



Safety Bulletin 130

Agency workers and their health and safety

All workers are entitled to work in an environment where the risks to their health and safety are properly controlled. If you are an agency worker then your health and safety is protected by law and your employment agency has a duty to make sure that they follow the law.

If you supply or use agency workers you need to be aware of your responsibilities for their health and safety.

Agency workers can face particular problems because, for example, they may not be familiar with the business they are working in or its particular hazards. The risks can be reduced through effective partnership and co-operation between the employment business and the user business, and by following good practice in areas such as risk assessment and communicating health and safety information.

When a business uses agency workers, the business and the agency have a shared duty to protect their health and safety.

Some health and safety responsibilities depend on whether you are the employer. This is determined by the circumstances of each individual case (and you should be aware that agency workers could be considered your employees for health and safety purposes even if they are not for tax and National Insurance).

Agency workers might be employees of the agency, or employees of the business using them (in both cases, under a contract of employment), or (in some limited cases) self-employed/freelance. If you are the employer, you cannot transfer your health and safety responsibilities to another person or business.

However, even though employment status can be important, and the actual legal responsibility cannot be given to someone else, the most important thing is for both the user business and the agency to clarify and agree at the start of a contract the practical arrangements for day-to-day supervision, direction and control of the work that agency workers will be doing.

Health and safety risk assessment for agency workers

By law, businesses must ensure that they assess health and safety risks.

Businesses using agency workers

If agency workers are on your site (either under your direct employ or through another company), your assessment needs to take them into account. You should consider the special problems they may face. For example, they will know less about your business than ordinary employees, and so could be at greater risk.

Your risk assessment must take into account any special cases such as pregnant women, people who work alone or people who may not speak English as a first language



You must also give the agency and agency workers information about risks and measures taken to control them before the start of the placement.

Co-operate to protect agency workers' health and safety

Responsibility for agency workers' health and safety is often shared regardless of where contractual obligations lie. The business using the workers, the employment agency and the workers themselves can all have responsibilities. Co-operation is essential.

From the start, every interested party needs (and is required by law) to share information. For example, if the user business wants workers for a particular role, they should tell the agency about any risks to health and safety involved, and any special qualifications or skills required to carry out the work safely.

This will help the agency put forward people with the right training, qualifications and experience. Similarly, the agency should tell the user business about workers' skills and qualifications, to help all concerned decide what additional training the workers may need.

Continuing co-operation throughout placements will help ensure that responsibilities are clear. It also allows everyone involved to co-ordinate health and safety activities such as giving information, instruction, training and supervision. Nobody should just assume that someone else is taking care of it. For clarity, who actually provides it can be spelt out in contractual arrangements - bearing in mind that the **legal responsibility** as employer cannot be passed on.

It's a good idea to regularly review the effectiveness of your arrangements. For example, the end of a work placement is a natural time to do this. You should try to identify any problems, and discuss the reasons for them. This will help you take steps to improve health and safety for the future.

Agency workers and health and safety information and training

Each new work placement poses health and safety risks. It's essential that the business using the workers, the agency and the workers themselves share information to ensure worker health and safety is properly protected.

You will need to think in particular about what health and safety information, instruction and training workers need (whether you are the user business or the agency), and clarify who will provide it to meet the legal duties you both have under health and safety legislation.

User businesses have a responsibility to give appropriate instructions and readily understandable information (both to the workers and the agency) about the risks that agency workers may face when working in their business, about any special occupational skills or qualifications needed to do the work safely, and about health surveillance requirements.

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Agencies have the same duties if the workers are their employees. Additionally, the user business should tell the agency about any special features of the job that may affect agency workers' health and safety. The agency must pass this information on to the workers.

You should check that workers have **understood training** once it's been given and are continuing to follow procedures correctly.

Consultation

Consultation with the workforce is key to bringing about improvements in health and safety. Workers are more likely to work in a safe and healthy way if they have been involved in taking decisions about how risks at work are controlled.

Whether you are a business using agency workers or an agency, you are legally obliged to consult workers about health and safety if they are your employees.

It is good practice to consult workers who may not be your employees where the placement is long term, though this should not in itself be seen as implying contractual obligations. For more information, see our guide on how to **communicate your health and safety procedures**.

Even when agency workers are not legally your employees, it is good practice to consult and involve them - they need to feel 'part of the team'.

Ensure agency workers use health and safety equipment and follow procedures

Businesses using agency workers must ensure that the workers have the same level of health and safety protection as ordinary employees.

For example, if user businesses provide employees with personal protective equipment (PPE) such as protective clothing, agency workers will also need PPE if they are exposed to the same risks.

Legal responsibility for providing this free of charge lies with whoever is the worker's employer - this might be the agency or the user business. If you're not the employer, you may agree to provide what is necessary (whether you're a user business or an agency), but you cannot charge the worker for it.

In only a few cases, where workers are genuinely self-employed, will they be responsible for providing their own PPE.

Similarly, agency workers who use computers and similar equipment with screens will need suitable workstations and rest breaks. Unless a worker is genuinely self-employed, both the user business and the agency have responsibilities. The employer is responsible for paying for eye and eyesight tests.



The more hazardous the work your business carries out, the more you need to do. There are specific requirements in relation to (for example) chemicals, the use of work equipment and machinery, manual handling, the use of electricity and the comfort of the working environment.

Businesses using agency workers and agencies themselves need to work together to ensure that the right equipment is provided and procedures are followed.

Monitor agency workers' health and safety

Depending on your assessment of the risks, you may need to carry out health checks on employees (whether you are the **user business** or the **agency**). For example, you might need to do this if employees work with chemicals that can damage health. While health checks are not a substitute for controlling risks, they can help you tell whether your controls are working.

Businesses using agency workers

If you are the user business and you conclude that health checks are necessary, you may want to include, as best practice, agency workers even if they are not your employees. You should co-ordinate with the agency about arrangements for this, and make sure that all parties are clear about who will provide it if it's required.

Don't forget that you need to give workers readily understandable information about these health checks, too, whether they're your employees or those of the agency.

In some cases, you may decide that all that's needed is to check sickness records and reports of diseases. In other cases, you may need direct checks such as inspections for skin rashes

Agencies

If the agency workers you supply are your employees, you are responsible for any health checks needed.

Before placing workers with a user business, you need to check with the user business whether they will be doing work that requires health checks. If so, you'll need to get information from the user business about what's involved. You might be able to arrange for the user business to do the checks on your behalf - but you are still responsible for making sure they are done if the workers are your employees.

You may also need to organise some health checks yourself. For example, you might arrange annual medical checkups for workers who are exposed to potentially serious health hazards, such as asbestos or radiation.

When accidents at work happen, it may be an agency worker who is injured or made ill. The user business and the agency should clarify with each other, before placement, who is the 'responsible person' for any necessary RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) reports in respect of



agency workers, and ensure that all relevant information is exchanged so that RIDDOR forms can be completed in full.

Control agency workers' working hours

The Working Time Regulations set limits on working hours. They also set out workers' entitlement to rest breaks and to holidays. Unless agency workers are genuinely self-employed (running their own business), they are covered by the regulations.

The worker's employer is responsible for complying with the regulations.

You need to be careful. There are special rules for young workers and night workers. Also, if workers work for more than one business, their total working hours could exceed the limit. You should make reasonable enquiries of agency workers about whether they are working elsewhere and take reasonable steps to ensure that their weekly average of 48 working hours is not exceeded. Alternatively, ask the worker to make an agreement that the limit should not apply in their case.

If you are an agency that places workers you employ with other businesses, you are responsible for managing their working time. You must work with the businesses using your workers to ensure that they provide the right rest breaks and other entitlements.

If you require any further information, clarification or assistance with the above, then please do not hesitate to contact us:

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