

# Wilkins Safety Group

## Weekly Update Newsletter



Welcome to this issue - Friday 9<sup>th</sup> December 2011 - of our Update

**Please feel free to forward this newsletter to colleagues and friends.**

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**Season workers and holiday help, how does this affect you under the new guidance?**



### Agency workers

**Does your business use agency temps?** If the answer is yes, you need to be aware that under a new law agency workers are entitled to the same treatment as if you had hired them directly.

This covers: annual leave; pay; night work; rest periods; working hours; and rest breaks.

*When did the new law come into force and what effect does it have?*

The Agency Workers Regulations 2010 came into force on 1 October 2011. They give agency workers certain rights from the first day that they start working for you and more rights after a 12-week qualifying period.

*What rights do agency workers have from the first day that they start working for me?*

From the first day that an agency worker starts working for you, you must not treat him or her less favourably than your comparable employees and workers in relation to the collective facilities and amenities that you provide.

You must also inform agency workers of any relevant vacancies that you have available, to give them the same opportunity as a comparable directly employed worker to find permanent employment with you. You can do this by placing an announcement in a suitable place such as the staff notice board.



*What are "collective facilities and amenities"?*

This depends on what you offer. Usually, it would include facilities such as a workplace canteen, a creche, car parking, and transport to and from the workplace. So, for example, if you provide a mini-bus service that picks up and drops off your employees at the nearest station, you would have to extend this facility to agency workers.

*What rights do agency workers have after the 12-week qualifying period?*

To complete the qualifying period agency workers must work in the same role with the same hirer for 12 continuous calendar weeks, during one or more assignments. They are then entitled to the same basic working and employment conditions to which they would have been entitled had they been directly recruited for the same job by you.

*What are "basic working and employment conditions"?*

This means terms and conditions relating to pay, working time, night work, rest periods, rest breaks and annual leave. Pay means any sums that you pay to a worker in connection with his or her employment and includes any fee, bonus, commission or holiday pay. It does not include things such as occupational sick pay, redundancy payments and any bonus that is "not directly attributable to the amount or quality of the work done". So, if your workers have the opportunity to earn a bonus for achieving a certain number of sales, agency workers also have to be given that opportunity, but a bonus for long service does not have to be extended to them.

*If the agency worker is assigned to a new role in my business, does his or her qualifying period start again?*

Yes. However, for a role to be "new", two conditions must be met. First, the main work or duties of the new role must be "substantively different". Second, the agency must have informed the agency worker - in writing - of the type of work he or she will be required to do in the new role.

*If there is a gap between assignments in the same role will this break continuity of the agency worker's qualifying service?*

Not necessarily. Certain breaks during or between assignments will actually just pause the clock, and the temp will resume accumulating the 12 weeks' service on return from the break. The first of these is a break for any reason at all for no more than six weeks. Other breaks that will pause the clock include sick leave of up to 28 weeks, jury service of up to 28

weeks and time off related to pregnancy or maternity. In addition, where the worker is absent for the latter reason, she is treated as actually working for the purposes of the qualifying period for the original intended duration of the assignment or the likely intended duration of the assignment - whichever is longer.

*Does a temp have to work five days a week over 12 weeks to gain the qualifying service?*

No. Any week during which the agency worker works on the assignment is counted as a week. For example, if an agency worker works for one day a week on an assignment, after 12 weeks he or she will have completed the qualifying period.

But no service prior to 1 October 2011 counts, so it will be mid-December before any of your agency workers would have completed the 12-week qualifying period.

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## Latest HSE news taken from our website today

Here are a couple of the latest HSE news items that can be found on our website [www.wilkinssafety.co.uk](http://www.wilkinssafety.co.uk). Have you looked today to see the latest news?

### Firms fined £100k over forklift death at Macclesfield factory

Two companies have been fined a total of £100,000 following the death of a maintenance worker who fell from the forks of a forklift truck at a Macclesfield factory.

Martin Denton, 60, was being lifted in a metal container, known as a stillage, on 10 June 2006 when it slipped off and he fell approximately four metres to the concrete floor below. The father-of-three from Rotherham died in hospital later that day from head injuries.

Millennium Rubber International Ltd and United Crane Services Ltd were both prosecuted by the Health and Safety Executive (HSE) following the incident at Millennium Rubber's factory at Nab Works, Long Lane, Pott Shrigley.

Chester Crown Court was told United Crane Services had been hired to repair an overhead crane at the factory but had allowed Mr Denton to be lifted in a container designed for materials rather than people.



Martin Denton died after falling from the forks of a forklift truck

The HSE investigation found that it had been standard practice for Millennium Rubber to use containers and pallets on forklift trucks to lift workers, despite neither being designed, nor safe, for that purpose.

Mr Denton's widow, Kitty, said:

"The day Martin was killed was the worst day of our lives, sending shock through the family. After five years we still feel the hurt every day, and it doesn't get any easier.

"Martin went to work that morning a fit and healthy, loving family man, and didn't come home to us. Life without him is very different and very difficult. Everyday life will never be the same.

"His death has left a massive hole in not only my life, but that of his three grown-up children and eight grandchildren, and the rest of our family and friends.

"We feel really let down by the companies he was working for. The accident should never have happened and we wouldn't want anyone else to go through what we are going through."

Millennium Rubber, which produces rubber surfaces for running tracks and children's playgrounds, admitted two breaches of the Health and Safety at Work etc Act 1974 by putting workers' safety at risk. It was fined £90,000 and ordered to pay £21,411 in prosecution costs in a sentencing hearing a Warrington Crown Court on 9 December 2011.

United Crane Services, of Claywheels Lane in Sheffield, also pleaded guilty to one breach of the same act for failing to ensure the safety of its employee, Mr Denton. It was fined £10,000 with costs of £5,000.

HSE Principal Inspector Tanya Stewart added:

*"Mr Denton died because neither company followed basic health and safety procedures for working at height. He should never have been expected to stand in a metal stillage, balanced dangerously on the forks of a forklift truck.*

*"The companies simply did not consider the risks Mr Denton might face if he carried out the repair work to the overhead crane in this way. They should have made sure a safe system for the work was in place before allowing him to start.*

*"It's disgraceful that the practice of lifting workers on forklift trucks had taken place on many other occasions. Sadly, it was therefore almost inevitable that someone would be seriously injured or killed."*

A total of 27 workers were killed and more than 3,800 suffered major injuries in the manufacturing industry in Great Britain in 2010/11.

## **Wakefield builder fined for dangerous gas work**

A Batley family was put in danger after a local builder carried out defective gas fitting work while constructing an extension to their home, a court has been told.

Nigel Parker of Tingley, Wakefield, illegally modified the flue of a gas combi-boiler, extended pipework and moved the bayonet fitting for a gas cooker. He also left a gas meter unsafely perched on a plank above trenches that had been dug for the extension.

The Health and Safety Executive (HSE), which brought the prosecution, told Dewsbury Magistrates that the self-employed builder was hired to build the extension to the semi-detached property in Batley and started work at the end of September 2009.

During excavations, the incoming gas main was cut through. The gas authorities were called and they repaired the pipe but disconnected the supply as the gas meter had been left supported dangerously by just a wooden board spanning the excavations for the building's footings.

Mr Parker later used the wrong type of parts, did not tighten joints enough and used duct tape to hold things in place.

The offences came to light a few months later when the boiler broke down and the householder called out a properly registered gas engineer to repair it. He immediately spotted the dangers and disconnected the boiler. He reported what he had found to the Gas Safe Register and one of their inspectors visited and declared the boiler flue modification to be 'immediately dangerous'.

HSE Inspector John Micklethwaite, who investigated, said:

*"Mr Parker was fully aware of the legal requirement that gas fitting work should only be carried out by a registered Gas Safe engineer yet he undertook the fitting work himself and left a family exposed to danger."*

*"The family has been badly affected by this experience but the outcome could have been much more serious if carbon monoxide had leaked into the house from the defective flue. Their safety was at risk, their lives were disrupted for some weeks during winter when the gas supply was cut off and they have suffered financially because of the need to get remedial work carried out."*

*"This case should serve as a lesson to any builder who is tempted to undertake gas work when not qualified and not registered. With the onset of winter, demand for heating repairs and maintenance goes up and householders should be extra vigilant in checking that any gas work is carried out only by registered engineers."*

Paul Johnston, chief executive of Gas Safe Register, said:

*"This highlights the importance of always using a suitably qualified and competent Gas Safe registered engineer to carry out any work on gas appliances or installations. Not only could illegal work put you or your family at risk of CO poisoning there can also be a financial cost in having work put right."*

Nigel Parker of Haigh Moor Road, Tingley, who traded as Tingley Joinery and Building Services, pleaded guilty to three breaches of the Gas Safety (Installation & Use) Regulations 1998 between 1 October 2009 and 20 April 2010, and a further breach on or before 9 October 2009. He was fined a total of £5,000 with £1,620 costs.

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If you would like to discuss any of the issues highlighted in this newsletter then drop an email to **Jon** on [jon@wilkinssafety.co.uk](mailto:jon@wilkinssafety.co.uk) or call the office 01458 253682



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Your Business is Safer in Our Hands