



# Agency Worker Regulations Guidance

## Introduction

Legislation came into force on 1 October 2011, giving agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job. This document applies to all contractors and should be read in conjunction with the Equal Opportunities, Diversity and Inclusion Policy.

## Statement of Intent

Starfyn Education is committed to ensuring all contractors receive equal treatment and entitlement under the Agency Workers Regulations legislation.

## Procedures

### Day 1 rights for all 'agency workers'

From day one of an assignment agency workers are entitled to the same access to collective facilities and information such as:

- Access to internal vacancies \*
- Creche \*\*
- Canteen
- Food and drink machines
- Toilets/shower facilities
- Common room
- Car parking\*\*
- Prayer room
- Local pick-up/drop-off\*\*

\* This does not mean that you will automatically have the right to be employed by the hirer. You will still need to follow their usual recruitment process.

\*\* If there is a waiting list you will not automatically be entitled to a place but can apply and join the waiting list.

Your contact at the school will be able to advise you exactly which facilities apply as they will vary from school to school.



Day 1 rights do not include 'enhanced' access rights that are given as part of a benefit package to reward long term service and loyalty e.g. subsidised access to an off-site gym, subsidised meals in the canteen or discounted company goods in a staff shop.

### **After 12 weeks in the same job with the same hirer**

After a 12-week qualifying period an agency worker will be entitled to the same basic working and employment conditions as a directly employed member of staff in the same job. These include:

- Pay
- Duration of working time
- Night work
- Rest periods
- Break periods
- Annual leave
- Paid time off for ante-natal appointments
- Access to training

**Equal pay includes:** basic salary, bonuses or commission payments related to the quantity and quality of your work, shift allowance, overtime payments, holiday pay and vouchers (provided they have a fixed monetary value and are not part of a salary sacrifice scheme).

**Equal pay does NOT include:** benefits in kind, vouchers which are a salary sacrifice, pension payments, occupational sick pay, redundancy pay, notice pay, advances and loans, share and option schemes, maternity, paternity and adoption pay (over and above the statutory entitlement), bonus payments which are not directly attributed to your performance, Guarantee payments, expenses or health/life insurance.

### **12 week qualifying period**

The 12-week qualifying period is activated by working in the same job with the same hirer (school) for 12 calendar weeks, irrespective of your working pattern (e.g. full time or part time) and irrespective of which or how many agencies supplied you to the same role with the same hirer.

A calendar week will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will accumulate even if you only work a few hours a week.

Because the 12-week qualifying period can be accumulated through more than one agency (it's the same job with the same hirer that qualifies), we need to know if we send you to a school you have worked at in the previous 7 days through another agency for the same job.

If thought of as a clock which runs to 12, there are circumstances which will reset the clock, pause the clock or allow it to continue ticking.



Reasons the 12 calendar weeks will be reset to 0:

- Most commonly a new assignment with a new hirer.
- An agency worker remains with the same hirer but is no longer in the same role.
- A break between assignments with the same hirer of more than 6 weeks (which is not one which 'pauses' the clock or allows it to continue to 'tick').
- Reasons the 12 calendar weeks will be paused:
  - A break for any reason that is no more than 6 calendar weeks where the agency worker returns to the same role with the same hirer.
  - A break of up to 28 weeks because the agency worker is incapable of work due to sickness or injury
  - Any break for annual leave which the agency worker is entitled to.
  - A break of up to 28 calendar weeks for the agency worker to perform jury service.
  - A break caused by regular and planned shutdown of the workplace by the hirer (e.g. Christmas).
  - A break caused by a strike, lock out or other industrial action at the hirer's establishment.
- Reasons the 12 calendar weeks will continue to tick:
  - Breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth.
  - Any breaks due to maternity, paternity and adoption leave.

If you don't think you are getting your day 1 entitlement, then speak to your contact at the school. If your query is regarding your 12-week entitlement, then speak to your consultant.

For more information on AWR:

[http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemploymentagencies/DG\\_198913](http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemploymentagencies/DG_198913)

<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workersregulations-guidance>

### **Paid Annual Leave**

As an agency worker, you are entitled to the minimum statutory paid annual leave as stated by the Working Time Regulations. Your entitlement for paid annual leave accrues in proportion to the amount of time worked and so is included in your daily rate. You are requested to take any annual leave during school holidays. When working within a care setting, annual leave should be taken at a time that will cause the least disruption to the unit.

Some umbrella companies give you the option to hold your holiday pay back until you request it. To find out, contact your umbrella company or look at your pay slip. It may state "Accrued holiday pay this period" and "Holiday paid out". If they are holding your holiday pay for you, you need to follow their



procedure to request paid holiday. You must claim it before the end of the financial year (March) each year as it will not be rolled over.

The annual leave entitlement to which the AWR is referring after the 12-week qualifying period is any annual leave scheme offered to a directly employed member of staff in the same job if that equates to more than the minimum statutory entitlement.

### **Sick Pay**

There are two types of sick pay:

1. Occupational sick pay (also known as company or contractual sick pay)
2. Statutory sick pay

Your employer does not have to offer an occupational sick pay scheme. If they do offer a sick pay scheme to a directly employed member of staff in the same job, the AWR does not give you access to it.

You may be able to claim Statutory Sick Pay (SSP) if you meet the following qualifying conditions:

- You are sick for at least four days in a row (including weekends and bank holidays and days that you do not normally work).
- You have average weekly earnings in-line with current criteria (which can be found here: <https://www.gov.uk/statutory-sick-pay>)

Your average weekly earnings are calculated using your earnings in the eight weeks before your sickness began. As agency workers, if you qualify for SSP it remains payable while you are working on an assignment or under contract with your agency. It is payable for up to 28 weeks. Whoever is responsible for the deduction of National Insurance contributions from your earnings is also responsible for the payment of SSP (if you are paid through an umbrella company they will be responsible).

To claim SSP you must inform your employer (and the umbrella company you are paid through) and provide some form of medical evidence from the eighth day of your illness.

SSP is usually paid on your normal payday in the same way as your normal earnings and is subject to tax and NI deductions, but if you are only receiving SSP your earnings may not be high enough for any deductions.

The standard weekly rate for SSP can be found here <https://www.gov.uk/statutory-sick-pay>. Your employer will work out a daily rate of SSP if necessary by dividing the weekly rate by the number of days you'd normally work in that week.



If you qualify for SSP it will be paid for the days you would normally work. These are called qualifying days. However, it is not payable for the first three qualifying days, which are known as waiting days.

If you do not qualify for SSP or SSP has ended, your employer (or umbrella company) must fill in form SSPI and give this to you as soon as possible. This form will state why SSP has not been paid or why it is ending, and the last date of payment, and will support a claim for Employment and Support Allowance.

For more information on SSP: <https://www.gov.uk/statutory-sick-pay>

## Communicating this Policy

This Policy will be communicated to contractors at their initial induction interview/briefing and thereafter from time to time, as determined appropriate by Starfyn Education. This Policy is available on the Starfyn Education website and is communicated to all clients.

Contact Point	Number or e-mail	Notes
Landline	01483 355377	7am to 5:30pm
James Biss	01483 355377	Starfyn Education Director
E-mails	<a href="mailto:James@starfyn.co.uk">James@starfyn.co.uk</a>	