
STATUTORY INSTRUMENTS

2010 No. 93

The Agency Workers Regulations 2010

PART 2

Rights

Qualifying period

7.—(1) Regulation 5 does not apply unless an agency worker has completed the qualifying period.

(2) To complete the qualifying period the agency worker must work in the same role with the same hirer for 12 continuous calendar weeks, during one or more assignments.

(3) For the purposes of this regulation and regulations 8 and 9, the agency worker works in “the same role” unless—

- (a) the agency worker has started a new role with the same hirer, whether supplied by the same or by a different temporary work agency;
- (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and
- (c) the temporary work agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role.

(4) For the purposes of this regulation and regulation 10, any week during the whole or part of which an agency worker works during an assignment is counted as a calendar week.

(5) For the purposes of this regulation and regulations 8 and 9, when calculating whether any weeks completed with a particular hirer are continuous, where—

- (a) the agency worker has started working during an assignment, and there is a break, either between assignments or during an assignment, when the agency worker is not working,
- (b) paragraph (8) applies to that break, and
- (c) the agency worker returns to work in the same role with the same hirer,

any continuous weeks during which the agency worker worked for that hirer before the break shall be carried forward and treated as continuous with any weeks during which the agency worker works for that hirer after the break.

(6) For the purposes of this regulation and regulation 8, when calculating the number of weeks during which the agency worker has worked, where the agency worker has—

- (a) started working in a role during an assignment, and
- (b) is unable to continue working for a reason described in paragraph (8)(c) or (8)(d)(i), (ii) or (iii),

for the period that is covered by one or more such reasons, that agency worker shall be deemed to be working in that role with the hirer, for the original intended duration, or likely duration of the assignment, whichever is the longer.

(7) Where—

(a) an assignment ends on grounds which are maternity grounds within the meaning of section 68A of the 1996 Act, and

(b) the agency worker is deemed to be working in that role in accordance with paragraph (6), the fact that an agency worker is actually working in another role, whether for the same or a different hirer during the period mentioned in paragraph (6) or any part of that period, does not affect the operation of that paragraph.

(8) This paragraph applies where there is a break between assignments, or during an assignment, when the agency worker is not working, and the break is—

(a) for any reason and the break is not more than six calendar weeks;

(b) wholly due to the fact that the agency worker is incapable of working in consequence of sickness or injury, and the requirements of paragraph (9) are satisfied;

(c) related to pregnancy, childbirth or maternity and is at a time in a protected period;

(d) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the agency worker is otherwise entitled which is—

(i) ordinary, compulsory or additional maternity leave;

(ii) ordinary or additional adoption leave;

(iii) paternity leave;

(iv) time off or other leave not listed in sub-paragraph (d)(i), (ii) or (iii); or

(v) for more than one of the reasons listed in sub-paragraph (d)(i) to (iv);

(e) wholly due to the fact that the agency worker is required to attend at any place in pursuance of being summoned for service as a juror under the Juries Act 1974⁽¹⁾, the Coroners Act 1988⁽²⁾, the Court of Session Act 1988⁽³⁾ or the Criminal Procedure (Scotland) Act 1995⁽⁴⁾, and the break is 28 calendar weeks or less;

(f) wholly due to a temporary cessation in the hirer's requirement for any worker to be present at the establishment and work in a particular role, for a pre-determined period of time according to the established custom and practices of the hirer; or

(g) wholly due to a strike, lock-out or other industrial action at the hirer's establishment; or

(h) wholly due to more than one of the reasons listed in sub-paragraphs (b), (c), (d), (e), (f) or (g).

(9) Paragraph (8)(b) only applies where—

(a) the break is 28 calendar weeks or less;

(b) paragraph (8)(c) does not apply; and

(c) if required to do so by the temporary work agency, the agency worker has provided such written medical evidence as may reasonably be required.

(10) For the purposes of paragraph (8)(c), a protected period begins at the start of the pregnancy, and the protected period associated with any particular pregnancy ends at the end of the 26 weeks beginning with childbirth or, if earlier, when the agency worker returns to work.

(11) For the purposes of paragraph (10) "childbirth" means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy.

(1) 1974 c.23.

(2) 1988 c.13.

(3) 1988 c.36.

(4) 1995 c.46.

(12) Time spent by an agency worker working during an assignment before 1st October 2011 does not count for the purposes of this regulation.