

Agency Workers Regulations and Locum GPs June 2012

This guidance will be useful for locums who are employed by locum agencies, as well as the practices who hire them.

Practices should be aware that the Regulations also apply to any other staff that they hire through agencies eg. secretarial staff.

The Agency Workers Regulations came into force on 1st October 2011, entitling agency workers to equal treatment with directly recruited employees with respect to basic employment conditions.

NB. In explaining the new rights afforded by the Regulations, this guidance refers to three parties:

- **Agency** – the temporary work agency that engages the worker (in this case the locum agency)
- **Hirer** - the organisation to whom the worker is actually supplied to provide work services (in this case the GP practice or OOH provider)
- **Worker** – the individual concerned (excluding self-employed Drs who provide services through an agency to clients or customers of the doctors business)

What rights have agency workers gained?

Since the Regulations came into effect, agency workers now have certain rights on day one of starting work in a new post. Other rights are gained after a period of 12 weeks.

From their first day in a new post, agency workers are now entitled to have access to all work facilities, such as a work canteen, childcare facilities or any transport services provided. They should also have access to information on any internal job vacancies. It is the responsibility of the hirer to provide these to the worker.

After 12 weeks in the same job, agency workers are entitled to equal treatment 'to basic working and employment conditions'. The phrase basic terms and conditions refers to: pay; holidays; night work; rest periods/breaks; duration of working time. Equal treatment with regard to pay includes any fee, bonus or commission. It also includes holiday pay. It **does not** include sick pay, redundancy pay or maternity/paternity/adoption pay. Pregnant agency workers also gain the right to paid time off to attend ante-natal appointments, and for alternative work or pay to be provided where the assignment can not be continued for health and safety reasons.

It is the responsibility of the agency to guarantee that these conditions are met after 12 weeks and the agency should work with the hirer to ensure that they have all the relevant information on comparable pay etc.

The 12 week qualifying period for acquiring these rights is counted by calendar weeks, regardless of how many hours the individual works each week. Therefore, even if a locum GP works for a practice for just one session a week, they will still gain the

additional rights after 12 of these weekly sessions. However, a break from work of over 6 weeks will pause the accrual of the 12 week qualifying period. Continuity will not be broken if there is a break in work of less than 6 weeks, or the break is due to annual leave, or the break is due to illness or jury service and is less than 28 weeks. Continuous service will continue to accrue for the original intended duration of the assignment where the break is due to taking maternity, paternity or adoption leave.

The standards against which these conditions should be compared are those offered to an equivalent employee, as set out in employee contracts, handbooks, pay scales etc. In a GP practice this might be a salaried GP employed by the same practice. However, there does not have to be an actual equivalent employee with whom to compare the agency worker; the comparator could be theoretical. The important principle is that the agency worker should have the same basic employment conditions that they would have had if they had been employed directly by the hirer.

The regulations **do not give agency workers employee status**. This means that they do not, for example, gain the right to claim redundancy pay or unfair dismissal.

Who does this affect?

The Regulations affect all those who work as temporary agency workers. You are a temporary agency worker if you have been supplied by an agency to a hirer to work on a temporary basis.

The Regulations will therefore apply to locums who are employed by locum agencies. They will **not** affect locums directly contracted by a practice.

A locum is an agency worker if –

- they are paid by a locum agency, which deducts tax/NI contributions
- they hold a contract with the locum agency but work under the supervision of a practice

A locum is **NOT** an agency worker if –

- an agency *introduced* them to the practice, but they are directly contracted by the practice
- the agency deducts a percentage of the locum's fee but the locum is not engaged by the agency and the agency does not deduct tax etc.
- they hold a contract with the practice
- they are genuinely in business on their own account. If you are unsure of your employment status, you may find the [HMRC Employment Status Indicator useful](#).

The Regulations will not apply to a locum working as part of a locum chambers if the chambers' members retain their self-employed status and the relationship between the doctor and the hirer is one of business to client. Please note though that use of the title 'chambers' does not necessarily guarantee this will be the case. As mentioned above, if you are unsure of your employment status you should check with HMRC.

Should a dispute occur, it will be for the Employment Tribunal to decide the status of the worker and therefore whether the agency worker regulations apply.

What are the potential penalties for the GP practice for non-compliance with the Regulations?

If a hirer is found to not have complied with the Regulations, they could face for compensation set at a minimum of two weeks' pay, with no maximum award.

Furthermore the Employment Tribunal can order additional compensation of up to £5,000 when there has been a prohibited structure of assignments that appear intended to prevent the agency worker from gaining rights under the Regulations. Practices should therefore not attempt to sidestep the Regulations by, for instance, cutting off a locum GP's time at the practice after 11 weeks and then re-hiring them in a new role after a period of 6 weeks.

Further guidance

You can find further guidance on the Agency Worker Regulations on the [Department for Business Innovation and Skills \(BIS\) website](#).

If you are a BMA member and are unsure of your rights under the Agency Worker Regulations you can contact the BMA for expert advice. Email support@bma.org.uk or telephone 0300 123 1233.