

Canada life Group Insurance

Technical Update bulletin

June 2011

The Agency Workers Regulations 2010 Implications for Group Risk benefits

Agency Workers Regulations 2010

The Agency Workers Regulations 2010 come into force on 1 October 2011. After 12 weeks in a job, an agency worker will be entitled to equal treatment in basic working and employment conditions; the same that would have applied to them had they been recruited directly.

What is an agency worker?

An agency worker is a person who:

- Has an employment contract with an employment agency that provides temporary staff for employers
- Is supplied by the agency to undertake temporary work for an employer (hirer)
- Is managed and supervised by the hirer

An agency worker or 'worker' will not have a contract of employment with the hirer; only employees will have such a contract of employment.

The following are not treated as agency workers:

- Self-employed people
- Employees of companies providing managed service contracts, for example, cleaning or catering, where the service company manages and supervises these individuals
- In-house temporary staffing banks, as individuals will be directly employed and are covered by the regulations concerning fixed term employees.

What employment conditions are covered?

Some employment conditions are covered from day 1, but after 12 weeks in a job, agency workers are entitled to equal treatment in respect of basic terms and conditions for working time, holiday and pay to which they would have been entitled had they been directly recruited by the hirer.

The equal treatment does not extend to all benefits. The rights include:

- Basic salary
- Holiday
- Rest breaks
- Piece-work production target bonus
- Luncheon vouchers
- Access to on-site facilities like canteen or child-care facilities

In brief....

• The Agency Workers Regulations 2010 come into force on 1 October 2011.

• Agency workers will be entitled to equal treatment in basic working and employment conditions.

• Most rights apply after the worker has been in a job for 12 weeks. Some rights apply from day 1.

• Group Income Protection and Group Critical Illness are out of scope. There is less clarity on Group Life benefits.

Rights do not extend to :

- Occupational sick pay
- Any payment related to a pension* or compensation for loss of office
- Maternity or paternity pay
- Redundancy pay
- Any payment made under a 'financial participation scheme' – a scheme that offers workers a share in an organisation's profits through distribution of shares or cash
- Any payment for time-off work made in accordance with certain statutory rights
- Guarantee pay under the Employment Rights Act 1996
- Any payment by way of an advance under a loan agreement
- Any payment in respect of expenses
- Any bonus or incentive payment '...which is not directly attributable to the amount or quality of work done by a worker and which is 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 long service'

Benefits in kind, except for vouchers which have a fixed monetary value, for example luncheon vouchers, are excluded from the regulations.

*Provisions in the Pensions Act 2008 mean that when NEST is introduced agency workers will have the right to be auto-enrolled in a pension scheme.

Impact for a 'hirer's' employee benefits

- Group Income Protection is out of scope as occupational sick pay is specifically excluded.
- Benefits in kind are out of scope, which includes Group Critical Illness as well as benefits like private medical insurance or the private use of a company car.
- Pensions are out of scope until NEST arrives. The responsibility for this will depend on who pays the agency worker.

This leaves Group Life cover. It is not clear whether the hirer has to provide this cover for agency workers, if they provide group life cover for their employees. If the employer uses a minimum service period for this cover, then that would apply to both employees and agency workers. Employers will need to seek legal advice on their arrangements.

Temporary, part time and fixed term contract workers

It is worth remembering that there are separate regulations that affect temporary, part-time and fixed term contract workers. These individuals will have a contract of employment with the employer, so are employees, and have the same employment rights as comparable permanent employees.

Links

Guidance from BIS: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/A/11-905-agency-workers-regulations-guidance.pdf>

Agency Workers Regulations: <http://www.legislation.gov.uk/ukxi/2010/93/contents/made>

If you have any questions regarding this bulletin or need any further help, please contact your Account Manager or phone 0845 223 8000.

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In brief....

Pensions are out of scope until NEST arrives.

Temporary, part-time and fixed term contract workers have the same employment rights as comparable permanent employees.

Benefits in kind such as PMI and private use of company cars are out of scope

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