

Unions today – your friend at work

At times we all need advice or support in connection with employment.

Everyone has the right to join a union – it costs less than you think and your employer doesn't need to know you are thinking of joining up. The average cost of being in a union is only 92p a week for part-timers and about £2 for those working full-time.

To find out more about how to join a union and which union is the right one for you, phone the TUC's *Know Your Rights* helpline on **0870 600 4 882**, or visit www.worksmart.org.uk/unionfinder



Trades Union Congress

Congress House, Great Russell Street, London WC1B 3LS
Tel: 020 7636 4030
www.tuc.org.uk



Working on the Edge

The TUC is calling for a better deal for agency and casual workers, through our *Working on the Edge* campaign. Find out more at www.tuc.org.uk/ontheedge

www.worksmart.org.uk

– the one-stop site for everyone at work. This website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this leaflet, plus the whole range of rights materials, is on the site – just a click away!

Everyone at work has some basic rights.
Thanks to union campaigning, rights for agency workers have just got better though there is still a long way to go.
This leaflet tells you where you stand.

Agency workers have rights too!



workSMART

Know
Your
Rights

www.worksmart.org.uk



There are three ways you gain rights as an agency worker:

- Agency workers get some special protection of their own. We deal with this in the first section of this leaflet. You will also have a written statement of terms and conditions from your agency. This is a legal document that can be enforced. It must cover some items that we describe below, but the details will differ from agency to agency. If you think your agency has broken the terms of this, you should take advice.
- Everyone at work, including agency workers, has some basic rights in law such as the minimum wage. We explain these in this leaflet.
- A few agency workers will have extra rights because they have the special legal status of employees. We set these out briefly towards the end of this leaflet, and explain the difference between employees and workers.

Employment law can get complicated. We have done our best to make this leaflet both accurate and easy to read, which means that we cannot deal with every last detail. You should therefore not rely on it as legal advice, and should always take further advice based on your own situation before taking any action.

Special rights for agency workers

No fees

- An employment agency cannot charge you a fee simply for finding you work or putting you on their books. (Until recently this was legal in the entertainment or modelling sectors.)
- An employment agency cannot insist that you buy other products or services such as CV writing, training, or personal protective equipment as a condition of using the work-finding services of the agency.

Employment agencies are meant to make their money from employers who need workers, not from those seeking work.

Getting your wages

An agency cannot withhold your pay simply because they have not received their payment from the company or organisation where you worked, or because you cannot produce a signed time sheet. Where the hiring company refuses to sign a time sheet, it is the agency's responsibility to establish the hours that you actually worked. You should be paid for these.

A written statement of terms and conditions

When you sign on with an agency you should be given a written statement of terms and conditions before you start any work. This applies whether the agency is trying to find you temporary work or a new permanent job. Once terms have been agreed and confirmed in writing, they should not be changed unless you agree. Any agreed changes must be confirmed in writing within five working days. (In practice it might be hard to disagree as the agency can simply stop finding you work if you do not sign.)

If your agency is finding you temporary work then the written agreement must cover:

- whether you are classed as an employee of the agency or a worker who is 'contracted for services'. You will usually be a worker (see page 8 for more about this important difference);
- it must say that you will be paid for all work carried out;
- how much notice you are required to give and entitled to receive in order to end the contract;

- the rate of pay that will be paid or the minimum rate of pay that the agency reasonably expects to achieve for you. This must be at least the hourly National Minimum Wage rate;
- whether you will be paid weekly or monthly;
- the amount of paid leave that will be given. Most agency workers are covered by the Working Time Regulations and are entitled to at least four weeks' holiday pay per year (see page 4).

Health and safety

Agencies have a duty to find out about any health and safety risks known to the hirer and the steps taken to prevent or control those risks.

They should check that the hirer has carried out a thorough health and safety risk assessment and ensure that you are made aware of the situation before placing you with the organisation.

Your rights as a worker

Everyone at work, including all agency workers, enjoys these rights from their first day of work:

- the National Minimum Wage;
- working time rights (including breaks, holidays and holiday pay and a limit on the working week);
- health and safety protection;
- the right to join a union; and
- protection from unfair discrimination.

The National Minimum Wage

This is the minimum that you can be paid for each hour that you work:

- if you are 22 or over you should get at least £4.50 an hour, rising to £4.85 in October 2004;
- if you are aged 18 to 21 you should get at least £3.80, rising to £4.10 in October 2004;
- if you are 16 or 17 you will be protected for the first time from 1 October 2004, when you should get at least £3.00 an hour.

Most people can easily work out whether they are getting the minimum wage by dividing their pay (before tax and other deductions) by the number of hours worked, though if you are paid any overtime you should only work out the average for the hours you are getting your basic pay. Tips given directly to you do not count, but any paid through your pay packet do.

But there are two complications:

What deductions can be legally made from your pay?

If accommodation is provided for you, a maximum of £24.50 a week can be deducted (or £3.50 per day where less than a full week's accommodation is provided). In October 2004 this will increase to £26.25 and £3.75. This doesn't mean you can't be charged more, but only this amount can be taken off your pay before working out whether you are getting the minimum wage.

No deductions can be made for any meals or other refreshments that are provided. If transport is provided to get you to and from work, a deduction can be made. There is no limit on this and it is a common source of abuse.





What if you have no set hours?

Some people are paid by the amount of work they do, rather than how long they work. You still get some minimum wage protection, but the system used to try and work it out has been abused so much that it is changing.

From October 2004 an employer will have to either pay the worker the minimum wage for all hours worked or will have to pay 100 per cent of the minimum wage for the number of hours it takes an average worker to complete an agreed amount of work. (This rises to 120% in 2005.) The employer will have to carry out tests to establish the time it takes an average worker to complete the work. For example, if the tests show that the average worker can complete 10 pieces in an hour, the employer must pay the workers at least 45 pence per piece in order to meet the current minimum wage rate of £4.50 per hour (10 x £0.45 = £4.50).

If you think that you are not being paid the minimum wage you can make a complaint directly to the *NMW Helpline* on **0845 6000 678** (England, Scotland or Wales) or **0845 6500 207** (Northern Ireland). You can also seek further advice from your union if you are a member or from an advice agency.

Working time rights

These cover rest breaks, holidays and holiday pay, night work and how many hours you can work each week. There are leaflets that cover these rights available from the TUC's *Know Your Rights* line on **0870 600 4 882**.

Rest breaks

You have the right to a rest break of 20 minutes where your working day is longer than six hours. If you are under 18, however, you are entitled to a 30-minute break after working four and a half hours.

Holidays

You should receive four weeks' paid annual leave. Some agencies have been getting round this by saying that your hourly pay rate includes holiday pay and that they therefore do not have to give extra pay if you take a break.

At the very least, your contract must clearly state that your pay includes a sum for holiday pay and what amount of your pay is holiday pay. As an agency worker, your hours and pay may vary considerably over time. If this is the case, your earnings over the most recent 12-week period are divided by the hours worked over the same 12 weeks to give you an average hourly rate and this is used to determine your holiday pay.

If you did not do any work at all in one or more weeks, you simply discount that week and move to the week immediately before it until you have a total of 12 weeks' work and pay on which to work out your average hourly rate. If in doubt about your entitlement, seek further assistance from your union or an advice agency such as the CAB, as there are clear legal rules on what employers can and cannot do when it comes to calculating your holiday pay.

Night work

Regular night workers should not work more than eight hours in each 24-hour period. The Working Time Regulations allow for night work to be averaged over a 17-week period in the same way as weekly hours of work. Night workers are also entitled to a free health assessment.

Working week

You have the right not to work more than 48 hours a week on average. This limit is averaged over a 17-week period. This means that it is legal to work more than 48 hours in some weeks, so long as this is balanced out by weeks in which fewer hours are worked, making an average of not more than 48 hours over the whole 17 weeks. You can sign away this right, but cannot be pressured to opt out, and can opt back in again at any time though you may have to wait for up to three months to gain protection.

Health and safety protection

Your agency has a responsibility not to place you in a job for which you are not appropriately qualified. The company where you are placed is responsible for making sure that the workplace is a safe working environment for you, and must provide appropriate health and safety training.

Protection from discrimination

You have the right not to be treated less favourably than other workers by your agency or the hiring company on the grounds of sex, race, disability, pregnancy, sexual orientation and religion or belief. From 2006 it will also be unlawful for employers to discriminate against workers and job seekers on grounds of age.

Union membership

You are allowed to join a union. You do not have to tell your employer if you are a member. You cannot be discriminated against for being a union member.

Representation

You have the right to be accompanied at a workplace disciplinary or grievance hearing by either a trade union representative or a colleague. (There is no legal obligation on a union to represent you.)

Entitlement to maternity pay and sick pay

There are some limited circumstances in which agency workers can get statutory maternity pay or statutory sick pay. There are tough conditions, however, and not many will qualify in practice.

Statutory Maternity Pay (SMP)

You do not need to be an employee to get SMP although only employees are entitled to take maternity leave (for more information about 'employees' see page 8). You do, however, have to meet some quite tough conditions including signing on (even if they didn't find you work every week) with your agency for at least 26 weeks before the fifteenth week before your baby is due. If you qualify for SMP, you will receive maternity pay for 26 weeks and this will be paid at 90 per cent of your average pay for the first six weeks and then at a flat rate for the remaining 20 weeks. From April 2004, the flat rate is £102.80 per week.

If you are pregnant and think you might qualify, you can get a copy of *Maternity Leave and Pay* from the TUC's *Know Your Rights* line on **0870 600 4 882**. If you do not qualify for SMP, you may be able to claim Maternity Allowance from your local Benefits Agency office and you should contact them for further details and an application form.

Statutory Sick Pay (SSP)

Agency workers who pay Class 1 National Insurance contributions are entitled to SSP in the same way as other employees. Entitlement will depend on whether you are working on an assignment at the time you fall sick. If you are, then you may be entitled to SSP until the end of your current assignment. If you are not working when you fall sick, however, you will not be entitled to SSP. To be entitled to SSP:

- your normal earnings must exceed £79 a week. If your pay varies, your entitlement depends on your average pay over the last eight weeks; and
- you must be absent from work due to illness for at least four consecutive days.

If you qualify for SSP, it is normally paid in the same way as your wages. It is paid at a flat rate (currently £66.15 a week) and can be paid for up to 28 weeks, if your sickness lasts that long. It is not paid for the first three days that you are on sick leave; these are called 'waiting days'.



Additional rights for employees

Some of the most important employment rights are only available to those who are classed as 'employees'. These are set out below. Many agency workers do not qualify for these rights as they do not pass the 'employee' test. Your written contract with your employment agency will tell you whether you are a worker (the key phrase is 'contract for services') or an employee (this will be a 'contract of employment') though in some cases a court could decide that you are an employee even if your agency tells you that you are a worker.

As an agency worker, you are more likely to be an employee if:

- you have worked for the agency or placement company continuously for some time and would expect this to continue unless they dismiss you;
- the days you work and your terms and conditions are set by the agency or company;
- the agency or company can dismiss you for misconduct; and
- you have access to a grievance procedure under the terms of your contract.

If you are an employee you gain these extra rights:

- the right to claim unfair dismissal if you are sacked without notice or good cause;
- the right to redundancy pay;
- the right to take maternity, paternity and parental leave and to request flexible working;
- the right to paid time off for antenatal care; and
- the right to a written statement of main terms and conditions of employment.

Some of these rights, however, have qualifying periods – you only get them after some time in your job. You can find out more about employee rights in the leaflet *Your Job and the Law* available from the TUC's *Know Your Rights* helpline on **0870 600 4 882**.

Contacts

Employment Agency Standards Inspectorate

If your agency is treating you badly and you think it might be breaching the law you can report it to the government office that regulates agencies.

T: 0845 955 5105

Recruitment and Employment Confederation (REC)

Some agencies (usually the better ones) are members of the REC, which sets standards for its members. If your agency has a REC symbol on its premises or paperwork then you can complain to the REC if you think it is breaking employment law.

T: 020 7462 3260

Health and Safety Executive

The HSE can provide advice and information on health and safety issues.

T: 08701 545 500 (8am - 6pm)

National Minimum Wage Helpline

T: 0845 600 0678

Advisory, Conciliation and Arbitration Service (ACAS)

ACAS is a public body that promotes good workplace relations. Their national helpline answers employment questions and provides general advice on rights at work for employees and employers.

T: 08457 47 47 47 (9am - 4.30pm)

Citizens Advice Bureau (CAB)

You can find your nearest CAB from www.nacab.org.uk or a telephone directory.

Employment Tribunal Service Enquiry Line

Information about making a claim or tribunal procedures.

T: 08457 959 775

If you think your problem may have a discrimination aspect then you might find the following helpful:

Equal Opportunities Commission

T: 0845 601 5901

www.eoc.org.uk

Commission for Racial Equality

T: 020 7939 0000

www.cre.gov.uk

Disability Rights Commission

T: 08457 622633

www.disability.gov.uk

Lesbian and Gay Employment Rights

T: 020 7704 6066

www.lager.dircon.co.uk