

Qualifying for 'equal treatment'

Day 1 rights for all agency workers

Regulations 12-13

The Regulations give agency workers the same access to certain facilities provided by the hirer and information on job vacancies. The test relates to what comparable workers and employees receive and the agency worker is entitled from the first day of their assignment (so not after 12 weeks):

- Access to facilities
- Access to information relating to vacancies
- Access to collective facilities and amenities

Regulation 12

- From day one of an assignment, agency workers are entitled to be treated no less favourably than a comparable worker or employee¹ in relation to access to collective facilities and amenities provided by the hirer.
- This is not intended to extend to all benefits which a hirer might provide to directly recruited workers or employees; rather, it applies to collective facilities provided by the hirer either to workers or employees as a whole or to particular groups of workers or employees. These may include:
 - a canteen or other similar facilities
 - a workplace crèche
 - transport services (e.g. in this context, local pick up and drop offs, transport between sites – but not company car allowances or season ticket loans)
 - toilets/shower facilities
 - staff common room
 - waiting room
 - mother and baby room
 - prayer room
 - food and drinks machines
 - car parking



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This is a non-exhaustive list and acts as an indication of which kind of facilities should be included. It applies to facilities provided by the hirer and therefore these facilities will usually be on-site. However, for example, if a canteen is used on another site – or shared with another company – then this should also be available to agency workers.

Access to facilities is not:

This does not mean that agency workers will be given ‘enhanced’ access rights, for example, where access to a crèche involves joining a waiting list, the agency workers would also be able to join the list and would not be given an automatic right to have a crèche place.

Nor is it about access to off-site facilities and amenities which are not provided by the hirer, such as subsidised access to an off-site gym as part of a benefit package to reward long term service or loyalty or to other types of benefits such as the ability to purchase discounted company goods in a staff shop or subsidised meals in a canteen. However, this does not prevent hirers offering these to agency workers if they choose to do so.

Objective Justification

This is the only element of these Regulations where there can be “objective justification” for less favourable treatment. Essentially, hirers have to ask themselves “is there a good reason for treating the agency worker less favourably?” Cost may be one factor to take into account but hirers are unlikely to be able to rely on cost alone to justify different treatment. Practical and organisational considerations could also be a factor. Even if there is objective justification, hirers may want to consider whether it is possible or feasible to offer agency workers certain access to facilities on a partial basis, as an alternative to excluding them altogether.

Access to facilities – comparable worker

An agency worker’s right is to treatment in relation to relevant facilities that is no less favourable than that given to an actual comparable worker 2 – an employee or worker directly employed by the hirer. First, the hirer should establish if there are any comparable workers or employees. To be comparable they should be:

- doing the same or broadly similar work to the agency worker
- working at the same location as the agency worker or, if there is no such person, be in another location owned by the hirer (this is to avoid any confusion when a company has several different locations and may have, for example, a canteen in one particular location to which all direct employees in all the locations have access).

If there are no comparable workers or employees there is no entitlement to equal treatment.



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Access to information on job vacancies

Regulation 13

From day one of an assignment, all agency workers will be entitled to be provided with information about any relevant job vacancies within the hirer that would be available to a comparable employee or worker.

Hirers can choose how to publicise vacancies, whether it is via the internet/intranet or on a notice board in a communal area. But the agency worker should know where and how to access this information.

Access to vacancies is not:

This obligation does not constrain hirers' freedom regarding;

- any qualification or experience requirements such as time in service with the organisation
- how they treat applications
- This right will not apply in the context of a genuine 'headcount freeze' 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.
- Access to vacancies comparator:
- The need to inform agency workers of vacancies is limited to where there is a comparable employee or worker currently based at the same establishment. Practical difficulties would arise from including those who may be geographically remote or on the basis of comparison with a predecessor.
- In summary
- Day 1 entitlements – liability
- The hirer is responsible for providing equal treatment for day 1 entitlements and is liable for any breach of this obligation given the TWA has no control over providing an agency worker with access to facilities when they are on an assignment.
- Information about access to facilities is likely to be set out in company handbooks. The hirer could either provide agency workers with information about their facilities, for example as part of an induction pack, or provide information to TWAs to pass to agency workers as part of the information about the assignment.



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Summary of Day 1 rights

Comparator for Day 1 right	Access to facilities	Access to vacancies
Employee or worker	Yes	Yes
Working for and under the supervision and direction of the hirer	Yes	Yes
Engaged in same or broadly similar work	Yes	Yes
Based at same establishment	Yes	Yes
Engaged in same or broadly similar work	Yes	No
Must still be employed/engaged at the time of the breach of the Regulation	Yes	Yes

Name:

Date:

Signature:



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