



REC EDUCATION: WHAT YOU NEED TO KNOW AS A SUPPLY TEACHER

Jobs *transform* lives

THE AGENCY WORKERS REGULATIONS 2010

WHO IS AN AGENCY WORKER?

Individuals who are engaged by an agency under a contract of employment or other contract to provide their services personally and are supplied to work under the supervision and direction of the agency's client, generally come within the agency worker definition. Those who are not covered by the AWR include individuals who do not work under the client's supervision and direction such as individuals who are genuinely self-employed.

WHAT IF I WORK THROUGH AN UMBRELLA COMPANY?

If you work via an umbrella company or any other intermediary and you are an agency worker you will still be entitled to rights under AWR.

"All REC members are required to abide by a Code of Professional Practice and take a robust compliance test to enter and stay in membership"

WHO ARE THE RECRUITMENT AND EMPLOYMENT CONFEDERATION?

The Recruitment and Employment Confederation (REC) is the professional body for the UK's recruitment industry. All REC members are required to abide by a Code of Professional Practice and take a robust compliance test to enter and stay in membership. We represent 83% of the entire recruitment industry by turnover, set standards and drive professionalism in recruitment. The REC has over 300 education members who supply teachers to schools across the UK. This guide has been created by the REC for supply teachers to help you understand your rights under the Agency Workers Regulations 2010.

THE AGENCY WORKERS REGULATIONS 2010

The Agency Workers Regulations 2010 (AWR) give supply teachers who are supplied to schools by agencies the right to be engaged on at least the same terms and conditions as teachers who are employed by schools directly. This is referred to as equal treatment. The AWR apply to England, Scotland and Wales and similar provisions apply in Northern Ireland (Agency Workers (Northern Ireland) Regulations 2011). If you are an agency worker you are entitled to work under the same basic employment rights that would have applied if the school had taken you on directly. These will apply after you have worked in the same role for the same 'hirer' for 12 weeks. You will also be entitled to certain Day One rights from the first day of an assignment.

WHO IS MY HIRER?

The hirer for the purposes of AWR varies. The hirer will have its own legal identity and is responsible for supervising and directing you as a teacher whilst you work an assignment.

- Foundation schools, voluntary aided schools and foundation special schools– the hirer is the school's governing body.
- Community schools, voluntary controlled schools, community special schools and maintained nursery schools– the hirer is the local authority or the school's governing body.
- Academies and free schools– the hirer is the proprietor of the school often known as the 'academy trust'.
- Independent schools– the hirer is the proprietor of the school.

For simplicity we will refer to the hirer as 'the school' for the rest of this guidance.

WHAT EQUAL TREATMENT RIGHTS AM I ENTITLED TO?

Equal treatment means the terms and conditions that relate to: pay; duration of working time; night work; rest periods; rest breaks; and, annual leave. These rights apply once you have qualified for equal treatment. After 12 weeks, you qualify for equal treatment but you will not become an employee of the school.



PAY



DURATION OF WORKING TIME



NIGHT WORK



REST PERIODS & REST BREAKS



ANNUAL LEAVE



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SCHOOL CLOSURES

If you are working before and after a school closure (for example, the school holidays) and you are part way into your qualifying period, the qualifying period will pause at the end of the term and start again at the beginning of the next (so long as you are doing the same role with the same school).

PAY

The agency will negotiate rates of pay with the school. If you have qualified for equal treatment the agency must ensure that it is given sufficient information from the school to work out what equal treatment (including pay) you would be entitled to from the school if it employed you directly. The agency relies on this information to determine what terms you are entitled to be supplied on. Your equal treatment pay rates may vary from school to school, depending on the arrangements the school has in place for its own staff.

ARE THERE CIRCUMSTANCES IN WHICH THE AWR WILL NOT APPLY TO ME?

No. As long as you are an agency worker, the AWR will always apply to you and you cannot be asked to sign away your AWR rights. However, the agency you are supplied by can offer you a specific type of contract (often referred to as a 'pay between assignments contract') which changes your rights under the AWR. If you agree to work under this type of contract, you will not be entitled to equal pay but you will retain all of the other equal treatment rights and the Day One rights.

However, this is a contract of employment which gives you the same rights as an employee and it also means that the agency will be required to pay you a minimum amount during periods that you are not being supplied to work on an assignment provided you are available for work. The contract must set out basic information about your employment (including where you are required to work, the type of work, your hours etc.) and it must state that by entering into that contract, you are not entitled to equal pay.

WHAT ARE MY DAY ONE RIGHTS AS A SUPPLY TEACHER?

From day one of an assignment, you will be entitled to the right to access information on job vacancies and the right to access collective on-site facilities. You are entitled to access collective facilities such as car parking, childcare facilities, canteen facilities and any transport services that are provided to the teachers employed directly by the school. The school has the sole responsibility for ensuring that you receive any Day One rights so if you have any queries, you should address these to the school.

THE SCHOOL'S RESPONSIBILITIES

The school should provide your agency with up to date information on staff terms and conditions so that the agency can ensure that you receive the correct equal treatment after 12 weeks in the same assignment. Schools are also responsible for ensuring that you are able to access their facilities and can view job vacancies from the first day of your assignment.

HOW WILL I QUALIFY FOR EQUAL TREATMENT?

After you have worked 12 calendar weeks in the same role with the same school, you will be entitled to equal treatment irrespective of the number of agencies who supplied you to do the same role at the school and irrespective of whether you are full or part-time. Any time worked during a week will be counted as 'one week' – even if you have only worked a few hours in a week. If you take a break from an assignment and return to the same role with the same school and the break lasts for 6 weeks or less, you will preserve any weeks that you have already worked in the assignment. So, for example, if you worked for five weeks in an assignment, were then not required for three weeks and then you returned to the same role, instead of starting from zero weeks towards the twelve week qualifying period, you will pick up from week six. This is often referred to as 'pausing' the qualifying clock.

WHAT SHOULD I DO IF I THINK I AM NOT RECEIVING EQUAL TREATMENT?

If you have completed the 12 week qualifying period and believe you are not receiving equal treatment, talk to your agency! You should make an informal enquiry with your agency to find out if this has happened and why it has happened. If you don't receive a satisfactory response, you are entitled to make a request for a written statement from the agency. This will provide you with information about the treatment you have received. The agency has 28 days to respond. If you do not receive a response, you can make a request directly to the school. There is no independent body tasked with enforcing the AWR. Instead you can pursue a claim in an Employment Tribunal in order to enforce your rights. Claims can be brought against the school, the agency or both depending on the issue in question.

Would you like more information? If you would like to know more, please contact your agency. Additionally the Department for Business Innovation and Skills (the Government Department which is responsible for the AWR legislation) and the Department for Education have produced specific guidance for supply teachers: <https://www.gov.uk/government/publications/employing-agency-supply-teachers>.

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