

HR Matters

For employers

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The new Agency Workers Regulations

Agency temps will receive a number of new employment rights when the Agency Workers Regulations are introduced on 1 October this year, including the right to receive the same “basic working and employment conditions” as permanent employees. The regulations then go on to define what is meant by “basic working and employment conditions” which includes pay; the duration of working time; rest breaks and, paid annual leave. However, we’ve read the small print, and there are some important exclusions. Occupational sick pay; occupational pension; and maternity, paternity and adoption pay are all excluded. **So when do these regulations apply?** To qualify for these rights the individual has to be an “agency worker.” The regulations go on to define this as having the sort of contract with the agency which means they effectively work for the agency and are not self employed. This would mean that the typical admin temp from a high street agency is an agency worker, but a self employed specialist who is sourced from an agency may well not be. The other significant criteria is that the agency worker needs to be employed for a continuous 12 week period before qualifying for the rights. But note that any break of under six months does not count. In other words a temp who has worked for 10 weeks and then is taken on again for another 5 weeks within six months qualifies for certain rights.

It seems to us that the real issue for organisations is to understand what is required of them - and then to review how and when they use temps. Many organisations will feel that the advantages of using regular temps who understand their business outweighs the risks and costs associated with the additional rights.

Latest cases

Asda - v - Coughlin UKEAT/0453/10/DM

Mr Coughlan was found to have cannabis in his locker at work and after a disciplinary hearing (and appeal) was dismissed. His union rep presented mitigating circumstances including his long service, clean disciplinary record, stress etc.... He also argued that the dismissal was inconsistent with the company’s drug and alcohol policy. The tribunal found that Asda were right to treat the matter as gross misconduct but that dismissal was not “*within the range of reasonable responses*” given the mitigation, and therefore Coughlin had been unfairly dismissed. Asda appealed and the Employment Appeal Tribunal found that the original tribunal had been wrong. That dismissal was clearly within the range of reasonable responses. Asda had carried out a proper process and could show they had considered the mitigation. Therefore it was for them to decide whether the mitigation was sufficient. *Phew!*

Q&A - Extended Paternity Leave

Q. Can you tell me who this applies to and how this works?

A. It applies to a father, or partner, who is either the biological father or expects to have responsibility for the upbringing. To take APL, the mother must have ended her maternity leave. If the mother has not taken her full entitlement to statutory maternity pay when she returns to work, the outstanding amount transfers to the father who is taking APL.

APL may be taken at any time between 20 weeks after the date on which the child was born and the child’s first birthday. APL must be taken as one continuous period, for full weeks and for a period of between 2 and 26 weeks. Unless the employer agrees, APL may not be taken until 8 weeks after the date on which the father gives their employer the required notice.

National Minimum Wage Increase Announced

The Government has announced that the adult national minimum wage will increase by 15p an hour, to £6.08, from 1st October 2011. Other increases are:- 18-20 year olds: by 6p to £4.98ph; 16-17 year olds: by 4p to £3.68ph; apprentices: by 10p to £2.60ph

Student loans

Those staff who are paying off their student loans can work out exactly what they have to pay as their salary increases by clicking [here](#)

Contact us

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