

### **Employment Updates** *Increases in compensation levels*

The maximum unfair dismissal award will rise from 1 February 2012 from £68,400 to £72,300 for dismissals that take place on or after that date. On the same day, the maximum amount of a weeks pay, used in the calculation of redundancy payments and basic awards in the employment tribunal, will increase from £400 to £430.

### **Duties of Confidentiality**

The High Court has recently held that an employee who receives confidential information from a future employer is not bound to pass on that information to his existing employer as to do so would breach the duty of confidentiality with the new employer.

### **Race and Sex Discrimination - £4.5m award**

An NHS doctor who suffered post-traumatic stress following a sustained campaign of discrimination which resulted in her dismissal has been awarded a total of £4.5m. The treatment she received was so serious that it is doubted she will ever return to her career and she was also unable to look after her young son. The majority of the award consisted of loss of earnings and pension benefits. Three senior managers were found jointly liable for the award along with the NHS.

## Agency Workers

The Agency Workers Regulations 2010 which came into force on 1 October 2011 provides additional rights to agency workers, often referred to as “temps”. In this edition of our newsletter, we look at the Regulations and what they mean to those who hire temps.

Many different companies (known as “end users” or “hirers”) engage an employment agency to find someone to cover gaps in their workforce. This is different from companies hiring contractors who are self-employed. A genuine contractor will not fall within these Regulations.

The temp is generally engaged by the agency and placed with the hirer. From the first day on which a hirer engages a temp, they must provide access to the collective facilities afforded to their own employees. This will include on-site transport and canteen facilities, childcare facilities and an obligation to inform the agency worker of any permanent vacancies within the company.

Hirers who refuse to offer the same facilities must show that the refusal can be objectively justified but, if the refusal is based solely on the cost of making these facilities available to the temp, then a tribunal is likely to find such an attempt at justification unacceptable.

After 12 calendar weeks in the same role (even if they are only working part of the week), the temp will be entitled to the same basic pay and conditions as the hirer’s permanent employees carrying out the same or similar work. This includes rest breaks and leave.

As with permanent employees, temps who are pregnant will be entitled to paid time off for ante-natal care.



The 12 weeks do not have to run consecutively, but any break in assignments must, for the most part, last less than 6 weeks.

The Regulations state that a temp must receive equal treatment to their comparator. A comparator could be someone carrying out the same role as the temp, or working in the same location, or in a different location but who has access to the same facilities. Although it is not always necessary to identify a “comparator” to know what terms and conditions should apply, a hirer will be deemed to have complied with the Regulations if the comparator is identified and the temp receives equal treatment. The comparator’s experience and qualifications can, however, be taken into account.

To remove the burden from hirers, agencies can offer temps permanent contracts with the agency; paying the temp between assignments and taking reasonable steps to look for work for them. A temp working under this form of contract will not then be entitled to equal pay to his/her permanent comparator.



**Julie Shannon**

Julie recently joined us as our employment law specialist. She has several years experience in representing and assisting companies (both large and small) and individuals.

Julie can assist you with employment documentation, tribunal representation and advice and assistance on employment procedures including disciplinaries, redundancies and TUPE transfers.

Contact Julie at:

[julieshannon@healdnickinson.co.uk](mailto:julieshannon@healdnickinson.co.uk)

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**Agency Workers: The Qualifying Clock**

Although agency workers will accrue rights to collective facilities from the first day of their assignment, other rights, including equal pay, holidays etc will only accrue after a 12 week period. This does not always have to be a continuous period and, in certain circumstances, the break between assignments can be quite long. We set out here the key points to remember when calculating the appropriate period:

- The calculation is 12 calendar weeks even if the temp only works one day a week;
- The temp must be in the same job for the same hirer for 12 weeks but this can be through more than one agency;
- A break of less than 6 weeks between assignments for any reason will **pause** the clock;
- In limited circumstances (e.g: sickness, jury service) a break of up to 28 weeks and a subsequent return will **pause** the clock;



- Breaks caused by planned shutdowns, strikes and lockouts will **pause** the clock;
- A break to take leave will **pause** the clock;
- A break for consecutive reasons will **pause** the clock;
- A break of more than six weeks to work for a different hirer will **reset** the clock to zero;
- Working for the same hirer but in a new role will **reset** the clock to zero;
- A maternity or pregnancy related absence will cause the clock to **keep ticking**.

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