

# HR Performance

Your Virtual HR Manager - 24 Hours Per Day!



## HR Performance: July 2011 Article for IAM manager

**manager**  
The British Journal of Administrative Management



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Just before I get into this article's subject a quick reminder – the **Bribery Act 2011** came into force on July 1st 2011 and introduces new anti-corruption regulations which will affect all employees. Of greatest concern for organisations is the offence of failing to prevent bribery which will create a strict liability offence, which means that even if the organisation wasn't aware of the corruption committed by its employees it can still be prosecuted. The only real line of defence for an organisation is to have in place robust anti-corruption procedures and ensure all employees are made aware of them whilst carrying out appropriate risk assessments. Ensure your policy is in place now!

As promised in my last article I am going to take a look at the new **Equal Treatment for Agency Workers** legislation that comes into effect on October 1st 2011. Firstly, and a common question for most is about the qualifying period needed to gain the rights offered by this new legislation. **This is split into the following two headings:**

- 1. Day 1** – As soon as an agency worker commences employment with you they are entitled to exactly the same access to facilities such as staff canteens, childcare and transport if offered to your existing staff. You must also ensure that agency workers are informed about any job vacancies that you may have.
- 2. 12 Weeks** – Subject to a 12 week qualifying period the agency worker will be entitled to the same basic conditions of employment as any employee who had been directly employed on day one of the assignment. **These basic conditions specifically cover the following:**
  - a. Pay** which includes any elements of fee, bonus, commission and pro rata holiday pay. However, redundancy pay, company sick pay or maternity, paternity and adoption pay are not included.
  - b. Working time rights** which will include any additional holiday pay that you may make to your employed staff over and above the statutory requirement of 28 days.

*In addition to the areas identified above pregnant agency workers will also be entitled to paid time off work to attend ante-natal appointments.*

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As I am sure you'll now appreciate, if your business relies heavily on agency workers this new legislation will increase your agency costs – which means some employers may try to get around it. Probably the strongest deterrent is the fact that whereas your employed staff need to have 12 months employment to complain of unfair dismissal (assuming of course that they are not complaining about a protection offered by the Equality Act) agency workers will be able to make a claim of unfair dismissal if their work with you is terminated as a result of trying to enforce their rights under this legislation.

And be careful about trying to circumvent this 12 week qualifying period. Generally, breaks between assignments of less than six weeks will only pause the accrual of the 12 weeks qualifying period – this includes annual leave, shut downs and industrial action – whereas breaks in excess of six weeks will serve to reset it.

Some notable exceptions to the above include breaks of up to 28 weeks as a result of sickness and jury service - which only pauses the accrual period; whilst any absences as a result of pregnancy and maternity, as well as maternity, paternity and adoption leave, do not pause the qualifying period at all and all of these absences will count towards the 12 week qualifying period instead.

*The regulations even go so far as to make clear that a new assignment for the agency worker would need to be given “substantively different work or duties” for the qualifying period to be reset.*

So, above you have the basics of the legislation and I am sure you can already see how this is going to impact upon your organisation. You'll need to consider the hourly rate or salary paid to an existing employee for a given job (including any bonuses or commission etc) and then budget to have to pay the agency worker the same rate after the 12 week qualifying period – on top of the fee you already pay to the agency. The same will true if you have a more generous than statutory entitlement to holiday pay.

*You'll perhaps be pleased to know that if you have been employing an agency worker for a number of weeks or months prior to 1st October 2011 the rights are not retrospective and therefore an agency worker will be required to work 12 weeks after this date to acquire the rights referred to above.*

*Which will mean that the first date this legislation will really kick in for an eligible agency worker is... Christmas day 2011!*

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