



Health & Safety

MATTERS

Health & Safety Information for GMB Safety Reps

Date: 6th October 2011

Vol 8 No 7

The Health & Safety Implications of the new Agency Workers Regulations

Introduction

From October 1st this year organisations hiring agency workers for assignments that continue beyond 12 weeks will be required to offer the workers terms and conditions that are no less favourable than those offered to workers directly employed. It is not immediately clear how health, safety and welfare provision might be affected by the introduction of the Agency Workers Regulations (AWR), but their introduction has necessitated changes to the Management of Health and Safety at Work Regulations, principally covering pregnant women or newly nursing mothers.

How is an agency worker defined?

An agency worker is an individual who is supplied by a temporary work agency to work temporarily under the supervision and direction of the hirer. The contract is between the hirer and the work agency. The definition does not apply to temporary workers employed directly with the employer, or workers on secondment or loan from one company to another.

Amendments to Management of Health & Safety at Work Regulations

The new AWR have introduced three new additions to the Management of H&S at Work regulations, which are activated after the 12 week qualifying period has been completed.

- Regulation 16A enables the requirements under regulation 16 on the duties on risk assessment for a new or expectant mother, to apply to agency workers, requiring an assessment on the risks arising from the workers' physical condition. If the risk cannot be avoided the hirer must, if it is reasonable to do so, and would avoid the risks, alter the working conditions or the hours of work. If it is not possible to avoid the working conditions or the hours of work to avoid the risks, the hirer must immediately inform the agency, who must end the supply of the worker to the hirer. *It is worth noting that as the agency is now responsible for paying the worker for the duration of the planned assignment they may well look for suitable, alternative and safe employment elsewhere, which if suitable the worker should not refuse.*

GMB SAFETY REPS

Making Your Workplace Safer

[Insert Name]
[Insert Address]
[Insert Address]
[Insert Address]
[Insert PostCode]

-
- Regulation 17A requires the alteration of working conditions in respect of a new or expectant mother, who is an agency worker. If the worker is a night worker, with a certificate from a registered medical practitioner or registered midwife showing that it is necessary to suspend her from work, the hirer must inform the agency who must end her supply to the hirer.
 - Regulation 18A places duties on the agency worker to inform the hirer, **in writing**, that she is pregnant, has given birth in the previous six months or is breast feeding.

Other regulations which will apply

After completing the qualifying period, an agency worker will be entitled to the same terms relating to the duration of working time, night work, rest breaks and annual leave provision. The Employment Rights Bill 1996 is amended by AWR so that an agency worker is entitled to time off for antenatal care as long as she has on the advice of a registered medical practitioner, registered midwife or registered nurse, made an appointment for antenatal care. The agency is required to pay for her time off to attend the care.

Liability for the H&S of agency workers

Where an employer uses an agency worker, both the employer and the agency have a shared duty to protect the health and safety of the worker. The duties that fall under the agencies responsibility include; the provision of eye and eye sight tests for using computers, the provision of adequate PPE, training and information. In practice it is the hirer/employer who has responsibility for the day to day supervisory arrangements including the direction and control of the work. It is however **essential** that to avoid confusion over the degree of responsibility that the agency and the hirer agree and clarify in writing at the beginning of a contract who will have responsibility for overseeing health, safety and welfare arrangements.

From day one of an assignment for a hirer, an agency worker is entitled to the following, collective, facilities; a canteen (or similar), local pickups or drop offs, toilets/washing facilities, mother & baby room and a workplace crèche, if available, to comparable employees.

Conclusion

Historically GMB activists and safety reps have found it difficult to convince agency workers of the merits of joining a trade union as it was perceived that the union could do little for them. With the introduction of AWR, safety reps can now intercede with the employer on behalf of agency workers, who become GMB members, on a range of areas ensuring their rights at work. GMB played a big part of getting AWR introduced in the UK, in the face of hostility from both the previous and current government, as it was claimed that this would undermine flexibility and competitiveness in the economy. Only the trade unions pushed for equal treatment and the issues of workers welfare – we need to ensure that this opportunity is not missed and where GMB is present we use the AWR to improve agency workers welfare by signing them up. For further information on this or any other H&S issue contact Daniel.shears@gmb.org.uk or john.mcclean@gmb.org.uk

General Secretary
Paul Kenny
GMB
22-24 Worple Road
London SW19 4DD