

Advice Portsmouth

Agency Work Factsheet

When you're working through an agency, it's important to know if you're classed as an 'employee' or a 'worker' under employment law. It affects what you're entitled to and what your obligations are.

If you're self-employed and take on an assignment through an agency, this could mean you're classed as an employee or worker for the duration of the assignment.

What rights do I have?

As an employee or worker, you have rights straight away, such as:

- Protection against discrimination
- National Minimum Wage entitlement
- A minimum of 5.6 weeks' holiday entitlement

You also have from the first day the same rights to use any shared facilities.

Can my rights change?

You get more rights once you've worked on the same assignment at the same hiring organisation for 12 weeks. This is called the '12-week minimum qualifying period' under the law.

The rights cover:

- pay
- holiday
- sick leave
- pensions
- working hours and rest breaks
- access to permanent job vacancies at the hiring organisation
- parental time off
- ending employment and dismissal

A 'week' counts as any 7 days that you work in, from the day your assignment began, regardless of the amount of days you work in that week.

For example, if an assignment begins on a Wednesday and you work 3 of the days up to the following Tuesday, this counts as a week towards the 12-week qualifying period.

DO NOTE: A week does not count towards the 12-week qualifying period if:

- the total break you have between 2 periods of work is no more than 6 weeks
- you're absent due to sickness or jury service for 28 weeks or less
- you take any of your holiday entitlement
- the workplace shuts down, for example for Christmas or industrial action

Your 12-week qualifying period will start again if you:

- go back to the same assignment after a break of 6 weeks or more that's not due to any of the reasons in the lists above
- go back to the same role after 28 weeks' absence due to sickness or jury service
- start a new assignment with a new hiring organisation

Do I have the right to same pay as a direct employee?

After you've reached the 12-week qualifying period, you're entitled to the same rate of pay as direct employees of the hiring organisation. Under the law this is called 'the right to equal treatment to pay'.

The right to equal treatment to pay includes:

- basic pay
- holiday pay that's more than the legal minimum
- individual performance-related bonuses
- commission
- overtime pay
- allowances for working shifts or unsociable hours

The right to equal treatment to pay does not include:

- bonuses linked solely to company performance or to reward long-term loyalty
- expenses
- enhanced maternity, paternity and adoption pay and Shared Parental Pay
- company pension schemes
- redundancy that's more than statutory
- sick pay that's more than Statutory Sick Pay
- guarantee payments
- season ticket loans
- paid time off for trade union duties

Can my pay be delayed?

An agency is only allowed to delay a payment for a reasonable amount of time when they need to confirm hours you worked.

If they have problems getting payment from the hiring organisation, the agency must still pay you on time.

Do I get sick pay?

You have the same right as other workers and employees to:

- not work when you're too ill
- get Statutory Sick Pay (SSP), if you're eligible for it

Your agency and hiring organisation might have set out in a written agreement or policy how and when you need to contact them if you cannot work. If not, you should tell them as soon as possible the reason and how long you're likely to be off sick for.

Do I still make pension contributions?

Employment agencies must automatically enrol all their agency workers into a pension scheme within 3 months of the start of a contract.

If you do not want to be enrolled into the agency's pension scheme, you must tell the agency and the pension provider you want to opt out of the scheme.

Do I have to work more hours than direct employees?

You have the same rights as other workers and employees to:

- work no more than an average of 48 hours a week
- choose to work more by 'opting out' of the 48-hour week
- a minimum 20-minute rest break if you work more than 6 hours
- 11 hours' solid rest in any 24-hour period
- 1 day off work each week

After the 12-week qualifying period, you also have the right to the same working patterns and rest breaks as direct employees of the hiring organisation.

Protection from discrimination, ending an assignment and dismissal

You have the same protections from discrimination as other workers and employees.

You must not be discriminated against because of a 'protected characteristic', for example your sex, age or disability.

You and the hiring organisation do not have to give any notice to end an assignment early unless it's clearly written in your contract or assignment information.

You should tell your agency if you want to end the assignment.

If you want to leave the agency, check the contract or written agreement. Usually you need to tell them in writing.

An agency can usually end their relationship with you – or 'dismiss' you – without notice or reason unless:

- your contract says otherwise
- you're an employee of the agency and have been employed for at least 1 month

Disciplinary procedure and further advice

Agencies should have rules and procedures for dealing with disciplinary issues.

If you are in this position of facing a disciplinary procedure, then please ensure you seek advice and assistance. You can contact us on 023 92794 340 or email us at:
advice.portsmouth@theyoutrust.org.uk.