

## **MANAGER GUIDANCE ON ENGAGEMENT OF AGENCY WORKERS: FREQUENTLY ASKED QUESTIONS**

This document has been developed to assist managers by addressing common queries in relation to the application of the Engagement of Agency Workers policy and procedure.

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### **SECTION 1 - AGENCY WORKERS REGULATIONS**

**1a) Who is classed as an agency worker for the purpose of the Agency Worker Regulations (2010)?**

Agency workers are defined as ‘individuals who are supplied by an external Agency to work temporarily for and under the supervision and direction of a hirer’. Where agency workers are engaged by our University, the University becomes the ‘hirer’ under this definition. However, it should be noted that agency workers who are on assignment at our University do not have a contract of employment with our University. At all times, they remain an employee of the supplying Agency.

**1b) What rights do agency workers have from day one of an assignment?**

Agency workers are entitled to be given access to the same facilities and access to information on job vacancies on their first day, as would any new University member of staff. Access to facilities includes for example, food outlets, staff social areas, car parking, toilet and shower facilities, the library, prayer rooms and the Health Centre. Access to information on job vacancies includes being informed of how to access and apply for vacancies, including ‘internal only’ vacancies. Further advice and information on the rights available to agency workers and how to access internal vacancies, is available from Human Resources (also refer to question 3a).

**1c) Who is responsible for ensuring that agency workers have access to collective facilities and information on job vacancies from day 1 of their assignment?**

Our University is responsible for ensuring that agency workers have access to collective facilities and information on job vacancies from day 1 of their assignment. Liability for failure to provide day 1 entitlement also lies with our University. Bearing this in mind, you must ensure that an induction is carried out with an agency worker on their first day and that day 1 rights are discussed. For further guidance on what topics should be covered during the induction process, please refer to the ‘Agency Workers Induction Checklist’ and our University’s induction policy.

**1d) What rights do agency workers have after 12 weeks in the same assignment?**

Once agency workers have completed 12 weeks in the same assignment, they are entitled to the same basic working and employment conditions as if they had been recruited directly by our University although there are some exceptions (see question 1e). Any entitlements will be pro-rated to the length of the assignment and hours worked.

**1e) What constitutes basic working and employment conditions and what are agency workers entitled to?**

Agency workers are entitled to be treated equally in respect of the following:

- Basic pay
- Annual increments (where applicable)
- Overtime payments (on same basis/qualifying conditions as University employees)
- Shift allowances (where applicable)
- Duration of working time (standard working week for full-time staff consists of 37 hours per week)
- Rest breaks/restrictions on night work
- Annual leave

Agency workers are not entitled to:

- Occupational sick pay
- Occupational and statutory redundancy and notice pay

- Occupational maternity/paternity/adoption pay
- Occupational pensions
- Long service awards

**1f) Who is responsible for ensuring that agency workers have the same basic working and employment conditions after completing 12 weeks in the same assignment?**

Liability for failure to provide the same basic working and employment conditions can rest with either our University or the Agencies with whom we work with. Our University has taken steps to supply information about our basic working and employment conditions to Agencies listed on the framework agreement for the provision of agency workers. You may be contacted by Agencies seeking clarification on the basic working and employment conditions as some roles within our University have variations to the standard conditions. Subject to the appropriate information being provided and given that agency workers receive their pay direct from an Agency, it is the Agencies that are responsible for ensuring that agency workers receive any additional entitlements after completing 12 weeks in the same assignment. Further advice and guidance is available from Human Resources in relation to which conditions would be applicable.

**1g) How is the 12 week qualifying period for agency workers calculated?**

The 12 week qualifying period is triggered by working in the same role, with the same hirer (our University), for 12 calendar weeks. Any hours worked in a week will count as a week's qualifying service. The 12 week period does not have to be continuous. Continuity of qualifying service is preserved where an agency worker is absent due to a seasonal shutdown (for example, Christmas closure) or due to sickness, up to a maximum of 28 weeks. If an agency worker is absent due to a pregnancy-related illness or is on maternity/paternity/adoption leave, any qualifying service which has been accrued will be maintained and will be built upon when a return to work takes place.

**1h) How is continuity of qualifying service for agency workers broken?**

In order for continuity of qualifying service to be broken between assignments, there must be either a break of 6 weeks or more, or any change of role would have to be substantively different from the previous role.

**1i) What should I do if I receive a written request for information from the Agency or agency worker?**

If our University receives a written request for information from an Agency or agency worker, we have a legal obligation to respond within 28 days of first having received the request. You should promptly liaise with Human Resources who will advise on an appropriate response. There may be a need to gather information in order to respond to the request so again prompt liaison with Human Resources is required. It is essential that any requests are dealt with within this timeframe, otherwise we could be found in breach of the Regulations.

**1j) What are the potential consequences of not adhering to the Regulations?**

A penalty of up to £5000 to a hirer (our University) or an Agency can be applied if it is deemed to have deliberately attempted to prevent an agency worker from qualifying for equal treatment by structuring assignments to circumvent the Regulations. If it is deemed that an agency worker has not received equal treatment in relation to basic working and employment conditions after completing the 12 weeks qualifying service, awards can also be made for loss of earnings or an equivalent level of compensation, for which either the hirer (our University) or Agency may be liable.

### **1k) Can I appoint an agency worker to a permanent or fixed-term post?**

No – this is not permitted and would be in breach of our University's Recruitment and Selection procedures. Vacancies must be approved through the Vacancy Review Panel process and advertised in accordance with our University's Recruitment and Selection policy. Agency workers are eligible to apply for such posts and could be appointed, provided they were the best candidate following the recruitment and selection process.

## **SECTION 2 - FACTORS TO CONSIDER PRIOR TO ENGAGING AGENCY WORKERS ON ASSIGNMENTS**

### **2a) When can agency workers be used?**

Advice should be sought from Human Resources when you have identified a need for an agency worker. It may be appropriate to engage agency workers in the following circumstances:

- To provide cover for short-term, unforeseen and/or unexpected staff shortages
- To provide specialist skills which are not able to be sourced from within our University
- To assist during periods of peak workload
- To undertake a short-term project or task
- To provide services for a specific School/Service or to meet a specific need, where for organisational reasons, such use is approved

In the first instance, attempts to fill the role via the use of existing staffing resources and our University's Jobs Team should be explored prior to consideration of the agency route.

### **2b) When should agency workers not be used?**

Agency workers should not be used where there is a permanent or fixed-term vacancy which has not, or is not, being advertised on a long-term basis.

### **2c) How do I seek permission to engage agency workers?**

You will need to complete the 'Agency Workers Approval Form' and submit this to the Dean/Director (or nominee) of your School/Service for authorisation and then pass this to Human Resources. Once the form has been fully authorised, you will be contacted by Human Resources and you may then initiate the process for engaging an agency worker. Prior to contacting an Agency and agreeing to engage an agency worker, you should carefully review the Agency's terms of business. Particular provisions to consider include:

- Fees payable for engagement of an agency worker
- The employment status of an agency worker
- Notice provisions from either party for termination of the temporary assignment
- The transfer fee on temporary to permanent employment
- Repayment of the transfer fee if permanent employment is terminated.

### **2d) Which Agencies can I use?**

Our University has adopted a framework agreement for the provision of agency workers and any requests for agency workers should be dealt with through one of the approved suppliers named in the agreement. If you identify that there is a need to approach the services of an Agency not named in the framework agreement, this would be subject to separate approval and/or tender arrangements. For information on which Agencies are named in the framework agreement or for further advice, please contact Financial Services (Procure to Pay team).

### **2e) Who pays for agency workers?**

The cost of any agency worker is borne by the School/Service in which the agency worker is undertaking an assignment. You must specify the SBC and project code(s) the cost should be assigned to on the 'Agency Workers Approval Form'.

### **2f) How will an agency worker be paid?**

Agency workers will receive payment directly from the Agency. You will be required to authorise the timesheets of an agency worker and must keep copies of the timesheets, so that appropriate records are available and so that these can be checked against the invoice our University receives from the Agency.

### **2g) What checks are carried out on agency workers?**

All agency workers must be eligible to work in the UK, have satisfactory references and possess key skills, as relevant to the role. These checks are the responsibility of the Agency but it would be sensible to check this with the Agency before agreeing to engage an agency worker.

## **SECTION 3 - FACTORS TO CONSIDER DURING ASSIGNMENTS**

### **3a) What do I need to do on the first day of the assignment?**

You will need to carry out an induction with the agency worker and ensure that day one rights are discussed. For guidance on the topics that should be covered during the induction process, please refer to the 'Agency Workers Induction Checklist' and our University's Induction policy. This includes access to facilities and access to information on job vacancies, including 'internal only' vacancies. These rights should be discussed with agency workers on their first day during their induction. For information, all vacancies are advertised on our University's Jobsite. However, 'internal only' vacancies are only accessible with a University log-in. Agency workers are able to request access to such vacancies. Should an agency worker make such a request, please contact Human Resources.

### **3b) What are my responsibilities if the work or duties that an agency worker needs to undertake change during the assignment?**

You will need to notify the Agency and Human Resources if there are any changes to the work or duties that the agency worker is undertaking in advance of the changes taking effect. This is linked to the need to monitor continuity of qualifying service of agency workers. If the changes are substantial i.e. the role has completely changed, agency workers will need to be notified that they are starting a new assignment and you must complete a new 'Agency Workers Approval Form', in line with the approval procedure.

### **3c) Will the Agency contact me?**

The Agency may contact you to check that the required standards are being met by the agency worker during the course of the assignment. You can also contact the Agency at any time to discuss the performance of the agency worker or other issues. These issues should also be discussed with Human Resources.

### **3d) What happens if the agency worker is unsuitable for the role?**

If an agency worker is unsuitable for a role, you may request a replacement agency worker from the Agency. However, you should discuss performance issues with the Agency and also, seek advice from Human Resources prior to requesting a replacement agency worker.

### **3e) Who is responsible for managing sickness absence of agency workers?**

Managing sickness absence is the responsibility of the Agency. Agency workers are required to report sickness absence directly to the Agency who will notify you of any absences. Agency workers are not entitled to receive occupational sick pay but they will receive Statutory Sick Pay from the Agency, as applicable.

### **3f) What arrangements should be made for annual leave?**

Agency workers are eligible to receive annual leave through the Agency. The agency worker will book leave directly through the Agency who will notify you of the details and will make arrangements for a replacement, if necessary.

### **3g) What are my responsibilities if an agency worker is pregnant?**

The agency worker is required to notify the Agency of their pregnancy. You must ensure that an additional Health and Safety risk assessment is carried out for the agency worker. If agency workers have completed 12 weeks in the same role, they are entitled to paid time off to attend ante-natal appointments; you should therefore allow an agency worker time-off to attend if the appointments fall during working hours.

### **3h) What do I need to do if I want to extend an agency worker's assignment?**

You will need to complete the relevant sections of the 'Agency Workers Approval Form' and submit this to the Dean/Director (or nominee) of your School/Service for authorisation and then pass this to Human Resources. Once the form has been fully authorised, you will be contacted by Human Resources and you may then contact the Agency to request that the assignment be extended.

### **3i) What are my responsibilities if the assignment needs to finish earlier than planned?**

If the assignment ends earlier than the originally agreed date, you should refer to the terms and conditions originally agreed with the Agency, to confirm the notice period you are required to give the agency worker. In most cases you will be required to provide at least one week's notice to the Agency and agency worker. You must notify the Agency that the agency worker is no longer required and notify Human Resources of the change.

### **3j) Why do I need to keep records relating to the usage of agency workers?**

In line with statutory obligations, in particular circumstances, our University must provide information about the employment situation at our University including the total number of agency workers engaged, the areas in which they are utilised and the roles being undertaken. Records relating to the usage of agency workers should be kept to ensure compliance with this obligation. For this purpose, a template is provided in Appendix 3 of the 'Engagement of Agency Workers Policy and Procedure' and should be submitted to the HR Services team on a monthly basis.

### **3k) Who should I contact if I require further advice or guidance relating to agency workers?**

You should contact Human Resources who will be able to advise you accordingly.