



YOUR RIGHTS AS AN AGENCY WORKER

A growing number of people are finding themselves working through employment agencies and this has a direct effect on their rights at work. Luton Advice Network has produced this fact sheet to help Luton residents who are agency workers to understand their rights. If you think you are being unfairly treated at work and need help or advice, contact the Luton Advice Network Gateway Telephone Service on 0158731616 or check our website for local advice agencies which provide employment law advice www.lutonadvicenetwork.org.uk

Am I an Agency Worker?

'Employment agency' or 'agency' is a general term used to cover two specific types of work-finding activity, 'permanent employment' and 'temporary agency work' or 'temping'. In the former an 'employment agency' finds work for work-seekers who are employed and paid by employers, often referred to as 'permanent employment'. In the latter, an agency employs the worker directly under a contract but the worker works at another business, under the supervision of another person. This is known as 'temporary agency work' or 'temping'. If you are paid by the agency then you are an agency worker. Agency workers are legally considered to be 'workers' not 'employees' and this affects their employment rights.

What An Agency Must Do:

- give you written terms of employment before providing any work-finding services
- Pay you for work you have done, even if they haven't been paid by the hiring company (*Note - certain exceptions apply to agencies operating in entertainment and modeling sectors.*)
- Give you full written details of a job when they offer you a position with a hirer, including the identity of the hirer, start date, likely duration of the work, type of work, location, hours, any risks to health and safety and steps the hirer has taken to control such risks, experience, training and qualifications needed for the role, any expenses payable and the actual rate of pay.
- Confirm your identity and ask for documentation such as your birth certificate or passport, before introducing you to the hirer.
- Make enquiries with hirers about any risks to health and safety.
- Give you full written details of service(s) you may be charged for, where they provide such services. The details must set out your rights to cancel or withdraw, together with the length of the notice period you must give. But you must give 10 working days written notice to the agency to cancel from living accommodation and five working days notice for all other services.

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What An Agency Cannot Do:

- Charge you for fees for finding or seeking to find you work. (*Certain exceptions apply to agencies in entertainment and modeling sectors.*)
- Make you use fee-paying services (e.g. CV writing) as a requirement for finding you work.
- Withhold your pay just because you haven't produced a signed timesheet.
- Penalise you for ending an assignment if they employed you under a contract of service.
- Stop you from taking a permanent job with a company where you temped. They can only charge a fee to the company in limited circumstances (sometimes called 'temp to perm' fees).
- Disclose information about you to other people or companies or to a current employer without your consent (except to find you work, or for legal proceedings).
- Stop you from registering with other agencies.

As a 'worker' you have certain employment rights including:

- Paid holiday, rest breaks and limits on working time
- No unlawful deductions from wages
- The National Minimum Wage
- Not to be discriminated against under any of the equality legislation
- Protection under health and safety laws

What rights agency workers currently don't have:

- You are not entitled to redundancy pay when your job ends
- You do not have the right to claim unfair dismissal at an employment tribunal unless you have been discriminated against.

For further information about the laws governing employment agencies visit: www.direct.gov.uk/employees; www.berr.gov.uk/employment/employment-agencies or www.businesslink.gov.uk .

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New entitlements for agency workers under the Agency Workers Regulations from 1 October 2011

From 1 October, 2011 new entitlements for agency workers will include the following:

○ All agency workers will be entitled to access a hirer's collective facilities and amenities provided to workers or employees as a whole or to particular groups of workers or employees **starting from the first day of their assignment**. These may include:

- canteen
- childcare facilities
- toilets/shower facilities
- staff common room
- waiting room
- prayer room
- food and drinks machine
- car parking etc.

However this does not extend to all benefits which the hirer might provide to directly recruited workers or employees.

○ All agency workers will be entitled to access information on a hirer's job vacancies that would be available to a comparable employee or worker **starting from the first day of their assignment**.

However access to the hirer's vacancies does not constrain the hirer's freedom regarding any qualification or experience requirements such as time in service with the organisation or how they treat the applications or where posts are ring fenced for redeployment purposes or internal moves which are a matter of restructuring and redeploying existing internal staff in order to prevent a redundancy situation.

○ All agency workers who complete a 12 week qualifying period with the **same hirer**, in the **same role**, will be entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. These include:

- key elements of pay
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave.

Note that the qualifying period is not retrospective; an agency worker will only start to accrue the 12 weeks qualifying period after 1 October 2011 even if the assignment started before 1 October 2011.

○ An agency worker can work for more than one hirer during a week (or even during a day) and as a result can have more than one qualifying period running at any one time.

○ Pregnant agency workers, who have completed the 12 week qualifying period, will be entitled to paid time off for ante natal appointments.

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