

Chartergates Fact Sheet

SUBJECT: POTENTIAL RIGHTS/CLAIMS DEPENDING ON 'STATUS'

	Employee	Worker	Agency Worker	Subcontractor
Unfair Dismissal Rights	Yes	No	No	No
Redundancy Rights	Yes	No	No	No
Statutory Notice	Yes	No	No	No
Holiday Pay	Yes	Yes	Yes	No
TUPE	Yes	Potentially	Potentially	No
Agency Workers Regulations	Potentially	Potentially	Yes	No
Unlawful Deductions	Yes	Yes	Yes, if a worker	No
Discrimination	Yes	Yes	Yes	No
National Minimum Wage	Yes	Yes	Yes	No
Equal Pay	Yes	Yes	Potentially	No
Employment Income for Tax and NI Purposes	Yes	No	Yes	No
Statutory Sick Pay	Yes	No	Yes	No
Pregnancy, Maternity, Paternity, Adoption Rights and Pay	Yes	No	Yes	No
Fixed- Term Protection	Yes	No	No	No
Whistleblowing Protection	Yes	Yes	Yes	No
Pensions Auto-Enrolment	Yes	Yes	Yes	No

*The above is the general position only and the specific facts of a particular case should always be considered.

Notes

- ✓ *Unfair Dismissal*- An employee's right to claim unfair dismissal is subject to a qualifying period of continuous service unless the reason for dismissal is a 'protected' reason.
- ✓ *Redundancy*- An employee's right to a redundancy payment is subject to a qualifying period of continuous service.
- ✓ *Notice*- The above table only related to statutory notice. It does not apply to any contractual notice that an individual may be entitled to.
- ✓ *TUPE*- Only employees are entitled to any rights emanating from a TUPE transfer. However, the definition of 'employee' is slightly different. 'Employee' includes (but is not limited to) those working under a contract of service or a contract of apprenticeship. It does not include those that provide services under a 'contract for services'. Therefore, whether a worker or an agency worker falls within the TUPE regulations will be determined by whether they are providing the services under a contract FOR services. This will obviously depend on the particular terms.
- ✓ *AWR*- Where the individual is directly employed or directly engaged as a worker by the 'Hirer' then they will not come within the purview of the AWR. However, if the individual is employed by or is a worker of the umbrella company then they are likely to come within the scope of the AWR.
- ✓ *Discrimination*- An agency worker will benefit from the rights conferred by the anti-discrimination legislation in the event that they qualify as a 'worker'. They will also likely qualify for protection as a 'contract worker' and as a 'work seeker'.
- ✓ *Equal Pay*- Where the agency worker has a contract with the employment business then it is likely that the agency worker can bring a claim against the employment business where the female agency worker is paid less than a male agency worker doing equal work (or vice versa). The facts will be important in any case and in particular with regards to whether they were working at the 'same establishment'.
- ✓ *SSP*- Where the agency worker is an 'employed earner' for the purpose of NI then they have a right to SSP.
- ✓ *Pregnancy, maternity etc.* - Agency worker do receive some maternity, paternity, adoption and pregnancy rights although they are not as comprehensive as those received by employees. Where the agency worker is an 'employed earner' for NI purposes then they will have an entitlement to maternity, paternity and adoption pay. The protection period for an agency worker will usually end two weeks after the birth. What rights an agency worker will have on her return from pregnancy will depend on the facts of the particular case.