
STATUTORY INSTRUMENTS

2010 No. 93

The Agency Workers Regulations 2010

PART 2

Rights

Rights of agency workers in relation to the basic working and employment conditions

5.—(1) Subject to regulation 7, an agency worker (A) shall be entitled to the same basic working and employment conditions as A would be entitled to for doing the same job had A been recruited by the hirer—

- (a) other than by using the services of a temporary work agency; and
- (b) at the time the qualifying period commenced.

(2) For the purposes of paragraph (1), the basic working and employment conditions are —

- (a) where A would have been recruited as an employee, the relevant terms and conditions that are ordinarily included in the contracts of employees of the hirer;
- (b) where A would have been recruited as a worker, the relevant terms and conditions that are ordinarily included in the contracts of workers of the hirer,

whether by collective agreement or otherwise, including any variations in those relevant terms and conditions made at any time after the qualifying period commenced.

(3) Paragraph (1) shall be deemed to have been complied with where—

- (a) an agency worker is working under the same relevant terms and conditions as an employee who is a comparable employee, and
- (b) the relevant terms and conditions of that comparable employee are terms and conditions ordinarily included in the contracts of employees, who are comparable employees of the hirer, whether by collective agreement or otherwise.

(4) For the purposes of paragraph (3) an employee is a comparable employee in relation to an agency worker if at the time when the breach of paragraph (1) is alleged to take place—

- (a) both that employee and the agency worker are—
 - (i) working for and under the supervision and direction of the hirer, and
 - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and
- (b) the employee works or is based at the same establishment as the agency worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

(5) An employee is not a comparable employee if that employee's employment has ceased.

(6) This regulation is subject to regulation 10.