

This Brief explains how the Agency Worker Regulations apply to the GLA Licensing Standards.

Introduction

The Agency Worker Regulations 2010 (“AWR”) entitle agency workers to the same basic employment rights and working conditions as if they had been recruited directly. Some equal treatment rights apply from the first day of an assignment, while others depends on the agency worker completing a 12 week qualifying period. The GLA does not enforce the AWR; individuals themselves enforce the AWR in employment tribunals. However, the GLA Licensing Standards do contain existing provisions that are related to AWR rights.

Detailed guidance on the AWR is available on the Department for Business, Innovation and Skills (“BIS”) website:

www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf

The GLA will also make labour providers and workers aware of their rights and responsibilities under the AWR.

Definitions

The AWR applies to:

- Individuals who work as “temporary agency workers”.
- Individuals or companies supplying temporary workers, involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer. In the GLA sectors these types of businesses are often referred to as “labour providers”. The BIS guidance refers to “Temporary Work Agency”.
- Hirers, often referred to in the GLA sectors as “labour users”.

There are detailed definitions included in the BIS guidance.

Summary of AWR Entitlements

▪ Day 1 rights for all agency workers

From day 1 of an assignment, agency workers have a right to:

- Equal access to collective facilities provided by the labour user, including staff canteens, childcare and transport facilities (unless less favourable access is justifiable).
- Access to information on job vacancies.

The labour user is responsible for making sure agency workers benefit from these day one rights.

▪ After 12 weeks in the same job

After completing the 12 weeks qualifying period in the same job with the same labour user, agency workers will have the right to the same pay and other basic employment rights and working conditions as if they had been recruited directly by the labour user.

▪ Rights for pregnant agency workers

Agency workers have the rights:

- To reasonable paid time off to attend ante-natal appointments.
- To be offered an alternative assignment for pregnancy related reasons or to be suspended on full pay where a suitable alternative assignment is not available.

These rights apply from day one of an assignment for agency workers who are 'employees'. Individuals who are 'workers' will be entitled to paid time off for ante-natal appointments once they have completed the 12 week qualifying period. More information on a labour provider's responsibilities towards the pregnant worker is available in the BIS guidance.

Calculating the 12 week qualifying period

The BIS guidance explains how the 12 week qualifying period is calculated.

Individuals' rights to remedy

The BIS guidance explains the steps individuals are able to take if they consider they are being denied equal treatment under the AWR. This includes requests for information and making a claim through an Employment Tribunal.

Labour providers and labour users should follow the BIS guidance which explains when labour providers should seek information from the labour user about pay and basic employment rights and working conditions. Seeking such information will help labour providers to comply with their obligations under the AWR.

The labour provider and/or the labour user could be liable for failure for not providing equal treatment depending on the extent they were responsible.

Labour providers have a defence if they can demonstrate they obtained or took reasonable steps to obtain information from the labour user about its basic working and employment conditions and treated the agency worker accordingly.

Agency workers have a right to request written information if they believe their rights to equal treatment on pay and basic working and employment conditions have been infringed. While the GLA will not check whether requested information has been provided, an Employment Tribunal may take it into account.

When the GLA will take action

Where a GLA Inspector identifies a breach of the AWR, if the breach appears to affect compliance with the GLA licence, the GLA will require an explanation from the licence holder about issues related to AWR.

Depending on the response, the GLA may consider attaching an Additional Licence Condition (ALC) stipulating that the identified matters be corrected within a specified period of time:

- Not paying an agency worker all the pay they are entitled to under the AWR may result in an ALC against Licensing Standard 3.3 which prohibits withholding any payment due to a worker. This includes failing to pay the agency worker correct hourly rate of pay, additional holiday pay, overtime rates or performance-related bonuses .
- Not providing an agency worker with additional entitlements to holiday, rest breaks or periods may result in an ALC against Licensing Standard 5.1.
- Entitlements related to working time, night work and rights owing to pregnant and new mothers are not expressly covered by an individual Standard. However, the GLA may consider attaching a specific ALC against these particular issues.

Any decision to attach an ALC would have a right of appeal. Failure to correct any ALC may result in a licence being revoked under Licensing Standard 1.3, which requires ALCs be corrected by the specified deadline. Generally, the GLA will take no action if there is a reasonable explanation as to why the AWR are not being complied with. If there is evidence of deliberate exploitation and persistent non-compliance, the GLA may determine that the licence holder is not a fit and proper person to hold a licence.

The GLA will also ensure both the licence holder and workers are aware of their responsibilities and rights and individuals are aware of methods of redress.

Where an Employment Tribunal makes a ruling against a licence holder on AWR matters, the licence holder should notify the GLA within 20 working days of that decision. The GLA will then consider the specific circumstances of that decision and whether it should be considered a breach of the licence.

When AWR does not apply or is not relevant to the GLA Licensing Standards

- It is not a matter for the GLA if the labour user is solely responsible for providing the entitlements or fulfilling other requirements under the AWR. The Licensing Standards only apply to labour providers.
- The AWR does not apply where the workers involved are not 'temporary agency workers', for example because:
 - The workers are not supplied by a labour provider but are hired directly by the labour user,
 - The labour provider finds permanent work for the worker with the labour user or
 - The individual genuinely runs a business on their own account.
 - Where temporary agency workers supplied by a labour provider are not under the direction and supervision of a labour user during an assignment.
 - Agency workers employed on a pay between assignment contracts become employees of the employment business. These agency workers are guaranteed to be paid between assignments. They therefore do not qualify for to the right to equal pay. All other AWR rights apply. The BIS guidance has more information on pay between assignment contracts.

Please note: even if the AWR do not apply, a GLA licence is still required if workers are being supplied by a labour provider.

Further information

For further information on the GLA licensing scheme, please contact the GLA Helpdesk:

- 0845 602 5020
- licensing@gla.gsi.gov.uk

If you have received a hard copy of this Brief but would prefer electronic versions in future, please email communications@gla.gsi.gov.uk