

A GUIDE TO THE GOOD WORK PLAN & PAY PARITY



The Taylor Review

In October 2016, the UK government commissioned an independent review of the UK's current work practices in order to keep pace with modern business models.

Matthew Taylor was appointed to lead this review and in July 2017 he presented his "**Good Work; the Taylor review of modern working practices**".

Contained in his review were numerous recommendations proposed, one of which was that the Swedish Derogation should be repealed completely.

In response to this, in December 2017 the Government published its response to the Taylor Review named "**The Good Work Plan**", which sets out what has been described as "**the biggest package of workplace reforms for over 20 years**" and outlines their commitment to improving UK employment laws and to provide workers with access to fair and decent work.

What is The Swedish Derogation (R10)?

The Agency Workers Regulations 2010 (AWR) came in to force in October 2011 and provide agency workers with the right to be engaged on terms, relating to certain employment rights, which are at least favourable as the terms applicable to the staff of the client they are supplied to. These rights, often referred to as equal treatment, apply to agency workers once they have completed their qualifying period (12 weeks)

Equal treatment applies to the terms relating to:



However equal pay doesn't apply if an agency worker is engaged on a contract of employment that complies with all provisions of Regulation 10 of the AWR. Such contracts are commonly referred to as "**Swedish Derogation**" or "**R10**" contracts.

The Swedish Derogation is shorthand for a special type of employment contract provided for in Regulation 10 of the AWR. Its official name is a "**pay between assignments**" contract because workers engaged on these contracts with a temporary recruitment agency give up the right to pay parity with comparable permanent staff in return for a guarantee to receive a certain amount of pay when they have gaps between assignments.

The Swedish Derogation contract has been mostly used where large numbers of lower paid minimum wage temps are needed e.g. retail, manufacturing, etc. According to the Government's figures, 8-10% of UK agency workers are on Swedish derogation contracts.

What does the removal of the Swedish Derogation mean?

Abolition of the derogation means that all agency workers will be entitled to pay parity after the 12 week qualifying period and will have to be issued Regulation 5 employment contracts.

By no later than 30 April 2020 recruitment agencies must provide workers whose existing contracts contain a Swedish derogation provision with a written statement telling them that with effect from 6 April 2020, those provisions no longer apply. Agency workers can bring a claim in the Employment Tribunal where their employer fails to provide that statement on time.

Workers asserting rights under the new Regulations will be protected from detriment and unfair dismissal.

'All agency workers will be entitled to pay parity after the 12 week qualifying period'

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What is the Qualifying Period?

All agency workers will be entitled to pay parity with effect from 6th April 2020, if they have completed the 12-week qualifying period, or at the end of the qualifying period if they have not completed 12 weeks' work

What is pay parity?

An agency worker is entitled to the same basic working and employment conditions as direct recruits of the same business once they have undertaken the same role with the same end client for 12 continuous calendar weeks.



It Includes;

Any sum payable in connection with the agency worker's employment, including certain bonus payments, holiday pay, overtime, shift allowances and unsociable hours premiums.



It Does Not Include;

Any bonuses which are not directly attributable to the amount or quality of the work done by a worker, and which are given to a worker for a reason other than their personal output.



End client specific benefits over and above certain statutory rights such as sick pay, maternity/paternity pay, adoption pay, pension contributions and redundancy pay are excluded. (These statutory rights would be covered by either recruitment agency or intermediary/umbrella)



'At SureStaffing, we are currently talking to all our clients to discuss the ramifications of the abolishment of Swedish Derogation'



Why are clients and agencies worried?

If the end client has agency workers who are currently employed under Swedish derogation contracts, then these changes could have significant financial implications after the 12-week qualifying period because the recruitment agency will then have to pay the agency worker the same rate as a permanent member of staff doing the same job at that company.

This will mean either charge rates have to go up for the end client, to accommodate the AWR 12 week rule, as well as the additional administrative cost of ensuring Regulation 5 Pay Parity contracts are compliant.

How much this impacts on each end client and recruitment agency will depend on how many agency workers they have on Swedish derogation contracts, how long for and in what kind of roles. In particular, of course, the cost will depend on how great is the gap between what the agency currently pay those temps and what it will need to pay when they are entitled to the same rates as the end clients comparable permanent staff.



What steps are SureStaffing taking?

At SureStaffing, we are currently talking to all our clients to discuss the ramifications of the abolishment of Swedish Derogation and sending out Due Diligence Questionnaires to obtain all matters surrounding equal treatment and pay parity and advise those clients with whom this will impact and to discuss the way forward.