

## AGENCY WORKER RIGHTS

### New legislation from October 1<sup>st</sup> 2011

The Agency Workers Regulations (AWR) come into effect on 1st October 2011, and they are probably the biggest change to legislation for temporary workers since the introduction of holiday pay rules in 1998

The changes in regulations will affect most temporary workers. If you would like further information concerning your specific circumstances, please contact your account manager at Gap personnel for a confidential consultation.

### What's the legislation all about?

It aims to ensure the fair treatment of temporary workers who are retained on long term assignments at the same hirer. In some cases this will mean that workers will eventually be entitled to receive the same pay, along with some benefits as if they had been engaged directly by the Hirer

There are also some changes to your rights that will apply from the first day of your assignment with any hirer that we place you with.

### What does this mean?

From your first day on site you will be entitled to:

- Access to 'Collective facilities and amenities' e.g. office canteen or child care facilities provided on-site. This does not include off-site facilities not provided by the end employer itself e.g. subsidised gym membership. *(NB If there is a waiting list for the child care facilities or other facilities, you can't jump the queue. You just add your name to the bottom of the list.)*
- Notification of any other appropriate employment opportunities on site that are notified to other staff.

After 12 continuous weeks in the same assignments you will be entitled to:

- Basic pay, overtime etc, and personal performance bonus that are the same as you would have received if hired directly. This does not include profit shares or whole company bonuses that are not related to your personal performance.
- Similar terms relating to the duration of working time, including night work and rest periods as the hirer applies to its own staff.
- The same number of Holidays as you would have received if engaged directly by the hirer .

You are not entitled to other benefits such as sick pay or maternity pay etc. in excess of statutory pay, pension, redundancy, or staff loans.

### What impact will it have on me?

Gap personnel have been working with all of our clients to ensure that there is no detrimental impact to our workers as a result of this new legislation being introduced. New systems & processes have been introduced to ensure that the regulations are always complied with. In some cases there will be changes to the length & duration of assignments but this will be entirely dependent upon the type of work that you do for Gap personnel and also the client that you are placed with.

Any changes that apply to you will be advised at the start of your assignment or as soon as reasonably practicable thereafter

## Are there any opt outs or exemptions? Yes ....

1. If your assignment with the end client does not exceed 12 weeks (counting from the either the start date of the assignment or the 1st October 2011 – whichever is later) then obviously you will not be entitled to post 12 week QP rights
2. If you work through your own limited the company then you are likely to fall outside of the scope of the legislation.
3. If you are a professional worker (e.g. Doctor, Nurse, Architect, LGV Driver, Surveyor, Engineer) then you are likely to fall outside the scope of the legislation.
4. If you are engaged under a contract of employment that entitles you to receive Pay Between Assignments (PBA) then the part of the Regulations that applies to pay (regulation 5) is not applicable to you.

## What changes will be made to my assignment length or duration?

Assignment length or duration will continue to be determined by the requirements of the client. However, Gap shall be introducing a new policy whereby all assignments will be for an initial maximum of 11 weeks. At 11 weeks we will review the requirements of the client and contractual arrangements and a decision will be made to either - this is called the **review period**.

During the review period, Gap personnel will consult with the client. If you are still working in the same assignment at the end of the **review period** we may:

- Extend your assignment with the client
- Offer you a different assignment with the client
- Terminate your assignment with the client
- Offer you an assignment with another client
- Offer you an opportunity to take up a new assignment with the client as a permanent agency employee under an enhanced PBA contract.

## What happens if Gap personnel extend your contract with the client?

Once you have completed your 12<sup>th</sup> continuous week, you will be entitled to receive equal pay & benefits to a comparable permanent employee of the client. If you are offered an extended assignment, Gap personnel will advise you of any changes that will be made to your pay & benefits at the end of the review period. However, you are entitled to request this information at any time during your assignment with the client.

## Why would I be offered an enhanced PBA contract?

In some cases, during the review period, a client may express a desire to retain certain workers on a long term basis. This would normally happen when the client is unable to offer a permanent job or fixed hours to the worker immediately but:

- When the client has been impressed with the performance of the worker

- The worker has demonstrated an aptitude or skills which they need to retain on an open-ended basis
- Where the client is considering the worker for a permanent role as soon as they are able to do so
- When your performance and commitment meets the Gap personnel criteria for offering enhanced PBA contracts

It is important to note that you are not obliged to accept an offer of a new contract. It is entirely optional and if you choose not to accept the offer this will not affect your eligibility to be considered for further assignments with Gap personnel under your original contract.

### **What is an enhanced PBA contract and what does it mean to me?**

You will enter into an employment contract with Gap personnel that makes you a permanent employee and Gap personnel will then normally place you on long term assignment with our clients. This will mean that the aspects of the AWR regulations that cover equal pay will not apply, but in return for this you will benefit because:

- You may be offered a long term assignment
- As our employee, we treat you with priority with regard to available work
- As you may be engaged on a long term assignment, you may have a greater opportunity to secure a permanent job with a client, if such an opportunity becomes available
- You will be paid between assignments (PBA) if you are available for work and no work is available

### **What is the PBA & how do I claim it?**

If you are available for work (i.e. not sick, out of contact, on holiday, working on another assignment etc.) and no suitable work has been available for 7 consecutive days. The rate of pay between assignments is the higher of National Minimum Wage and 50% of the highest level of pay within the 12 weeks previous. This entitlement lasts for up to 4 weeks per contract of employment.

### **How can I check if I am receiving my full entitlement under AWR?**

If you have any questions about your entitlements you should submit these to your account manager at Gap personnel, at the earliest opportunity.

The legislation specifies a written request for information and twenty eight day response period. If you do not receive an adequate response after 30 days, you can escalate up the chain to client. However, Gap personnel will normally respond to your request within **7 days**.

If the information you receive suggests to you that you have not received your full AWR rights, then you should discuss this with Gap personnel to try to clarify any issues. If we identify any errors we will rectify these issues immediately (including any historical back pay etc), or agree revised terms and compensation as appropriate. If you feel that your Gap personnel contact has not resolved the issue adequately then you should escalate a complaint to the Managing Director. Failing this, you can take your claim to an Employment Tribunal, but this should be a last resort as failure to provide full AWR rights may have arisen merely by error or due to a lack of full information.

### **If I submit a request for information about my AWR entitlements, is there a risk that my contract may be terminated?**

Absolutely not! At Gap personnel we respect the rights of our workers and whilst our principle concern is to maintain regular flexible employment for our workers, we will always protect our workers rights whilst doing so. Your rights to

## WORKER INFORMATION SHEET



request information and take action under this legislation are specifically protected by regulation 17 of the AWR and to take action against a worker for exercising rights under the regulations is an offence. An employment tribunal may find that you are due compensation if you have been treated unfairly.

The legislation is called The Agency Worker Regulations 2010, available at [http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi\\_20100093\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf), and there are also some guidelines called, surprisingly, Agency Workers Regulations Guidance! See <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf>