

A Guide to Hiring Temporary Workers

Business Information Factsheet
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Introduction

Temporary workers (known as temps) are often required by employers that need to hire staff on a short-term basis to cover an employee's absence or to meet demand during busy trading periods. Employers often source and hire temps through temping agencies that employ and pay the temps and charge the hirer a fee for the temp's services.

This factsheet explains the process involved in hiring a temp through an agency, defines temporary workers and explains their employment status and rights. It also explains the legislation that hirers and temping agencies must comply with and provides sources of further information and support.

Definition of 'temporary workers'

Temporary workers (temps) are people who are hired on a short-term basis usually to fulfil specific duties, such as to cover an employee's maternity/paternity or sick leave, or to meet extra demand during busy periods. They are often hired by retailers in the run up to Christmas or are required to work in sectors that are subject to seasonal fluctuations such as tourism and hospitality. Temps are also hired to work in sectors that suffer from skills shortages such as secretarial and administrative, health and social care, childcare, education and engineering.

Temporary workers are typically sourced via a temping agency, which recruits, selects and employs them, hiring them out to firms for a fee. Temping agencies are defined as 'employment' businesses under the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) as they employ and pay the workers that they supply, (even if they have not yet been paid their fee by the hirer). The regulations set out requirements such as the statutory information that should be included in agencies' contracts with both temps and hirers.

While the hirer supervises the temp's work, there is no employment contract and relationship between them, although the hirer has certain legal responsibilities to the temp, for example in relation to complying with health and safety and equality legislation.

The employment status of temporary workers

A person's employment status affects both their rights and their employer's responsibilities under employment law. Temps are usually classed as 'workers' when supplied and employed by an agency, and not as employees.

Workers have fewer employment rights and responsibilities than employees. For example they are not usually entitled to protection against unfair dismissal, time off for emergencies, maternity

or paternity leave, or statutory redundancy pay. However they do have various entitlements, such as:

- The right to be paid the National Minimum Wage.
- The right to the statutory minimum level of paid holidays and rest breaks.
- Health and safety protection at work.
- Protection against 'whistleblowing' and unfair discrimination under the Equality Act 2010 and equivalent legislation in Northern Ireland.
- The right to maternity, paternity, adoption and sick pay.

Agency Workers Regulations

Hirers and temping agencies must comply with the Agency Workers Regulations (AWR) 2010 as amended in 2011. The Regulations give certain rights to agency workers such as temps and place certain duties on both temping agencies and hirers with whom workers are placed. These include:

- From day one of an agency worker's assignment, the hirer must ensure that the worker has access to the same information regarding job vacancies and facilities (such as workplace rest rooms, staff canteens and childcare facilities) as comparable employees (those employed permanently in the same role, doing the same work and in the same location as the agency worker).
- After 12 weeks in the same post, it is the joint responsibility of the temping agency and the hirer to ensure that agency workers have the same pay and basic working conditions (such as breaks and annual leave) as workers employed directly by the hirer.

The 12-week qualifying period does not need to be continuous. It can include a break of up to six weeks, with longer breaks allowed in certain circumstances. Go to www.personneltoday.com/employers-guides/agency-workers-regulations and www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters for further information about the AWR Regulations.

The Regulations cover the hiring of agency workers in England, Scotland and Wales. In Northern Ireland, the broadly similar Agency Workers (Northern Ireland) Regulations 2010 apply.

Regulations relating to equality

Hirers and temping agencies must also comply with the Equality Act 2010 (the Act), which was introduced to simplify discrimination law across England, Wales and Scotland and consolidated existing equality and discrimination legislation and strengthened certain aspects of equality law, extending protection to groups not previously covered.

The Act covers discrimination against people (including temps) with one or more of nine 'protected characteristics'. Protected characteristics are defined by the Act and include age, disability, race and sex, as well as gender re-assignment, marriage and civil partnerships, pregnancy and maternity, religion or belief, and sexual orientation.

The Act covers discrimination against both employees and non-employees such as agency workers who are treated less favourably with regard to their suitability for a post because they have a protected characteristic.

The Equality Act 2010 does not apply in Northern Ireland, and instead parts of the Disability Discrimination Act 1995 (which was largely repealed by the Equality Act 2010) still apply. Go to www.equalityni.org/Employers-Service-Providers and www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2014/Gaps-in-Equality-Law-in-GB-and-NI-March-2014.pdf for more information about equality law in Northern Ireland.

Sourcing temping agencies and the process for hiring a temp

Temping agencies are listed in specialist directories such as:

- Agency Central (www.agencycentral.co.uk).
- The Recruitment and Employment Confederation (REC) member directory (www.rec.uk.com/membership/member-directory).
- Recruiter (www.recruiter.co.uk/directory).

Before a hirer can be supplied with a temp by an agency, the following information must be provided to the agency:

- The hirer's identity, location, contact details and the nature of their business.
- The ideal date on which the hirer needs their vacancy filled and the duration of the work.
- The location, type and nature of the position that the hirer wishes to fill, as well as details of the hours of work, and any health and safety risks that have been identified in relation to the role and steps taken to minimise those risks.
- The experience, training and qualifications needed by potential temps.

Temping agencies that are classed as employment businesses have a duty under the Immigration, Asylum and Nationality Act 2006 (as amended by the Immigration Act 2016), to ensure that anyone they employ is legally entitled to work in the UK. Certain groups of people, mainly those from outside the unrestricted European Economic Area (EEA), must have the correct visas and authorisation to work in the UK.

UK Visas and Immigration, which is part of the Home Office, provides information about who can be employed legally and how to employ a person from outside the unrestricted areas, as well as guidance on preventing illegal working. Go to www.gov.uk/government/publications/preventing-illegal-working-code-of-practice-for-employers for more information.

Before supplying a temporary worker to a hirer, an agency must:

- Confirm the worker's identity by, for example, checking their passport or birth certificate.
- Confirm that the worker has the experience, training, qualifications and any authorisation considered necessary by the hirer, required by law or required by a professional body. For example, healthcare or childcare workers often need to be registered with a regulatory body and meet national standards of care.
- Confirm that the worker is willing to accept the post being offered.

- As far as is reasonably practicable, confirm that it would not be detrimental to the worker or hirer for the worker to accept the position.
- If the temp will be working with children or vulnerable adults, obtain at least two references and a criminal records check.

Contractual terms and conditions for hirers

By law, hirers must be supplied with a temping agency's standard terms and conditions (Ts and Cs) of business. These must be set out in a single document, such as a contract, and supplied to the hirer as soon as possible.

The Ts and Cs for hirers must include:

- Details of the employment status of the worker, which must make it clear that the agency is responsible for employing and paying them.
- The agency's fee for placing the worker (including charges to cover the worker's wage if appropriate) and how the fee has been calculated.
- The circumstances in which a refund or rebate will be payable.
- Details of the agreement providing the agency with the authority to act for the hirer and the extent of its activities on behalf of the hirer (for example whether it includes advertising the position on behalf of the hirer and, if so, in what media).
- Data protection warranties. Under the 2003 Regulations, temping agencies cannot disclose confidential information about workers to any third party (such as a hirer or client of the agency with whom they will be placed) without the consent of the worker.

Fees charged to hirers

Hirers are generally charged hourly fees by temping agencies that include the worker's hourly rate, plus a service or commission charge. Service or commission charges range from 10% to 25% of the worker's hourly rate, with some reaching 40%.

Temping agencies usually require workers employed by them to submit weekly timesheets, either in paper or electronic format and use these as the basis of their fee calculations when charging hirers.

A temping agency acting as an employment business may charge hirers an additional fee if a worker is offered permanent employment by the hirer directly within a certain period of time after the placement ends. This prevents hirers using the agency as a way of employing permanent staff without incurring typical recruitment costs.

Business protection legislation

Under the Supply of Goods and Services Act 1982, temping agencies must provide their services to hirers with reasonable care and skill. If a temping agency fails to meet its statutory obligations under the Act by failing to provide their service with reasonable care, they must make reasonable redress to the hirer.

The Business Protection from Misleading Marketing Regulations 2008 also make it a criminal offence for the proprietor of a temping agency to provide hirers with misleading information about their qualifications or experience, or make unfair comparisons between their own services and those of other similar recruitment agencies.

Hints and tips

- When using an agency to source temporary staff, hirers should be clear about their requirements to enable the agency to identify the candidate who best fits the role.
- Ensure temporary workers have some induction to the business to enable them to be as productive as possible in their role.
- From day one of their assignment, provide temporary workers with access to the same workplace facilities and information as permanent employees.
- Check with the agency about the details of the temp's employment status to ensure that they are being supplied as a worker who is employed and paid by the agency.

Further information

BIF042 Written Statements of Employment Particulars
BIF084 A Checklist for Inducting a New Employee
BIF371 Choosing and Using a Recruitment Agency
BIF477 A Guide to the Agency Workers Regulations 2010

Useful contacts

Acas (Advisory, Conciliation and Arbitration Service) provides information, advice, training and conciliation services to help prevent or resolve workplace disputes. Both employers and employees can access impartial advice via its telephone and online helpline. Acas also provides online resources and consultancy services for employers.

Tel: 0300 123 1100 (Helpline)

Website: www.acas.org.uk

The Chartered Institute of Personnel and Development (CIPD) is a membership body representing HR professionals and learning and development practitioners. It sets professional standards, accredits qualifications and runs training courses. It also publishes online resources covering HR management, organisational culture and workforce trends.

Tel: (020) 8612 6200

Website: www.cipd.co.uk

The Recruitment & Employment Confederation (REC) is a professional body representing recruitment agencies in the UK. It campaigns on behalf of its members and provides training, business advice and consultancy for start-up and established recruitment firms.

Tel: (020) 7009 2100

Website: www.rec.uk.com

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