

Agency workers –
we've got you covered



**Your employment rights
in the UK construction
industry**

UCATT Membership services and benefits

UCATT helps its members with:

- Negotiating pay and conditions both locally and nationally
- Improving health, safety and welfare
- Free legal aid for accidents at work
- Legal assistance for accidents outside work
- Training
- Free advice
- Free wills
- Home, motor and travel insurance, tool insurance, road rescue, personal loans and funeral care



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www.ucatt.org.uk



Registering with an agency

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) set legal minimum standards that employment agencies must meet.

Before an agency starts finding work for you the agency must agree the following:

- Whether you will be an 'employee' or a 'worker' of the agency or working for the agency on a 'self-employed basis'
- The type of work that the agency will find for you
- Any notice periods
- Information about your expected pay rates and holiday entitlement

Your agency cannot change these terms without your agreement.

For more information contact **UCATT** on 0207 622 2442 or visit www.ucatt.org.uk or <http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm>

Before you start your assignment

Before each assignment the agency must give you information which includes the following:

- Identity and location of the hirer
- Updated information about pay rates and hours of work
- Proposed start date and duration of the assignment
- Job position and the type of work to be done on the assignment
- The experience, training and qualifications needed for the role
- Health and safety risks and what precautions the hirer has undertaken to prevent or minimise risks

An agency must obtain confirmation from you that you are willing to work on the assignment before it starts.

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Money matters

- Your agency must pay you for the work you do
- Your agency must not withhold pay for work that you have done (even if the agency has not been paid by the hirer for this work or if a signed time sheet has not been produced)
- You have the right to be paid at least the National Minimum Wage (NMW). Your agency should not make deductions from your pay that take you below the NMW. Visit http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_10027201
- An agency cannot charge interest on a loan to an agency worker. They must inform you of repayment terms before you agree to a loan

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What services can my agency charge for?

- Agencies cannot charge you a fee for finding you work
- They can charge for some other services that they provide, such as providing accommodation, transport services or help in preparing CVs, but cannot require you to sign up for these additional services as a condition of finding work for you and shouldn't put pressure on you to do so
- The agency must confirm details of any charges in writing
- You can cancel or withdraw from any service by giving 5 working days notice (10 working days notice to cancel accommodation services)
- You should not be penalised for not accepting any agency services or giving notice to stop using a service

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Accessing other employment opportunities

- Your agency should not penalise you for ending an assignment
- They should not prevent you from taking up a permanent job with a hirer that you are temping for. They may be able to charge a fee to the hirer in certain circumstances, but they should not charge you or try to prevent you from taking up a permanent post with the hirer
- They cannot prevent you from registering with other agencies

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Advice, information and enforcement

The Conduct Regulations are enforced by the Employment Agency Standards Inspectorate (EAS). For information on these and other basic workplace rights and how to enforce them contact the Pay and Work Rights helpline on **0800 917 2368**.

- It can provide advice and pass any complaints about breaches of your rights to the EAS or other enforcement agencies
- It also covers queries on the National Minimum Wage (NMW), the 48 hour working time limit, working in agriculture and working through a Gangmaster
- The helpline provides a confidential service and is a free-phone 0800 number, which is also free from most mobiles
- For migrant workers calling the helpline there is translation help for over 100 languages
- The helpline is open outside of working hours (8am to 8pm) and on Saturdays (9am to 1pm)
- You can also visit the website and complete an on-line enquiry form or a complaint form at: <http://payandworkrightscampaign.direct.gov.uk/agencyworkers>
- **For more information** contact **UCATT** on 0207 622 2442 or visit www.ucatt.org.uk or <http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm>

Health and safety

As an agency worker, you have certain rights under health and safety law. You have a right to:

- Work in places where all risks to your health and safety are properly controlled
- Stop working and leave the area if you think you are in danger
- Receive appropriate health and safety training from the hirer
- Be issued with any protective clothing you need free of charge, such as clothing, shoes or boots, eye and ear protection, gloves and masks etc
- Join a trade union

The agency/hirer must tell you:

- What risks there are to your health and safety from current or proposed working practices
- How to do your job safely
- What has been done to protect your health and safety
- How to get first aid treatment and what to do in an emergency



Working Time

- You cannot be forced to work more than 48 hours per week on average – this is normally averaged over a 17 week period.
- There is limit on the hours night workers can be required to work: an average of 8 hours work in any 24. Where the work is mentally or physically draining this is an absolute limit of 8 hours work in any 24 hours
- Night workers also have the right to to a free health assessment

You have the right to:

- A rest break of at least 20 minutes during a working day of 6 hours or more
- 11 consecutive hours rest per day
- A full 24-hour rest period each week, or a full 48 hours in a fortnight
- 5.6 weeks paid holiday per year



New equal treatment rights for agency workers

From 1 October 2011, agency workers will have new rights to equal treatment as compared with directly employed staff as a result of the Agency Workers Regulations 2010.

From day one agency workers will have a right to:

- Equal access to collective facilities provided by the hirer
- Information and the opportunity to apply for vacancies in the hirer's workplace

After 12 weeks in the same job with a hirer agency workers will have the right to:

- equal treatment on pay, holidays and working time
- improved pregnancy rights

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www.ucatt.org.uk
Call 0207 622 2442



www.tuc.org.uk
Call 0207 636 4030



<http://www.community-links.org/>
Call 0207 473 2270

Who has these new rights?

The new rights will apply to individuals who are:

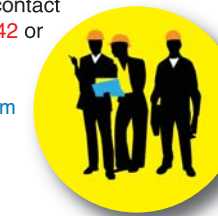
- an 'employee' or a 'worker' of an agency and
- placed on temporary assignments with hirers

The new rights will also apply to agency workers supplied through an umbrella company or via a chain of agencies.

The rights will not apply where:

- agency workers are self-employed and run their own business
- individuals work for a managed service company, where the agency delivers an entire service for an end-user and supervises and directs the workers
- a worker uses an agency to find permanent work with a hirer

For more information contact UCATT on 0207 622 2442 or visit www.ucatt.org.uk or <http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm>



Equal Treatment: Pay

After 12 weeks in the same job for a hirer, agency workers will have the right to the same pay as if they had been directly recruited by the hirer.

Pay includes hourly pay; salaries; piece rates; holiday pay; overtime pay; shift, unsocial hours and risk rates; and bonuses and performance-related pay connected to an individual's work.

Pay does not include pensions; sick pay; redundancy pay; maternity, paternity or adoption pay; bonuses linked to company performance or which reward loyalty or length of service; or expenses.

This does not affect agency workers' statutory rights to pensions, sick pay, and family-related pay.

For more information contact UCATT on 0207 622 2442 or visit www.ucatt.org.uk or www.tuc.org.uk/agencyworkers



Agency Workers on Permanent Contracts

Agency workers who have a contract of employment with an agency and who are paid between assignments are not entitled to equal pay, even after 12 weeks on an assignment.

Such agency workers must be paid at least 50% of the pay they received on their last assignment or the National Minimum Wage (NMW), whichever is the greater. They must also be paid for at least 4 weeks between assignments before being dismissed.

Such agency workers will qualify for statutory rights enjoyed by other employees.

For more information contact UCATT on 0207 622 2442 or visit www.ucatt.org.uk or www.tuc.org.uk/agencyworkers



Equal Treatment on Holidays and Working Time

After 12 weeks in the same job for a hirer, agency workers will have the right to the same holiday and working time entitlements as if they had been directly employed by the hirer.

This includes equal treatment on:

- Annual leave and holiday pay, including entitlements above the statutory minimum
- Bank holidays, including rights to time off or enhanced pay
- Rest breaks
- Access to overtime and overtime pay
- Night work, including enhanced pay rates

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Qualifying for Equal Treatment

Agency workers qualify for equal treatment on pay, holidays and working time after 12 weeks in the same job for the same hirer.

The qualifying period will be broken and set to zero if the agency worker:

- starts a substantively different role with the hirer and they are informed in writing by the agency about the new role or
- has a break of more than 6 weeks from work for the hirer, unless their absence is due to family-related leave, sick leave, holidays, temporary cessation of work or industrial action.

An agency worker will lose their equal treatment rights and need to qualify again if they are absent from work for more than 6 weeks or start a substantively different role with a hirer.

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Anti-avoidance Provisions

An agency worker will gain equal treatment rights if they are rotated to more than 2 different roles or on more than 2 assignments with the hirer (or an associated company) and the agency worker can show:

- they would have qualified for equal treatment if they had not been rotated and
- they were rotated because the hirer or the agency intended to prevent them from qualifying for equal treatment

Agencies and / or hirers will be required to pay up to £5,000 if they break the anti-avoidance provisions.

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Making a Comparison

After the 12 week qualifying period, agency workers will have the right to the same pay, holiday and working time entitlements as if they had been recruited directly by the hirer to do the job. Agency workers have the right to equal treatment on pay and conditions ordinarily contained in the contracts of the hirers' employees or workers.

In most workplaces it will be easy to assess whether an agency worker is receiving equal treatment by comparing their pay and conditions with collective agreements, staff handbooks, pay scales or standard contracts of the hirers' employees or workers.

Note: A hirer or agency can defend a claim for unequal treatment if they can identify an equivalent employee or worker on the same pay and conditions as the agency worker.

For more information contact UCATT on 0207 622 2442 or visit www.ucatt.org.uk or www.tuc.org.uk/agencyworkers

The organisations below can provide you with further information about your rights as an agency worker or contact UCATT on 020 622 2442



<http://gl.defra.gov.uk>

To report any problems with your employer to the GLA, telephone 0845 602 5020



www.direct.gov.uk



<http://www.bis.gov.uk/policies/employment-matters/eas>

If you have a question or want to make a complaint about an employment agency, you should contact the Pay and Work Rights Helpline on 0800 917 2368



www.hmrc.gov.uk

For national minimum wage (NMW) enquiries and complaints and help and advice on the rules of the NMW ring the Pay and Work Rights Helpline on 0800 917 2368



<http://www.worksmart.org.uk/>

BasicRights@Work

<http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm>

www.acas.org.uk
Call 08457 47 47 47

The Acas Helpline is the place to go for both employers and employees who are involved in an employment dispute or are seeking information on employment rights and rules.