

Guide to the Agency Workers Regulations 2010

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Please accept this guide with our compliments. If you have any questions please do not hesitate to contact one of our expert advisors on 01206 713 680 or email us at agency@contractorumbrella.com.

Anyone working through a Recruitment Agency, who is under the direct supervision and control of the hirer, will fall under the scope of this legislation which comes into force on 1st October 2011. This will also apply to individuals who have their own Limited Company (PSC) and whose working practices fall inside IR35. It is widely believed that the AWR reinforce the IR35 legislation and will therefore strengthen HMR&C's case against those whose contract is not an accurate reflection of their working practices. The latest guidance, issued in June 2011, states:

"If the arrangements do not reflect the reality of the relationship (e.g. despite the wording of the contract, the actual reality is that the individual is not in business on their own account and they work under the supervision and direction of the hirer) or are an avoidance tactic, then individuals are likely to fall into scope of the Regulations.

You can download our free IR35 guide from the following page - www.contractorumbrella.com/free_guide.html.

Unlike the Conduct of Employment Agencies and Employment Businesses Regulations there is no opt-out from this legislation; the only exemption is from Section 5 which relates to equal pay and this is only if your preferred Umbrella Company has implemented the Swedish Derogation Model.

Contractors are already entitled to a range of statutory protections, whilst working through ContractorUmbrella, provided by the Working Time Regulations, National Minimum Wage legislation etc. This new legislation is intended to give additional protection and rights equal to those of permanent employees in comparable positions.

Some of the rights are available from day one at a client's site and concern accessibility to site facilities and information on job vacancies. Ensuring that these provisions are made is the responsibility of the hirer who will be liable for any breach of the obligation. For instance, if the company has parking facilities which are available to all its employees, those facilities would also need to be made available to temporary workers. However, it does not mean that they would be entitled to preferential treatment so, if the company had only 5 parking spaces which were available to the longest serving members of staff, the temporary worker would not be able to jump the queue.

The client or hirer is not obliged give access to off-site facilities which they do not directly provide such as subsidized gym membership or the opportunity to purchase discounted company goods. The legislation is not intended to give enhanced rights but to ensure that treatment should be 'no less favorable than a comparable worker' i.e. one doing the same or a similar job at the same location.

We have listed below those types of facilities that should be made available from the first day at a client site; the list is not exhaustive as available facilities will vary from site to site.

- Canteen facilities
- A workplace crèche
- Bathroom/shower facilities
- Staff common room
- Mother and baby rooms
- Prayer rooms
- Food and drinks machines

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The hirer is also obliged to provide information about any relevant job vacancies that the client has that would be made available to a comparable worker. Again the intention is not to give preferential treatment and the client will still have complete freedom with regard to qualification or experience requirements and how applicants are treated. The right to information will not apply when there is a genuine headcount freeze or when internal moves are required to restructure or avoid redundancy.

The Legislation makes other new rights available after a qualifying period of 12 weeks, with the same client, in the same role:

- Duration of working time
- Night work
- Rest periods
- Rest breaks
- Annual leave
- Paid time off for ante-natal appointments

The 12 week period refers to 12 calendar weeks irrespective of how many hours are actually worked in that 7 day period. The qualifying period is also not altered by a change of Employment Agency; it refers solely to the time spent working at a particular client site.

The qualifying period should be 're-set' when a new assignment begins for a new client or when a new assignment begins for the same client but in a new role or when there is a break between assignments of 6 weeks or more. Breaks of more than 6 weeks may sometimes merely 'interrupt' the qualifying period e.g. sickness or annual leave. The qualifying period cannot be broken by moving from one site to another within the same company unless the role is completely different.

After the qualifying period has been completed pregnant temporary workers will be entitled to take paid time off for antenatal medical appointments and antenatal classes. In cases where the original assignment cannot be completed for Health and Safety reasons it will be necessary for another assignment to be found. Under certain circumstances it may be necessary for the client to carry out a risk assessment to determine whether or not the role is still appropriate. If a risk assessment determines that the original placement is unsuitable, a suitable alternative must be offered and cannot be unreasonably refused. If an alternative role cannot be provided by the Employment Agency, they will be obliged to pay the contractor at the same rate for the duration of the terminated assignment.

The Swedish Derogation Model

Where appropriate, the Swedish Derogation can be applied by Umbrella Companies; a rather strange name given to an agreed opt-out from section 5 of the regulations, which relate to equal provision of pay. The Worker enters into a permanent Contract of Employment with the Umbrella Company who is then responsible for paying the contractors' salaries and for maintaining continuity of assignments. This obviously restricts liability for Employment Agencies and ensures a closer working relationship between Recruiters and Umbrella Companies.

In order to guarantee full compliance with the new legislation the Contract of Employment must be signed and returned to the Umbrella Company any assignments commence.

The Contract of Employment will include the following information:

- Client details
- Minimum pay rates and their basis of calculation

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- Location of work, reflecting where you will be willing to travel
- Minimum and maximum expected hours
- The nature of the work to be undertaken

The Contract will also contain a statement which confirms that the individual becomes an employee of the Umbrella Company and therefore accept the exemption from section 5 of the Agency Worker Regulations which relates to equal treatment provisions on pay. The rest of the new legislation will still apply to which means individuals will have entitlement to equal treatment in respect of duration of working time, night work, rest periods, rest breaks and paid annual leave. Under the Contract of Employment with the Umbrella Company there will also be entitlement to Statutory Maternity Pay, Paternity Pay, Adoption Pay and Sick Pay.

If you have any questions about the AWR or Swedish Derogation model you can contact one of our expert advisors on 01206 713 680 or email us at agency@contractorumbrella.com.

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About ContractorUmbrella Ltd

ContractorUmbrella is one of the largest and most respected Umbrella Companies in the UK. Established in 2002, we are now recognised as being a market leader with several thousand satisfied clients.

ContractorUmbrella is part of the SJD Group of accountancy companies, which includes **SJD Accountancy** who are the chosen firm to over 8,000 contractors working through their own Limited Company, winner of the prestigious Accountancy Age Awards for Excellence and are the National firm of Accountants recommended by the Professional Contractors Group.

ContractorUmbrella featured 14th in the FastTrack 100 league table of Britain's fastest growing companies in 2007.

[Visit here](#) for more information.

ContractorUmbrella was awarded the prestigious Investors in People accreditation in 2006.

Key Features

- Unlike other Umbrella Companies we do not charge a percentage of your income, our fee remains the same regardless of your earnings.
- No hidden joining or leaving charges, no minimum commitment and no fees charged in-between contracts.
- ContractorUmbrella Ltd is an alliance partner of Contractor UK, Contractor Money, Freelance UK, Freelancers in the UK and associate members of the Professional Contractors Group the UK's largest trade body for contractors.
- Money-back **Customer Service Guarantee**.
- Web-based portal giving 24/7 access for both timesheets and expenses submission.
- Personal Account Manager for every client.

