities provided by the Hirer to employees as a whole or to particular groups of workers or employees. These may include:

- a canteen or other similar facilities
- a workplace crèche
- transport services (e.g. in this context, local pick up and drop offs, transport between sites – but not company car allowances or season ticket loans)
- toilets/shower facilities
- staff common room
- waiting room
- mother and baby room
- prayer room
- food and drinks machines
- car parking

Access to facilities is not:

This does not mean that Temporary Workers will be given 'enhanced' access rights, for example, where access to a crèche involves joining a waiting list, the Temporary Workers would also be able to join the list and would not be given an automatic right to have a crèche place.

Nor is it about access to off-site facilities and amenities which are not provided by the Hirer, such as subsidised access to an off-site gym as part of a benefit package to reward long term service or loyalty or to other types of benefits such as the ability to purchase discounted company goods in a staff shop or subsidised meals in a canteen.

Access to facilities – comparable worker

An Temporary Worker's right is to treatment in relation to relevant facilities that is no less favourable than that given to an actual comparable worker – an employee or worker directly employed by the Hirer.

If there are no comparable workers or employees there is **no entitlement** to equal treatment.

Access to Information on Job Vacancies *Regulation 13*

From day one of an assignment, all Temporary Workers will be entitled to be provided with information about any relevant job vacancies within the Hirer that would be available to a comparable employee or worker.

Access to vacancies is not:

This right will not apply in the context of a genuine 'headcount freeze' where posts are ring fenced for redeployment purposes or internal moves which are a matter of restructuring and redeploying existing internal staff in order to prevent a redundancy situation.

After 12 weeks in the same job

Regulation 6

After an Temporary Worker completes a 12 week qualifying period with the same Hirer, in the same role, they will be entitled to have the same basic terms and conditions of employment as if they had been employed directly by the Hirer.

They are;

- **Key elements of pay**
- **Duration of working time** e.g. if working is limited to a maximum of 48 hours a week
- **Night Work**
- **Rest Periods**
- **Rest Breaks**
- **Annual Leave**
- **Pregnant Temporary Workers who have completed the 12 week qualifying period will be entitled to paid time off for ante natal appointments**

Calculating the 12 week qualifying period

Regulation 7

The 12 week qualifying period is **triggered by working in the same job with the same Hirer for 12 calendar weeks**. A calendar week in this context will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis.

Accrual of 12 week qualifying period

The qualifying period is **not retrospective**; a Temporary Worker will only start to accrue the 12 weeks qualifying period after the Regulations come into force on 1 October 2011 even if the assignment started before 1 October 2011.

Substantively different

If there is a substantive change to a job role within the same Hirer, a new qualifying clock commences for the new role.

However, for this to happen, the work or duties which make up the whole or main part of a role must be substantively different.

How to identify 'basic working and employment: Conditions' and the relevance of a "comparator"

Regulation 5

How equal treatment is established

Equal treatment is not required in respect of all the terms and conditions that the person would have received had they been recruited directly. It covers basic working and employment conditions.

Terms and conditions normally set out in:

- (a) Standard contracts;
- (b) A pay scale or pay structure;
- (c) A relevant collective agreement;
- (d) A company handbook or similar

It would not apply if there were genuinely no 'basic working and employment conditions' that apply generally.

Comparator (Direct Employee of the Client)

A Comparator needs to be engaged in broadly similar work to the Temporary Worker, but account can be taken of their skills and qualifications as this may justify a higher level of pay for the comparator. They must work at the same or, if there is no comparable employee in the same workplace, in another of the Hirer's workplaces. They will not be a comparable employee if they are no longer employed by the Hirer. Another Temporary Worker cannot be a Comparator.

Pay

At a glance

This guide explains what is included and excluded in the definition of 'pay'.

'Pay' includes

- **Entry level** basic pay based on the annual salary an Temporary Worker would have received if recruited directly (usually converted into hourly or daily rate, taking into account any pay increments). **Please note; as a Temporary Worker does not accrue time, the comparable pay is entry level only**
- Overtime payments, subject to any requirements regarding the number of qualifying hours
- Shift/unsocial hours allowances, risk payments for hazardous duties
- Payment for annual leave (any entitlement above the statutory minimum of 5.6 weeks may be added to the hourly or daily rate)
- Bonus or commission payments directly attributable to the amount or quality of the work done by the individual.
- Vouchers or stamps which have monetary value and are not "salary sacrifice schemes" – e.g. luncheon vouchers, child care vouchers

'Pay' excludes

- Occupational Sick Pay (the Regulations do not affect an Temporary Worker's statutory entitlements)
- Occupational Pensions
- Occupational Maternity, Paternity or Adoption pay (the Regulations do not affect an Temporary Worker's statutory entitlements)
- Redundancy pay (statutory and contractual)
- Notice pay (statutory and contractual linked to loss of employment)
- Payment for time off for Trade Union duties
- Guarantee payments as they apply to directly recruited staff if laid off
- Advances in pay or loans e.g. for season tickets
- Expenses such as accommodation and travel expenses
- Payments or rewards linked to financial participation schemes such as share ownership schemes, phantom share schemes
- Overtime or similar payments where the Temporary Worker has not fulfilled qualifying conditions required of someone directly recruited. For example, an Temporary Worker would have to be doing work over and above standard hours to qualify for overtime, not just working a shift that permanent staff tend to work on an overtime basis
- The majority of benefits in kind (see reference to vouchers in stamps which have a monetary value and are included on previous page), given as an incentive or reward for long-service.
- Any payments that require an eligibility period of employment/service, **as a Temporary Worker does not accrue time.**
- bonuses which are not directly linked to the contribution of the individual – e.g. a flat rate bonus that is given to all direct recruits to encourage loyalty or long term service
- additional discretionary, non-contractual bonuses

Bonuses linked to individual performance

There are many different types of bonus or commission payments. The key question is whether the bonus or incentive payment or reward is directly attributable to the amount and quality of work done by the Temporary Worker. If it is for another reason other than the amount or quality of the work, such as to encourage the worker's loyalty or to reward long-term service then it is outside the scope of the entitlement to the same terms and conditions relating to pay.

Examples of bonus payments that would be included;

- commission payments linked to sales;
- bonuses payable to directly recruited staff who meet a specific individual performance target, e.g. in terms of calls handled in a given time;
- bonuses payable on the basis of individual performance over a given period, e.g. a reporting year

Examples of bonus payments which would be excluded;

Bonuses which are determined by the overall performance of the company and given to workers who have been with the Hirer for a number of years;

- bonuses which are determined by the overall performance of the part of the organisation where the Temporary Worker has worked, where there is no recognition of individual contribution
- bonuses designed to reward loyalty and service to the organisation and not based on individual performance

Even where a Temporary Worker does qualify for the bonus, they will not have to receive exactly the same bonus as any particular directly-recruited worker but should have the same opportunity to achieve a bonus, subject to their personal performance.

Performance appraisal systems

The Regulations do not require integration of Temporary Workers into performance appraisal systems for someone directly recruited.

Annual pay award

Where a Hirer gives an annual pay increment, a Temporary Worker should receive the pay increment that he or she would have been entitled to if recruited directly to do the same job. BUT if the Temporary Worker is paid above the entry level pay then there is no entitlement for the Annual Pay Award to be made.

Working Time and Holiday Entitlements

At a glance

This section covers what is included in working time and holiday entitlements. In addition to existing rights ([Working Time Regulations 1998](#)), after 12 weeks in a given job, an Temporary Worker will be entitled to the same terms and conditions relating to the duration of working time, night work, rest periods and rest breaks, annual leave and to be paid at the appropriate overtime rate as he or she would have received as a direct employee.

Working time entitlements – duration of working time; night work; rest periods and breaks

Many Hirers may already offer some or all of these entitlements to Temporary Workers from day one of an assignment.

For example, where a someone directly recruited would have had a more generous entitlement to rest than the statutory minimum requirement (perhaps a lunch hour rather than the minimum 20-minute rest during a shift of more than six hours), an Temporary Worker working the same shift will also be entitled to this once the 12-week qualifying period has elapsed.

Duration of working time this might cover a variety of conditions. For example, if someone directly recruited to the same job would not be expected to work more than 48 hours then the Temporary Worker should be offered the same terms and conditions.

Paid Holiday leave

In relation to paid holiday leave, all workers have a statutory entitlement to 5.6 weeks per year (based on their working pattern – somebody working five days a week is entitled to $5.6 \times 5 = 28$ days) which can include bank and public holidays.

If a Hirer would have given a more generous contractual leave entitlement to the Temporary Worker if recruited directly to fill the same job, the Temporary Worker concerned should receive the same enhanced entitlement once the 12-week qualifying period has elapsed. The entitlement is entry level holiday entitlement only, therefore if the Hirer's staff accrue additional holiday entitlement over a period of time, the Temporary Worker is not entitled to this.

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Payment in lieu option

There will be many differing entitlements to paid holiday leave provided by Hirers and a possible way of simplifying the administration of this entitlement could be to deal with any additional entitlement – over and above the statutory entitlement – as a one off payment at the end of the assignment or as part of the hourly/daily rate.

Pregnant workers and new mothers

At a glance

After completing a 12 week qualifying period in a given job, pregnant Temporary Workers will be allowed paid time off to attend antenatal medical appointments and antenatal classes when on assignment.

If they can no longer complete the duties of the original assignment for health and safety reasons, they will also need to be found alternative sources of work (paid at a rate that is no less favourable than the last assignment which was terminated on health and safety grounds related to the pregnancy).

If alternative work cannot be found, then the pregnant woman will have the right to be paid by the agency for the remaining expected duration of the original assignment.

This provision does not give the Temporary Worker any additional entitlement to maternity, paternity or adoption rights beyond those to which they would otherwise have been entitled.

For further information

[Directgov – working when pregnant](#)

[Business Link – pregnancy at work](#)

[Health and Safety Executive – Health and safety for new and expectant mothers](#)

Responsibility of the pregnant Temporary Worker

The Temporary Worker will need to first notify the agency of her pregnancy and also in writing to the Hirer. The agency may wish approach the Hirer on her behalf and to ask for a health and safety risk assessment in the current assignment.

If the Hirer identifies a risk, they will need to make an adjustment if it is reasonable. If it is not reasonable, the agency should offer alternative suitable work if available, where the Temporary Worker be paid at the same rate until the end of the assignment. The Temporary Worker will not be eligible to be paid if they have unreasonably refused suitable alternative work.

The Temporary Worker should inform the agency of any ante-natal appointment so that she will continue to be paid at the usual hourly rate.

We regret that, due to the volume of enquiries that we are expecting, we will not be answering queries via telephone. Therefore if you have any enquiries please email the nature and detail of your enquiry to AWRenquiries@wolviston.com. We look will respond to your request within 5 working days.

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