

Your employment rights after 12 weeks

Once you've worked on the same 'assignment' (period of work) at the same 'hiring organisation' (company) for 12 weeks, you get more rights. This is called the '12-week minimum qualifying period' under the law.

The rights cover:

- the right to same pay
- the right to same holiday
- the right to the same working patterns and rest breaks
- time off for 'antenatal' (pregnancy) and adoption appointments

The 12-week qualifying period

A week counts as any 7 days that you work in, from the day your assignment began.

For example, an assignment begins on a Wednesday and you work 3 of the days up to the following Tuesday. This counts as a week towards the 12-week qualifying period.

A week still counts towards the 12-week qualifying period if you do not work because of:

- pregnancy, childbirth or maternity from the start of your pregnancy to 26 weeks after birth, or your return to work – whichever is earliest
- maternity leave
- paternity leave
- adoption leave
- shared parental leave

For example, you're on a 1-year assignment and you're pregnant. You've been working for 8 weeks when you call in sick with a pregnancy-related illness. Any weeks you're off sick with that illness will still count towards your 12-week qualifying period.

A week does not count towards the 12-week qualifying period if:

- the total break you have between 2 periods of work is no more than 6 weeks
- you're absent due to sickness or jury service for 28 weeks or less
- you take any of your holiday entitlement
- the workplace shuts down, for example for Christmas or industrial action

Your 12-week qualifying period will start again if you:

- go back to the same assignment after a break of more than 6 weeks – unless it is due to any of the reasons listed above
- go back to the same role after 28 weeks' absence due to sickness or jury service
- start a new assignment with a new hiring organisation
- start a new role with the same hiring organisation – this role must be 'substantively different'

Under the Agency Workers Regulations 2010, agencies are not allowed to create patterns of assignments that stop you reaching the 12-week qualifying period.

The right to the same pay

After you've reached the 12-week qualifying period, you're entitled to the same rate of pay as direct employees of the hiring organisation. Under the law this is called 'the right to equal treatment to pay'.

The right to equal treatment to pay includes:

- basic pay
- holiday pay that's more than the legal minimum
- individual performance-related bonuses
- commission
- overtime pay
- allowances for working shifts or unsociable hours

The right does not include:

- bonuses linked solely to company performance or to reward long-term loyalty
- expenses
- enhanced maternity, paternity, adoption pay, shared parental pay and parental bereavement pay
- company pension schemes
- redundancy pay
- sick pay that's more than statutory sick pay (SSP)
- guarantee payments
- season ticket loans
- paid time off for trade union duties

Changes to the law on the right to the same pay

Before 6 April 2020, some agencies might have arranged to pay an agency worker between assignments to stop them getting the right to the same pay. This is known as 'derogating from the right to equal treatment to pay'.

However on 6 April 2020 the law changed so that:

- these contracts are no longer valid
- the agency worker can still make a complaint about such a contract, even if they received it from the employer before 6 April 2020
- the agency can still offer an agency worker a permanent employment contract and pay between assignments, but the agency worker will be entitled to equal treatment to pay after 12 weeks

The right to the same holiday

After the 12-week qualifying period, you have the right to the same amount of holiday and holiday pay as direct employees of the hiring organisation.

If the employer gives holiday above the legal minimum of 5.6 weeks, you can choose how you want to use it. You can either:

- add it to your holiday entitlement

- get paid for it on top of your hourly or daily pay rate and clearly itemised on each payslip
- get paid for it in one go at the end of your assignment and clearly itemised on your final payslip

The right to same working patterns and rest breaks

After the 12-week qualifying period, you also have the right to the same working patterns and rest breaks as direct employees of the hiring organisation. This includes any entitlement to longer lunch breaks or other breaks.

[Find out more about rules on working hours and rest breaks](#)

Pension rights

Employment agencies must automatically enrol all their agency workers into a pension scheme within 3 months of the start of a contract.

If you do not want to be enrolled into the agency's pension scheme, you must tell the agency and the pension provider you want to opt out of the scheme.

[Find out more about pension schemes and rules from The Pensions Regulator](#)

Parental rights

Agency workers have the right to:

- not be treated unfairly because of pregnancy or maternity
- paid time off for antenatal appointments when pregnant, after reaching the 12-week qualifying period
- unpaid time off to attend antenatal appointments with a partner who's pregnant
- paid time off to attend up to 5 adoption appointments – this is for a single adopter or the primary adopter in a couple
- unpaid time off to attend 2 adoption appointments – this is for the partner of a primary adopter

If you do not have employee status, you're not entitled to:

- maternity leave
- paternity leave
- adoption leave
- shared parental leave
- neonatal care leave
- parental bereavement leave

You can still stop working to care for your child. But you need to tell your agency the dates you cannot work.

While off caring for your child, you might be entitled to one of the following:

- statutory maternity pay
- Maternity Allowance
- statutory paternity pay
- statutory adoption pay
- statutory shared parental pay
- statutory neonatal care pay

[Find out more about time off for care and support](#)

Pregnancy and agency work

Your hiring organisation must carry out a risk assessment for you when you tell them in writing that:

- you're pregnant
- you've given birth within the last 6 months
- you're breastfeeding

They should review the risk assessment regularly.

By law, agency workers must not be treated differently to other workers.

If there is a health and safety risk to you or your unborn baby, your hiring organisation must remove it.

If it's not possible to remove the health and safety risk to you or your unborn baby, your hiring organisation must tell your agency.

Your agency must either:

- find you another suitable assignment
- suspend you on full pay for the length of your original assignment

Under the Employment Rights Act 1996 and the Agency Workers Regulations 2010, you would usually need to meet the 12-week qualifying period to be entitled to a different assignment or suspension on full pay.

If your agency finds you other suitable work but you refuse it without a valid reason, they do not have to pay you.

If you're unsure about your health and safety rights as an agency worker and you've just had a baby or are pregnant, you might need to consider [getting legal advice](#).

Find out more from the Health and Safety Executive (HSE) on health and safety rights for:

- [agency workers](#)
- [new mothers and pregnant workers](#)