

What Is the Swedish Derogation?

- The Swedish derogation is the “nickname” for a special type of employment contract, which is provided for in Regulation 10 of the Agency Workers Regulations 2010 (AWR). Its official name is a “pay between assignments” contract. This is because agency workers who are engaged on these contracts with a temporary work agency (TWA), give up the right to pay parity in return for a guarantee to receive a certain amount of pay when they have gaps between assignments.
- This arrangement has been most commonly used where high levels of blue-collar workers are needed, e.g. retail, manufacturing, etc. According to the UK government’s figures, an estimated 8-10% of UK agency workers are on Swedish derogation contracts, which is between 104,000 to 130,000 agency workers.

Why Is It Being Abolished?

- During the Taylor Review into Modern Working Practices (Review), evidence was presented of potential abuse of the Swedish derogation. The Review was concerned that it was too easy for companies to avoid paying workers between assignments, e.g. by keeping them on longer assignments at reduced pay. It also noted that some workers were being forced to accept Swedish derogation contracts, either at the start of an assignment or after 11 weeks, to allow them to be paid less than permanent employees doing the same work.
- After a consultation exercise, the UK government has agreed to revoke the Swedish derogation provisions set out in regulations 10 and 11 of the AWR. The Agency Workers (Amendment) Regulations 2019 will come into force on 6 April 2020.

What Does the Removal of the Swedish Derogation Mean?

- The abolition of the Swedish derogation means that all agency workers will be entitled to “pay parity” (see below).
- To ensure workers are aware that they are no longer opted out of their equal pay rights, TWAs will be required to provide agency workers whose existing contracts contain a Swedish derogation provision with a written statement advising that, with effect from 6 April 2020, those provisions no longer apply. Agency workers will have the right to bring a claim in the employment tribunal where their TWA fails to provide the above statement.
- Agency workers asserting rights under the new Regulations will be protected from detriment and unfair dismissal.

What Is “Pay Parity”?

- Under the AWR, agency workers are entitled to the same basic working and employment conditions as direct recruits (including pay) once they have undertaken the **same role** with the **same hirer** for **12** continuous calendar weeks.

- Pay includes any sum payable in connection with the agency worker’s employment, including certain bonus payments, holiday pay, overtime, shift allowances, unsociable hours premiums, but excludes things such as company sick pay, maternity/paternity/adoption pay, pension and redundancy pay.
- It does not include bonuses that 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 the amount or quality of work done such as to encourage the worker’s loyalty or to reward the worker’s long-term service.

Why Should End-user Clients be Worried?

- If your business hires agency workers who are currently employed under Swedish derogation contracts, these changes could have significant financial implications after the 12-week qualifying period described above has been reached, i.e. as the hirer you will have to pay the agency worker the same rate as direct recruits. The UK government has estimated that the cost of increased wages could be up to £380 million each year to hirers across the UK.
- TWAs are also concerned about the change as many recruitment businesses supply workers who have entered into Swedish derogation contracts of employment and have been required to supply on this basis to hirers. This means they will have to re-visit client terms and pay rates.

How We Can Help

- We are recruitment sector specialists, acting for all clients in the recruitment supply chain, which means we understand how the sector works, as well as the language and practices used.
- We were heavily involved in the government’s consultation on the AWR when they were first implemented, working closely with both the CBI and REC. We therefore have intimate knowledge of the AWR.
- We are actively advising clients in relation to this issue. This includes providing training to ensure that HR, legal and operational teams understand the implications of the change and, in particular, what “pay parity” means. We are also advising end-user clients on potential options in relation to reducing the financial impact of this change.
- We will be running a webinar to help end-user clients prepare for the change and minimise the impact of the new legislation. Details to follow.
- To find out more about how we can support your business, please contact Alison Treliving or your usual contact in the Labour & Employment team.

Contacts

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