

Practical Guide to Implementing the Agency Workers Regulations (AWR)

Logical Approach

Best Practices

Useful Questionnaires

FAQs

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What is AWR?

Despite the acknowledged positive intentions of the AWR, areas of conjecture still remain within the legislation's finer detail. However, all parties commercially involved in the recruitment industry including agencies, payroll providers, candidates and the Hirers themselves, are legally obligated to ensure they are compliant to the practices of the AWR where applicable.

Effectively, the AWR is motivated by a desire to introduce Best Practice into the industry to ensure agency workers are afforded the same entitlements as fellow workers who enjoy full employment status from the Hirer directly.

It is therefore paramount that all those in the recruitment process ensure that they are fully compliant and aware of their professional obligations and liabilities should the AWR legislation not be adhered to.

Therefore, it is critical that communication and transparency between all parties can be demonstrated along with constant proof of Best Practise and a commitment to operating within the spirit of the AWR.

To this end, we recommend that to protect the interests of all parties including agencies, candidates, Hirers and indeed AOG Resources itself, that the practical applications in this publication be stringently followed where possible and any queries raised be documented and signed.





The logical approach

Is the candidate outside of scope?

(Typically meaning 'Not an Agency Worker': Genuinely in business in their own right or part of a profession contractual relationships and conditions apply)

Yes (Solution), NO (Carry on) or Not Sure (Carry on)?

Is Comparator (or Match Pay) being paid or proposed to be after 12 weeks?

(Where the Hirer, Agency and/or Umbrella have decided to follow the legislation as intended. Giving equal pay and treatment when compared to an individual who is employed or hired by the Hirer directly)

Yes (Solution), NO (Carry on) or Not Sure (Carry on)?

Is the Swedish Derogation (Pay between assignments) Model a possible route?

(Where parity of pay is not required but payment in between assignments is. Subject to acceptance by the worker from the outset with clear contractual reasons stating the loss of certain benefits)

Yes (Solution), NO (Carry on) or Not Sure (Carry on)?

Do not proceed with this particular individual. No contract offered.

(With all options being exhausted, then a commercial decision not to use this individual on a specific assignment should be taken)



The Agency Guide to the Hiring Process

Overview

In its simplest form, the newly introduced Regulations apply to any individual whereby the legislation classifies them as an agency worker.

Once an individual has been classed as an agency worker, the AWR legislation is legally binding and dictates that Temporary Work Agencies (TWA's) must actively document specific information pertinent to the vacancy or assignment.

This information falls into two categories based on the actual length of the assignment undertaken by the agency worker.

Day 1 Entitlements

From the first day of any given assignment, he or she will automatically acquire the same rights and facilities available to regular employees or workers of the same Hirer.

The Hirer has a legal requirement to treat all employees equally and to provide agency workers with information pertaining to the facilities and benefits available. This information can be provided in the form of a company handbook or induction pack and should also be made available to the TWA for inclusion within the assignment's general documentation.

Typically, relevant information will include:

- The agency worker has the right to be informed of any relevant job vacancies to which they consider themselves suitable or relevant.
- Access to facilities on the Hirer's premises including uniforms, canteens, rest rooms, lockers, car parking and memberships.
- Plus any other facilities or benefits generally available to other employees and not provided as a consequence of long service or company loyalty.



The Agency Guide to the Hiring Process

12 Week Entitlements

With certain exclusions, once an agency worker has been working on an assignment at a Hirer's site for a twelve week qualifying period, they are automatically entitled to the same employment terms and conditions as comparable employees working within the same organisation or hired by the Hirer directly including:

- Equal Pay (based on the annual salary of a worker if they had been recruited directly by the Hirer).
- Identical Working Hours (including shift patterns or unusual hours, plus details of overtime payments).
- Risk Payments for hazardous duties.
- Comparable Annual Holiday & Statutory Sick Pay Entitlements.
- Any Qualifying Bonus Schemes (including any vouchers offered which have a monetary value).
- Rest Break Entitlements.
- Canteen Access & Other Benefits.



The Supply of Information

Agency Workers Rights to Relevant Information

Within the AWR legislation, agency workers are entitled to request and receive information which will enable them to define and judge their entitlement to “equal treatment” both from assignment commencement and after the 12 week qualifying period.

Deciding exactly what constitutes “equal treatment” will invariably be a matter of common sense and practice, but the spirit of the legislation is to ensure that agency workers are treated the same as if they had been recruited directly for the same job.

The responsibility to provide the agency worker with information relating to relevant job vacancies and access to collective facilities and amenities lies with the Hirer (in most circumstances). The agency worker can legally request this information any time after the start of any given assignment.

Process Guidelines

Before making any claim, the agency worker should be advised that they are required to submit a written request for information to the Hirer or Temporary Work Agency (TWA) who then have 28 days to respond (in writing) from the receipt of said request.

It is therefore in the interests of all parties to exchange information in a timely manner, in many cases this may become a contractual requirement for indemnities and insurance purposes. Furthermore, in accordance with suggested Best Practices, TWAs should instigate a system of sending formal reminders to the Hirer to check that any terms and conditions or pay structures which affect agency workers have not been changed.

As all parties are responsible for the supply of this information, procedures should be introduced at the outset and certainly no later than week 10 of any assignment - in good time to implement the information prior to the 12 week qualifying period. It is equally important that previous assignments are recorded to prevent earlier or immediate qualifying periods. We suggest looking at the previous 3 months, although 6 weeks is the stipulated timeframe (as explained later in this guide).

The ability to demonstrate and provide documented evidence which proves these guidelines have been embraced, will strengthen the defence against any potential case raised. In short, transparent sharing of information between all parties is a central facet of the AWR's objectives.



Agency to Hirer Information

In the course of our AWR obligations, AOG Resources will be liaising with both recruitment agencies and contract or temporary workers to ascertain preferred or stipulated routes, plus the professional and employment status on any given assignment. This internal process will be underpinned by an assignment schedule a copy of which is included overleaf.

At this juncture, the TWA will have already established the information to be included in the assignment schedule from the Hirer by completing an Agency to Hirer AWR 'Take-On' Questionnaire, an example of which is also published in this guide.

Please feel free to adapt the 'Take On' questionnaire in accordance with your company branding and procedures. If you would like AOG Resources to do this on your behalf, please contact marketing@racsgroup.com for a quotation.





Agency to Hirer AWR 'Take-On' Questionnaire

Regulation 5 of the Agency Workers Regulations (AWR) 2010 demonstrates that an agency worker who completes a 12 week qualifying period in the same role will be entitled to receive treatment and remuneration equal to what they would have received had they been recruited directly by the Hirer. The legislation also requires that any Temporary Work Agency must produce the following information in writing and within 28 days of any formal request from an agency worker (deemed to be or otherwise).

Please complete this form and provide any additional relevant information so that we know what terms and conditions the Contractor will be entitled to when they complete or are likely to complete the qualifying period of 12 weeks. This will allow us to assess and to inform you whether there is a risk to you under the AWR. We would be grateful if you could inform us if any of the following information changes e.g. the client has given a pay rise to a comparable employee.

We require this information no less than 10 weeks into any assignment - ideally we would like it before the assignment starts but nonetheless we need to demonstrate that we have made such a request. A best practice would be for your agency to do the same in all events (irrespective of the AWR model used) in order to safeguard against any future liability under the 'avoidance' clauses of the legislation.





DAY ONE RIGHTS

1 Please confirm that you have informed the Hirer of their day one responsibilities?

Yes / No

CONTRACT DETAILS

2 Please indicate the Contractor's Job Title:

3 Please indicate the Start Date:

4 Please indicate the End Date:

5 If an End Date is not specified, please indicate how the assignment is likely to run:

6 Please complete the Hirer's site details:

Name
Address

Postcode

PAY & BONUSES

7 Please indicate the Pay Rate to AOG Resources

Hourly / Daily

8 What is the salary payable to a comparable worker?

Hourly / Daily

9 What are the overtime payments?

Hourly / Daily

10 What are the shift/unsocial hour payments?

Hourly / Daily

11 What are the performance related commission payments?

Hourly / Daily

12 What are the performance related bonus payments?

Hourly / Daily

13 What are the voucher/stamp payments (that have a monetary value)?

Hourly / Daily

14 Are there any other payments made? (If so, what are they?)

Hourly / Daily

HOLIDAY & WORKING HOURS

15 How many days annual leave would the Contractor receive?

16 Please confirm that this is the same as a comparable worker:

Yes/ No

If No, state additional days:

17 Is the Contractor required to carry out shift work?

Yes/ No

18 Confirm that the Contractor is entitled to the same terms and conditions which would apply to shift work and working time regulations:

Yes/ No If No, state why:

19 Confirm that the Contractor is entitled to the same terms and conditions which would apply to rest breaks and rest periods:

Yes/ No If No, state why:

20 Any additional comments:



Agency to Worker

Now that you have asked the relevant questions of the Hirer, this section of the Guide outlines the questions you are strongly encouraged to ask your agency workers.

Typically, during the 'take on' interview process, your staff will already ask a series of company-approved questions, but the AWR legislation requires you also to request further information

which falls into one of three categories:

Past Three Months Employment History

Logically, all parties need to ascertain if the agency worker has been employed by the same Hirer within the previous six weeks. Given that the AWR 'clock' could have been stopped or paused for a number of reasons (sickness, holiday, maternity etc.), AOG Resources recommend that you actually ask if the agency worker has been employed by the same Hirer at any time during the previous three months.

Part 1 of the Agency to Worker questionnaire published overleaf illustrates the precise questions which you should ask to establish this information.

Professional Status

Establishing the professional status of an agency worker is central to the AWR legislation. If an agency worker considers themselves to be a 'professional' and it is subsequently proved, then by definition, they technically fall outside of the AWR scope. By asking these questions, you are both exercising a 'duty of care' and safeguarding your position, irrespective of the model then used.

Again, Part 1 of the Agency to Worker questionnaire illustrates the questions you should ask.

Self-employed or In Business Status

This element of AWR should only be used when an agency worker claims to be genuinely self-employed, or in business in their own right. The pertinent questions you need to ask are outlined in Part 2 of the Agency to Worker questionnaire (on Page 13) which also demonstrates that you have exercised the requisite 'duty of care' as required under the AWR legislation.



Agency to Worker Questionnaire (Part 1)

Previous workplace & Professional status

In addition to the standard questions you currently ask as part of the 'take on' process, AWR legislation requires that you request the following information.

SECTION A - PREVIOUS WORKPLACE

1 Have you worked for the same Hirer in the last three months? Yes No

2 If Yes, please give details in the boxes below:

Name of Hirer	Postcode	Assignment Date - From	Assignment Date - To

SECTION B - PROFESSIONAL STATUS

3 What is your occupation?

4 Do you consider yourself to be a professional? Yes No

If Yes, how long have you been in this profession? Years Months

Will you be carrying on your profession during this assignment? Yes No

5 Are you professionally qualified? Yes No

Please list your qualifications

6 Are you on an official / legal register? Yes No

If Yes, please state the register

7 Are you a member of a trade union or professional body / organisation? Yes No

If Yes, state your trade union / professional body / organisation

8 Are there any other factors we should be aware of in regards to your professional status? Yes No

If Yes, please provide details below:



I hereby confirm that the information contained on this questionnaire is, to the best of my knowledge, a true and accurate reflection of my previous workplace & professional status, and in conjunction with the terms and conditions of any arrangement organised by AOG Resources.

CONFIRMATION & SIGNATURE

Full Name

Date

Signed

Telephone





If you selected 'Yes' to questions 5 or 6 above, please provide more details below:

I hereby confirm that the information contained on this questionnaire is, to the best of my knowledge, a true and accurate reflection of how I supply my services as a self-employed Contractor or in business in my own right and in conjunction with the terms and conditions of any arrangement organised by AOG Resources.

CONFIRMATION & SIGNATURE

Full Name	<input type="text"/>
Signed	<input type="text"/>

Date	<input type="text"/>
Telephone	<input type="text"/>





Agency to Umbrella

What We Require

As this Guide has articulated, the AWR will give agency workers the right to request information about “equal treatment” and pay. It is therefore essential that all information has been shared between the Hirer, Agency and Umbrella organisation to demonstrate, if required at a later date, that the best possible endeavours were made to secure the requisite information. To ensure compliance with the legislation, AOG Resources requests that the three questionnaires published in this Guide are completed and returned to us in a timely manner. If the Swedish Derogation model has been elected, then these questionnaires need to be completed at the outset of any given assignment; other models that require comparator information should be provided no later than 10 weeks into the said assignment.

Step 1

Ascertain if the agency worker can and does fall outside of the AWR regulations. During the AOG Resources ‘take on’ process, we will also ask a variety of questions relating to the agency worker’s professional status, the answers to which will dictate our subsequent actions.

Step 2

Where at all possible, in conjunction with the Agency and the Hirer, AOG Resources will ensure that comparator (Match Pay) is both achieved and demonstrable proof obtained before applying Umbrella rates to achieve parity. (Umbrella rates are typically higher than comparator as they take into account National Insurance Contributions, our margin and holiday entitlements etc).

Step 3

If parity of pay cannot be reached, we will then apply the Regulation 10 (Swedish Derogation) Model providing AOG Resources Umbrella rates are actually achievable - typically above £8.00 per hour.

At the beginning of any new placement, AOG Resources will require a completed assignment schedule with the information shared between the Hirer and the Agency at the point of introduction. The purpose of the Assignment Schedule is to confirm to all parties the correct information and expectations of each assignment. A copy of the Schedule will be sent to both the Agency and the Contractor whilst also assisting to identify exactly which model is being



Assignment schedule

Dear Agency Contact,

To comply with the Agency Workers Regulations we can confirm that the following information has been received and accepted by AOG Collective Limited.

Contractor Details	
Contractor Name	A. Contractor
Contractor RACS Ref number	COL000000
Agency Details	
Agency Name/Number	ABC Recruitment (A000000)
Agency Address	1 My Road, My Town, My County, My Country. ZY1 2XW
Agency Contract Consultant	John Smith
Client / Hirer Details	
Client/Hirer Name	Amazing Advertising
Client/Hirer Address	1 Any Road, Any Town, Any County, Any Country AB1 2CD
Have you worked for the Hirer in the past three months?	Yes / No
Assignment Details	
Job title/position	Freelancer Graphic Designer
Start date	01/10/2011
Finish date	25/12/2011
Standard work hours	40 hours per week
Notice Period (if applicable):	1 week
Pay Rates/ Terms	
Pay Rate	£250.00
Rate Frequency	Per day
Payroll Frequency	Monthly
Overtime agreement/ Rate	N/A
Reclaimable Expenses	No expenses unless agreed in advance.
Comparator Information (if applicable)	
Comparator Pay Rate: (hourly/daily/weekly/monthly/other)	
Comparator pay info relating to Overtime/ Shift/Unsocial hours/bonuses/ commission etc.	
Comparator Holiday per Annum	



Frequently Asked Questions

1. What are the Agency Workers Regulations (AWR)?

The AWR is a new tranche of Government legislation introduced on October 1st 2011, with the primary intention of providing agency or temporary workers with identical basic employment rights and working conditions afforded to their directly employed counterparts in the same workplace.

The spirit of the legislation ensures that an agency worker will be treated no less favourably than a comparable employee doing the same (or similar) job in the Hirer's workplace. As this Guide has identified, agency workers have particular rights from Day 1 and after 12 weeks of any given assignment focussing on access to information and job vacancies, eligibility to facilities and benefits, plus a broad understanding that temporary and directly employed staff members will be treated equally throughout the assignment's duration.

There are exceptions to the legislation whereby Hirers can justify less favourable or different levels of treatment on certain objective grounds; this might include if a Hirer is seeking to achieve a genuine business objective where a different level of treatment is necessary and appropriate. Cost might be a contributing factor, but practical and organisational factors could also be relevant considerations.

2. When will AWR legislation apply to agency workers?

AWR becomes law on October 1st 2011 and will apply ONLY to all new placements commencing after this date. AWR will apply to all existing assignments after a twelve week qualification period concluding on December 24th 2011 ensuring that all placements will need to be fully compliant by this date.

3. Who qualifies as an agency worker?

An agency worker is defined as an individual who is supplied by a Temporary Work Agency (TWA) to work temporarily and under the direction and supervision of a Hirer. The agency worker is provided with a contract of employment or assignment contract by the TWA. A TWA includes both a Recruitment Business & Umbrella Company.



Frequently Asked Questions

4. Who does not qualify as an agency worker?

Those who are genuinely self-employed or working via their own personal service company (PSC) do not qualify as agency workers under the terms outlined within the AWR legislation. However, individuals with their own personal service companies, but who are not in business themselves, can fall within the AWR definition of an agency worker.

AWR regulations are unlikely to apply to those individuals working for in-house temporary staffing banks employed directly by just one company. However, individuals running companies specifically to supply agency workers will fall into the scope of AWR.

Guidance notes indicate that the AWR will not apply to workers seconded from one organisation to another, but this might depend on the specific circumstances of the individual(s) concerned and will largely depend upon the employment and organisational arrangements in question.

5. Does AWR apply to limited company Contractors?

AWR's definition of an agency worker excludes those who are genuinely self-employed and working through their own personal services company. Therefore, Contractors who consider and demonstrate themselves as being "in business on their own account", will also fall outside of the regulations. AOG Resources will test and request written confirmation from individuals

working in this manner prior to the commencement of any assignment and will treat the placement as being outside of AWR's remit.

However, individuals with their own PSC's who are not actually in business on their own account (i.e. a not a genuine business to business relationship) are within the scope of AWR.

Similarly, those individuals who work within and carry on a genuine profession and where the Hirer is deemed their client or customer, then they can likewise fall outside of the scope of the AWR.

All other temporary agency Contractors are protected by the AWR.

Again, the AWR is unlikely to apply to individuals working for in-house temporary staffing banks employed directly by one company, or to workers seconded from one organisation to



Frequently Asked Questions

6. Does AWR apply to managed service contracts?

AWR regulations state that genuine managed service contracts are excluded. Typically, these individuals are working for a service provider offering total provision and managing the workforce exclusively.

7. Can an agency worker opt out of AWR?

No. AWR legislation explicitly prohibits agency workers from contracting themselves out of the regulations scope. TWAs or the Hirer are liable for a fine of up to £5000 should they attempt to implement breach anti-avoidance regulations to prevent their legal obligations being adhered to within the twelve week qualifying period.

8. how does AWR define “equal treatment”?

“Equal treatment” applies to the basic working and employment conditions available to the agency worker and in direct relation to those afforded to directly employed members of staff.

These conditions include access to information which documents the facilities, amenities and pay structures available to those who are directly employed, plus details of any job vacancies available in the Hirer’s workplace.

In essence, the working conditions offered to an agency worker should be the same as those afforded by directly employed staff members recruited by the Hirer to carry out an identical or similar role.

9. What constitutes “equal treatment” in terms of pay?

Within the AWR legislation, “equal treatment” in relation to pay includes basic salary scales, plus any other contractual entitlements directly associated to the work being performed by an agency worker during any given assignment including:



Frequently Asked Questions

- Overtime Payments.
- Shift Allowances.
- Premiums for Unsocial Hours.
- Bonuses (Those which are directly linked to the quality or quantity of work completed by an agency worker AND NOT linked to bonuses of a 'loyalty' or 'length of service' nature).
- Vouchers or Stamps With a Monetary Value (These include luncheon, childcare or transport vouchers unless these benefits are otherwise funded on a 'salary-sacrifice' basis).

10. What is excluded from AWR's definition of "pay"?

Elements which AWR does not recognise as "pay" are those provided by Hirer's to employees in recognition of the long-term relationship which exists between the two parties including:

- Profit-sharing Schemes.
- Occupational Pension Contributions.
- Occupational Sick Pay.
- Redundancy Pay.

11. how do agencies establish "equal treatment" and a comparator?

The right to "equal treatment" is measured against a comparable employee of the Hirer (if one exists) fulfilling the same or a similar role within an organisation. If an existing comparable employee receives a level of treatment which is consistent with the basic working conditions of the agency worker, then the "equal treatment" rule will be deemed to have been complied with. However, factors such as qualifications, experience and expertise can also be considered when comparing the respective professional merits of a comparable directly employed staff member and an agency worker.



Frequently Asked Questions

Under the AWR, similar rules and processes will need to be applied to both full-time, permanent roles and those positions fuelled by agency workers. Streamlining these processes and guideline will assist the process, as will communicating the changes and AWR requirements to members of any given organisation who could be considered the Hirer.

12. from whom can the agency worker request information regarding “equal treatment”?

AWR legislation gives the agency worker the right to ask their TWA (Umbrella or Agency) for information directly relating to their rights to “equal treatment”. Only after the 12 week qualifying period has elapsed can the agency worker request a written statement from the TWA.

If the agency worker has not received a written reply from the TWA after 28 days of the request being made, they have the right to request the same information from the Hirer.

The agency worker is prohibited from instigating a tribunal claim in respect of the TWA or Hirer’s failure to provide the requested information, but if the worker subsequently makes a claim under the regulations for say breach of the “equal treatment” rule, any Employment Tribunal will draw negative inferences from the fact that information was not provided when requested.

13. What benefits are agency workers notentitled to?

Within the AWR legislation, agency workers will not be entitled “equal treatment” in relation to the following benefits:





Frequently Asked Questions

13. What benefits are agency workers not entitled to?

Within the AWR legislation, agency workers will not be entitled “equal treatment” in relation to the following benefits:

- Occupational Pension Schemes.
- Share Schemes.
- Enhanced Occupational Sick Pay - (over that of Statutory Payments).
- Redundancy Pay.
- Maternity or Paternity Pay (Agency workers might be entitled to SMP allowances).
- Company Performance Bonuses.
- Non Cash Awards.
- Salary Advances or Loans.
- Additional Discretionary or Non-Contractual Payments.

14. Are agency workers entitled to time off for antenatal appointments?

A pregnant agency worker will be entitled to paid time off to attend antenatal appointments. However, agency workers will not be entitled to “equal treatment” with regards to maternity pay, but might qualify for statutory maternity pay from the TWA.

15. Does the 12 week period still apply if supplied by multiple agencies?

Yes. In effect, the ‘clock’ continues to run even if an agency worker is placed by a variety of TWA’s within the twelve week period, irrespective of the length of the assignments. As a consequence of this facet of the AWR, both Hirers and agencies will be required to maintain accurate and up to date records of any agency worker placements and, as a matter of best practice, share this information between each other on an ongoing basis.



Frequently Asked Questions

16. Can the 'clock' be stopped, paused or reset?

The twelve week qualifying period will be reset to zero should an agency worker take a break of six weeks or more between assignments in the same job, or upon the start of a new or "substantially different" role with the same Hirer.

To satisfy the requirements of the "substantially different" phrase, there has to be a genuine difference between the old and the new roles. Differences in pay, assignment description, skills, location, reporting lines, equipment and working hours will help establish the differences between the two roles.

The table below outlines the criteria that can stop, pause or reset the 'clock'.

EVENT	EFFECT ON 12 WEEK PERIOD
Agency worker begins a new assignment with new client	Clock resets to zero
Agency worker remains with same client but in a substantively different role	Clock resets to zero
Agency worker has a break of more than 6 weeks between similar assignments with same client	Clock resets to zero
Agency worker has a break of less than 6 weeks between similar assignments with same client	Pauses clock
Sick leave	Pauses clock for up to 28 weeks
Annual leave	Pauses clock
Pregnancy, maternity leave or absence	Clock keeps ticking



Frequently Asked Questions

17. Does the Swedish Derogation model override AWR “equal treatment” requirements?

Agency workers will fall outside of the AWR scope in relation to pay if they are provided with more comprehensive employment rights as per the Swedish Derogation Model. This option constitutes a permanent contract with an agency worker which complies with specific conditions.

Perhaps the most important condition is that when in between assignments, an agency worker must receive a level of pay which is either 50% of their weekly assignment rate or the national minimum wage with the higher figure being applied. The weekly assignment rate is calculated at the highest rate of pay and hours received and completed during the previous twelve weeks (or the duration of the assignment if less than 12 weeks).

Any contract cannot be terminated without the agency worker receiving at least four week's pay between assignments during the contract. This option only commences at the end of the first assignment.

This model represents a useful option, particularly if it has not been possible to obtain satisfactory information regarding pay and conditions, but it does not exempt Hirers from applying Day 1 rights to the agency worker. The Swedish Derogation Model only excludes the provisions which apply to pay.

18. how can hirers comply with AWR?

AWR provides the perfect opportunity for Hirers to review all their arrangements for the engagement of temporary or agency workers and indeed, how these arrangements affect the contracts of their directly employed staff.

- In the first instance, Hirers should produce a checklist outlining the specific information they have to provide prior to the authorisation of an agency worker in light of the AWR legislation.
- Hirers should then compile an audit to identify any differences in the working conditions provided to directly employed members of staff and agency workers. This audit will identify any potential areas which contravene the requirements of the AWR and provide the Hirer to rectify any non-compliant areas.



Frequently Asked Questions

- Hirers should also identify elements of their temporary agency workforce who might not currently enjoy the same employment conditions and benefits as directly employed members of staff. Any differences which contravene the AWR legislation should be rectified even if this element of agency workers is employed on a short-term basis i.e. less than the twelve week qualifying period.
- Hirers should always consider the penalties that can be imposed if any anti-avoidance procedures are introduced to avoid complying with both the letter and the spirit of the AWR.

19. Who will be liable in the event of a claim?

If an agency worker believes that he or she has been subject to less favourable treatment in comparison to permanent employees who are doing the same job, both the TWA and the Hirer occupy the following positions of liability:

- The Hirer is directly responsible for providing Day 1 entitlements.

The TWA is primarily responsible for any breach of the “equal treatment” principle which relates to the provision of basic working conditions. The agency can provide a reasonable defence to any such claim if they can demonstrate that they took all “reasonable steps” to obtain the relevant information from the Hirer.

The Hirer will therefore be liable for any breach by the agency if it is proven that they failed to provide the agency with the information requested.

- From AOG Resources perspective, it is therefore essential that we work closely with our clients to ensure they obtain accurate comparator information in a timely manner to avoid potential liabilities to any party.

20. In the event of an AWR breach, what options are available to the agency worker?

Should the agency worker conclude that they have been subject to a breach of the AWR legislation, they have the right to instigate an Employment Tribunal for compensation.

No maximum compensation limit has been set, but successful claimants can expect a minimum award of two week's pay should the Tribunal uphold their claim for not receiving “equal treatment”.

As mentioned previously, if placements or assignments have been deliberately structured to avoid complying with the AWR legislation, then fines and compensation levels of up to £5,000 can be imposed.

Please consider this a reference document only.

For more information, you can call +44(0) 203 696 8340 or +44(0) 023 696 8341