

**Obtaining temporary work via an agency can be a good option if you are struggling to find a permanent job or do not want to tie yourself down for too long. However there are some complexities to do with your tax and employment law status that you should be aware of. We tell you more in this factsheet.**

## What is my tax position as an agency worker?

Let's start with a look at the basic 'agency' arrangement: in a typical situation, the agency will supply you to an 'end client'. You will usually perform tasks under the day-to-day supervision of someone at the end client location but will send time sheets to the work agency, who will pay you.

Technically, you are usually neither an employee of the end client nor of the agency, however under a special rule, the agency is responsible for deducting income tax and National Insurance contributions (NIC) from the salary paid to you, under the Pay As You Earn (PAYE) system. They must also pay employer NIC. This is a cost to the agency, but it is usually covered in the fee that is charged to the end client by the agency.

Please note that due to the way the system works, PAYE may not always operate smoothly for agency workers who change agencies a lot. Find out how to check you are not paying too much or too little tax on our website here: <http://www.litr.org.uk/tax-guides/employed/what-if-i-do-not-pay-enough-tax>

For other top tips on managing your tax affairs as an agency worker, see our news piece: [www.litr.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one#improvePAYE](http://www.litr.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one#improvePAYE)



## What are my employment rights?

Typically agency workers are 'workers' for employment law purposes (the category that sits somewhere between employees and the self-employed) and, as such, are entitled to basic protections, for example being paid at least the minimum wage, Statutory Sick Pay (SSP), auto enrolment and paid annual leave. More information on your rights as a worker can be found at [www.gov.uk/employment-status/worker](http://www.gov.uk/employment-status/worker)

Under The Agency Workers Regulations (AWR), agency workers are also allowed to use any shared facilities (e.g. a staff canteen or childcare) from the first day they work in an assigned location. After 12 weeks' continuous employment in the same role, agency workers get the same terms and conditions as permanent employees, including pay, working time, rest periods, night work, breaks and annual leave.

You can find out more about AWR here: [www.gov.uk/agency-workers-your-rights](http://www.gov.uk/agency-workers-your-rights)

There are rules in place that aim to stop businesses from no longer using agency workers as they get near 12 weeks of continuous work. If you think you have been unfairly treated, you should contact ACAS on 0300 123 1100 (Text Relay 18001 0300 123 1100). There is however, an exemption from this 12 week rule where an agency pays the agency worker between assignments – more on this below.

### What is a 'pay between assignments' contract?

Where an agency can offer an agency worker a permanent contract of employment and pay the agency worker during the periods when there are no available suitable assignments, the 12 week equal treatment rule will not apply. This exemption is sometimes referred to as the "Swedish derogation".

For the exemption to apply, lots of conditions must be met, for example the rate of pay between assignments must be at least 50% of assignment pay and calculated using a reference period (usually the 12 weeks immediately preceding the period of pay between assignments).

There can be problems with these 'pay between assignments' arrangements, for example agencies inventing small jobs to avoid having to pay you between assignments. There is some more information on this on the Money Advice Service website:

[www.moneyadviceservice.org.uk/en/articles/pay-and-benefits-for-temps-and-agency-workers](http://www.moneyadviceservice.org.uk/en/articles/pay-and-benefits-for-temps-and-agency-workers)

### I incur a lot of travel expenses as an agency worker – am I entitled to any tax relief?

You may work on lots of different engagements and may incur substantial travel costs in getting to your various work locations. Unfortunately, agency workers are not normally entitled to tax relief on the home to work travel and subsistence expenses they incur (although your workplace may be 'temporary' in the ordinary, natural meaning of the word, they are not 'temporary' for the purposes of meeting the tax law question!) Many people think this is unfair and this is one of the reasons for the rise of umbrella companies – see later.

Travel expenses are usually tax deductible if they are incurred *while* working (as opposed to getting to work). For more information on when agency worker travel expenses may be allowable, see our news piece: [www.litrg.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one#home-to-work](http://www.litrg.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one#home-to-work)



## Can I claim tax credits as an agency worker?

Yes, although you need to work a minimum number of hours each week to get Working Tax Credit (WTC). The number of hours required (16, 24 or 30 as the case may be) will depend on your circumstances. If your work pattern changes from week to week, depending on how much work the agency has for you, you and your employer must decide how many hours you (usually) work.

If you are working through an agency, you can qualify for WTC for the period in which you are actually working if it is expected to last at least four weeks. It is not sufficient simply to be registered with an agency and available for work, you must actually be working. Due to the rules about gaps between jobs and stopping work, it may be possible to qualify for WTC continuously if you start work again within a short period.

For more information on WTC see our sister website here: [www.revenuebenefits.org.uk/tax-credits/guidance/how-do-tax-credits-work/entitlement/wtc-elements/#Variable hours](http://www.revenuebenefits.org.uk/tax-credits/guidance/how-do-tax-credits-work/entitlement/wtc-elements/#Variable%20hours)

You may be able to talk through your specific circumstances with an adviser on HMRC's tax credit helpline: 0345 300 3900 (Textphone: 0345 300 3909).



## What are the travel and subsistence rules from April 2016?

From April 2016, relief for home to work travel and subsistence expenses will be restricted where a worker:

- personally provides services to another person
- is employed through an employment intermediary (such as an agency or umbrella company)
- is under the supervision, direction or control of any person.

Anyone with a technical interest in the law can find the new rules here: [www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance/travel-and-subsistence-expenses-for-workers-engaged-through-employment-intermediaries-from-6-april-2016](http://www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance/travel-and-subsistence-expenses-for-workers-engaged-through-employment-intermediaries-from-6-april-2016)

## Problems with umbrella companies

The way umbrella companies work can be confusing - often workers do not understand all the deductions being made from their pay or appreciate the fees that the umbrella company will charge for their services. We look at how umbrella companies work in detail in our report: [www.litrg.org.uk/latest-news/reports/141117-travel-expenses-low-paid-%E2%80%93-time-rethink](http://www.litrg.org.uk/latest-news/reports/141117-travel-expenses-low-paid-%E2%80%93-time-rethink)

In addition, some umbrella companies have abused the temporary workplace rules, for example, by claiming relief on inflated or fictitious expense amounts or in circumstances where the relief would not be due (for example where the work position is nominally temporary but expected to lead to a permanent position). Others may have given tax and NIC relief in a way which, according to HMRC, is non-compliant or that breaches the minimum wage rules.

Because of this, from 6 April 2016, rules have essentially closed down the ability for agency workers working through an umbrella company (even one that was sticking to the rules!) to get relief for their home to work travel and subsistence expenses.



### Is it possible to get around the new rules?

Unlikely – although some unscrupulous businesses may try, for example by saying that you are not under the supervision, direction or control of any person (which would be highly unlikely unless you are genuinely self-employed) or by asking you to work through a Limited Company.

We understand that it may be tempting to turn a blind eye to questionable practices like this, as this may mean lower taxes for you. However you should be extremely wary of businesses that try and get around the rules on travel and subsistence – you (rather than the business) can find yourself in trouble with HMRC.

You can find out more in our news piece 'Agency workers – new tax year, new troubles':

[www.litrg.org.uk/latest-news/news/160406-agency-workers-%E2%80%93-new-tax-year-new-troubles](http://www.litrg.org.uk/latest-news/news/160406-agency-workers-%E2%80%93-new-tax-year-new-troubles)

### Is there any point in using an umbrella company after 6 April 2016?

Being employed by an umbrella company may still be something you are considering even though their home-to-work expense processing role is now largely defunct. But if you are thinking of paying a fee to an umbrella company, it is important to understand what you are getting for your money. For a look at all the considerations see our news piece 'Umbrella companies brave the storm – but should you be using one?': [www.litrg.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one](http://www.litrg.org.uk/latest-news/news/160715-umbrella-companies-brave-storm-%E2%80%93-should-you-be-using-one)

### I want to be paid by my agency – why has my pay rate gone down?

On the face of it, the rate that the agency will offer when you choose to be paid by them may look lower than the rate for being paid through an umbrella company. This is because the agency are quoting you a 'gross' pay rate before your tax and National Insurance contributions have been deducted but AFTER their employer's National Insurance, holiday pay and other employer obligations have been accounted for (meaning the total cost of your employment to them is higher than just your pay rate). When you are paid through an umbrella company, the agency are essentially outsourcing your employment to the umbrella company and as such need to pass over ALL the costs of your employment to them. They do by tagging on an extra amount in respect of the employer's liabilities to your pay rate. Taking the umbrella company fees etc. out of the equation for a moment, once the employer's liabilities have been settled by the umbrella company out of this amount, you should be in more or less the same gross pay position as if you were paid by the agency directly.

Any reputable agency should be happy to help you reconcile the figures if you are unhappy or confused with what they are offering you. If you have any concerns about the way that the agency are handling your pay and taxes it may be useful to know that you can contact the Employment Agency Standards Inspectorate (EAS) which works with agencies, employers and workers to make sure that employment rights are complied with. You can contact them via an online form here: <https://www.gov.uk/government/publications/pay-and-work-rights-complaints-individuals>



This factsheet was written by the Low Incomes Tax Reform Group. Everything we do is aimed at improving the tax experience of low income workers. LITRG do not offer an advice service, but our website is full of general helpful tax information, including more on PAYE for employees and pensioners: [www.litrg.org.uk](http://www.litrg.org.uk)