

## 1. Introduction

This leaflet sets out guidelines on the rights and entitlements of agency workers as provided for under the Protection of Employees (Temporary Agency Work) Act 2012. It is not a legal interpretation of the Act.

## 2. What is the purpose of the Act

The Protection of Employees (Temporary Agency Work) Act 2012 which transposes EU Directive 2008/104/EC into Irish law was enacted on 16<sup>th</sup> May 2012. The aim of the Directive and legislation is to provide protections for agency workers and to ensure that they will be treated the same as permanent workers in respect of basic working and employment conditions. While the legislation does not contain all of the safeguards that the INMO campaigned to have included, it nevertheless represents a significant step towards securing equal treatment for agency workers and is very much welcomed.

## 3. Who does the legislation apply to

The Act applies to agency workers who are employed by an employment agency under a contract of employment and assigned to work temporarily for and under the direction and supervision of a hiring organisation, the 'Hirer'.

## 4. Who is the employer of the Agency Worker

For the purposes of the legislation, the employment agency is the employer of an agency worker.

## 5. What are the key entitlements under the act

- i) **Basic Working and Employment Conditions:** Agency workers have the right, from day one of employment, to be treated no less favourably in terms of basic working and employment conditions than if they had been directly recruited by the Hirer to do the same or similar work.
- ii) **Access to Collective Facilities and Amenities:** Agency workers have the right to be treated no less favourably than directly hired employees with regard to access to collective facilities and amenities such as canteen or other facilities,

child care facilities and transport services, unless there is objective justification for treating the agency worker less favourably.

- iii) **Access to Employment by the Hirer:** Agency workers have the right to be informed of vacant positions arising within the Hirer. The Act provides, that when a Hirer is informing its employees of any vacant position with the Hirer, it must also inform any agency worker assigned to the Hirer at time of the vacancy in order to enable the agency worker to apply for the position.

## 6. How are Basic Working and Employment conditions Defined

The Act defines basic working and employment conditions as follows:

- Pay;
- Working time;
- Rest periods;
- Rest breaks;
- Night work;
- Annual leave;
- Public holidays.

## 7. How is pay defined

The Act defines pay as follows:

- (a) Basic pay, and
- (b) Any pay in excess of basic pay in respect of -
  - (i) Shift premium;
  - (ii) Piece work;
  - (iii) Overtime;
  - (iv) Unsocial hours worked;
  - (v) Hours worked on a Sunday.

## 8. Location and Specialist Qualification Allowances

Following a claim taken by the INMO on behalf of five Agency Nurses, the Labour Court has determined that location and specialist qualification allowances come within the definition of

basic pay. This means that from 16<sup>th</sup> June 2015 agency nurses and midwives may benefit from either the specialist qualification allowance or location allowance where they meet the relevant criteria.

The specialist qualification allowance is payable to nurses/midwives employed directly on duties in specialist areas where they possess the relevant clinical qualification appropriate to the specialist area in which they are employed. The location allowance is payable to nurses/midwives employed on duties in designated locations, for example, A&E Departments, Theatre/O.R., Intensive Care Units, etc. A full list of the areas in which the location and specialist qualification allowances are payable is available from the INMO website and Information Office.

## 9. Do I now have entitlement to Sick Pay and access to the Pension Scheme

No, the Act explicitly excludes sick pay and payments under any occupational pension scheme.

## 10. What about Annual Leave entitlement

Under the legislation you are entitled to the same annual leave entitlements as directly recruited employees. The following are the annual leave entitlements of staff nurses / midwives employed in the public health services:

Service	Annual Leave Entitlement
0 to 5 years	24 days (9.2% of hours worked)
5 to 10 years	25 days (9.6% of hours worked)
More than 10 years	27 days (10.4% of hours worked)

## 11. Will I accumulate service for pay purposes

Under the legislation agency workers will accumulate service for incremental pay purposes and other entitlements provided for under employment legislation.

## 12. Does the Act apply to Permanent Agency Workers

Yes, however, the Act provides that where an agency worker is employed under a 'permanent contract' with the Agency and is paid between assignments the principle of equal treatment does not apply but only in respect of pay. The principle of equal treatment applies to all other basic working and employment conditions. There are several conditions which must be met before equal treatment in respect of pay does not apply, namely:

- The agency worker must be an employee of the agency;
- The agency worker must have a permanent contract of employment with the agency;
- The contract must have been given to the agency worker before the start of the first assignment; and
- The agency must pay the agency worker between assignments at the rate of no less than half of the pay to which he/she was entitled in respect of his/her most recent assignment and no less than the minimum wage.

## 13. From what date am I entitled to equal treatment

The Act provides that the entitlement of agency workers to the same pay has retrospective effect to 5 December 2011.

The Act also provides that entitlement to the other basic working and employment conditions is effective only from 16<sup>th</sup> May 2012.

The deadline for transposing the Directive into Irish law was 5 December 2011 but the Irish Government missed the deadline and the legislation was enacted on 16<sup>th</sup> May 2012. In accordance with the EU legal principle of 'direct effect', the directive applies to public sector organisations. It provides that where a Member State fails to implement a directive within the time limit set down the Directive is deemed to have been implemented into that Member State's law from the implementation date. This means that public sector agency workers can rely on the Directive from 5<sup>th</sup> December 2011. For example, where public sector agency workers become entitled to increased annual leave entitlements they do so from the 5<sup>th</sup> December 2011, even though

the legislation provides that such an entitlement is effective only from 16<sup>th</sup> May 2012.

## 13. Who has responsibility for ensuring equal treatment

The employment agency has responsibility for ensuring that equal treatment applies to agency workers, however, this is dependent on the agency being provided with the necessary information by the Hirer.

The Hirer is responsible for providing access to collective facilities and/or access to information on job vacancies that arise.

## 14. What are the remedies under the Act

The Act provides that agency workers, or a trade union representative on their behalf, can make complaints in relation to any alleged contravention of their rights under the Act to the Adjudication Service of the WRC within 6 months of the date of the alleged breach (or 12 months if the worker can show reasonable cause for the delay). The Adjudication Officer can make a decision which shall do one or more of the following:

- declare that the complaint was well founded,
- require the employer to take a specified course of action including re-instatement or re-engagement of the employee, or
- require the employer to pay to the employee such amount of compensation as is just and equitable having regard to all the circumstances up to a maximum of two years remuneration.

## 15. Further Information

Should you have any queries in relation to your entitlements as an agency nurse, please contact the INMO Information Office at 01 6640610 or 01 6640619; e-mail [catherine.hopkins@inmo.ie](mailto:catherine.hopkins@inmo.ie) or [catherine.oconnor@inmo.ie](mailto:catherine.oconnor@inmo.ie)

This leaflet is not a legal interpretation of the Protection of Employees (Temporary Agency Work) Act 2012 (errors and omissions accepted).

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Irish Nurses and Midwives Organisation  
Working Together

## Agency Nurses/Midwives Entitlements

The largest Professional Union  
for Nurses and Midwives in Ireland  
representing over 41,000 members