

Agency Workers Guidance

This document sets out the process for schools who would like to hire an agency worker and details the rights and responsibilities set out in the Agency Workers Regulations (2010).

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1 Hiring an agency worker

Agency workers should only be used as a short term measure and where absolutely necessary for operational reasons e.g. to cover short term sickness absence or the suspension of an employee. Headteachers should consider all other options e.g. offering the hours to existing employees or using an honorarium payment.

The school should contact the agency and provide them with the following details:

- Job description and person specification;
- Rate of pay;
- Annual leave entitlement;
- Duration of the assignment (not usually more than 12 weeks).

2 Agency worker checks

Agency workers are subject to the same level of checks as a directly employed member of staff, however, the agency will be responsible for undertaking most of the checks. The school are responsible to ensuring that these checks have been carried out prior to them commencing work.

2.1 Driving responsibilities

Where an agency worker will be driving a school vehicle, the hiring manager must check that they hold the relevant licence.

Academies are free to make their own arrangements, but all other Headteachers should contact the Fleet Team to arrange for the individual to undertake a driving assessment with the prior to starting at the school.

3 Starting work

The Headteacher should undertake an induction with the agency worker on their first day, so they understand the key policies and what is expected of them in their role.

The Headteacher (or appropriate manager) is responsible for checking the hours claimed on the agency worker's timesheet are correct. It should be checked that appropriate deductions are being made for breaks i.e. minimum of 20 mins if they work 6 hours or more.

3.1 Extending the original assignment

In exceptional circumstances, where a school requires an agency worker for longer than 12 weeks, they should consider all other options before continuing with the booking. This may be included redeployment of staff, advertising the role internally or externally, offering additional hours to existing part time staff, using casual workers or using honoraria payments.

4 Agency worker rights

Agency workers have certain rights from day one of their assignment and further rights following a 12-week qualifying period in the same or similar job.

4.1 From day one

From the first day of their assignment, agency workers are entitled to be treated no less favourably than a comparable directly hired employee in relation to access to collective facilities and information relating to vacancies.

Collective facilities could include:

- Canteen;
- Staff room;
- Toilets and shower facilities;
- Car parking;
- Prayer room.

Any job vacancies publicised to directly employed staff members should be provided with information about relevant vacancies within the school, academy trust or council, depending who is classed as the hirer. Headteachers are encouraged to make agency workers aware of where they can find current vacancies during their induction.

4.2 From 12 weeks

Once an agency worker has been working for the same hirer, in the same or similar role, for 12 weeks, they will be entitled to the same basic terms and conditions as if they had been employed directly by the hirer. This includes:

- Basic pay, including overtime rates and shift premiums;
- Duration of working time;
- Night work;
- Rest periods;
- Annual leave.

Pregnant agency workers who have completed the 12 week qualifying period, will be entitled to paid time off for antenatal appointments. The agency is responsible for the payment, however, the school should ensure that practical arrangements are put in place for them to be able to take the time off.

For any entitlement that requires a period of service to have been completed, the period starts at the same time as the qualifying period commenced.

4.3 Qualifying period

The 12-week qualifying period is triggered by working in the same or similar job with the same hirer for 12 calendar weeks. A calendar week will comprise of any period of 7 days, starting with

the first day of a booking, and will be accrued regardless of how many hours the worker does on a weekly basis.

. The 'hirer' is the persons to who the agency worker is temporarily supplied to and who supervises and directs them. Within schools, the hirer may be different depending on the type of school they are:

Type of school	Hirer
Voluntary Aided schools	Governing Body
Community, Voluntary Controlled & Maintained Nursery schools	Durham County Council
Academies	Academy Trust

In schools where the council is the hirer, an agency worker can move between schools without breaking the qualifying period, unless it is a substantively different role

When considering whether the duties of a role are substantively different, the following should be considered collectively:

- Are different skills and competences used?
- Is the rate of pay different?
- Has the manager changed?
- Have the working hours changed?
- Does the role require any extra training or a specific qualification that wasn't needed before?

It would not be enough that an individual's manager changed but the job requirements stayed the same or that just the rate of pay changes – there must be a genuine and real difference to the role to justify restarting the qualifying period. If this occurs and can be justified, the school/hiring manager must notify the agency that the work or duties have changed.

There are various circumstances than can restart or pause the qualifying period and these are summarised below:

Reason for absence	Effect on qualifying period
Agency worker leaves one hirer and begins a new assignment with a new hirer	Resets to zero
Agency worker remains with the same hirer but in a substantively different role	Resets to zero
Break between bookings of more than 6 weeks (not for a situation listed below)	Resets to zero
Sickness absence	Paused for up to 28 weeks
Annual leave, shut downs i.e. school holidays	Paused

Jury service	Paused for up to 28 weeks
Industrial action	Paused
Pregnancy and maternity-related absence	Continues
Statutory maternity, shared parental, paternity or adoption leave	Continues

4.4 Responsibility for equal treatment

The employment agency will be primarily responsible for ensuring equal treatment for most of the agency worker rights, however, the hirer may become liable if the agency can show that it took 'reasonable steps' to obtain the information about the working and employment conditions from the hirer.

It is important that the school provides the agency with appropriate information about the terms and conditions that are in place, including the rate of pay to be paid from day 1 and the rate of pay should they continue past the 12 week qualifying period.



This policy has been developed by the HR Advice and Support team, based on current legislation and best practice. If you would like any advice on the application of this policy, please do not hesitate to contact the team:

Telephone	03000 266688
Email	hradvice@durham.gov.uk

Further support can be accessed by contacting (subject to SLA buy in):

Payroll and Employee Services	pesschools@durham.gov.uk
Occupational Health	occhealthadmin@durham.gov.uk
Health and Safety	hsteam@durham.gov.uk
Employee Assistance Programme	www.healthassuredeap.com Username: durham Password: council 0800 716017

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LK	v 2.1	April 2021	April 2023

The school complies with all relevant statutory obligations. The school privacy notice provides more specific information on data collected and how it is handled, a copy of which can be accessed from the school. For more information please contact the school directly.

If you have any concerns about how your data is handled, please contact either the school Data Protection Officer (details available from the school office), or the Information Commissioner's Office.