

PERSONNEL SERVICES

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Acting Director of Personnel and Related Services



To heads of departments and institutions, faculty board chairmen,
departmental administrators and faculty board secretaries

Ref. EMS/5, EMS/6

cc. heads of division, divisional secretaries, Principal Administrator of
the Conference of Colleges, Mr Morgan, Ms Coldstream, Mrs Harkness

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Guidelines for employing agency workers

The Agency Workers Regulations 2010 come into force on 1 October 2011. These give agency workers (primarily 'temps') an entitlement to the same or no less favourable treatment than direct employees of the University with respect to basic employment and working conditions.

The Regulations require agency workers to be given access to collective facilities and information on job vacancies from their first day of work. Other entitlements come into effect if and when the agency worker completes a qualifying period of 12 weeks.

1. Action required of departments and divisions

Departments and divisions are asked to:

- i. note the new arrangements for the employment of agency staff which are summarised below;
- ii. ensure that they give agency workers access to collective facilities and information on vacancies from the first day of their assignment;
- iii. ensure that they take steps to monitor when an agency worker completes the 12-week qualifying period and that the agency worker then has access to the same basic employment and working conditions as a comparable university employee; and
- iv. record an agency worker as a new-starter, as a leaver, and any changes to their pay, on the relevant forms and, in due course, on the Core HR system.

2. Background

The Agency Workers Regulations come into force on 1 October 2011. Their central purpose is to ensure that agency workers are treated the same as or no less favourably than comparable staff employed directly by the University. Some entitlements come in force from the worker's first day of work at the University. Others follow after a 12-week qualifying period.

3. Definitions

An agency worker is someone who works for the University, under university supervision and direction, but who has a contract with, and is paid by, the temporary work agency or other provider who supplied them.



The term 'agency worker' does **not** include anyone who is paid direct by the University, or is self-employed, or who works in the University but under the supervision and direction of an outside contractor responsible for managing and delivering a service. For example, staff of companies providing out-sourced catering or cleaning services are not agency workers.

4. Day 1 entitlements

Collective facilities

From the first day of their assignment in the University, agency workers are entitled to equal access to collective facilities provided by the department, such as a canteen, staff common room, child care facilities, car parking, inter-site transport services, toilets and showers or any other similar facilities available to direct employees. However, if there is a waiting list, e.g. for a nursery or car parking, equal treatment is satisfied by an agency worker having an opportunity to join the same list as other comparable employees.

It is not unlawful to deny agency workers equal access to collective facilities and amenities if that can be objectively justified. Departments must, however, consult Personnel Services when considering any such exclusion.

Vacancies

From the start of their assignment, agency workers are entitled to be notified of any job vacancies in the University and to apply for posts that are advertised internally and externally. However, they do not take precedence over priority candidates who are at risk of redundancy.

5. After 12 weeks' qualifying service

Agency workers who have accrued 12 weeks' qualifying service are entitled to the same basic terms and conditions as would apply to a staff member employed directly by the University to do the same job. See section 6 below on the calculation of the 12-week qualifying period.

Pay

After 12 weeks' service an agency worker's pay rate should be the same as that of a comparable university employee, taking account of the individual's experience and qualifications. Normally, this would be the pay for the grade of the substantive post for which they are providing temporary cover; however, if the agency worker is not fulfilling the full duties of the substantive post, a lower grade might be more appropriate. If the post requires protocol approval because it is an addition to existing agreed staffing levels, e.g. involving new skills for project work, then the post needs to be submitted for grading from the outset.

The agency worker's pay should include any relevant university allowances and is subject to the same cost-of-living increases as apply to the salaries of direct employee. After 12 weeks' service, which would be equivalent to the 3-month qualifying period from the start date until the date when incremental progression is due; agency workers will be eligible to receive an increment, if one is available, in either August or October.

Agency workers should be included in any merit pay scheme (providing they meet the general criteria for the scheme), but are not required to be fully integrated into performance appraisal or Personal Development Reviews.

Agency worker pay does **not** include elements such as pension, occupational (contractual) sick pay, parental pay, contractual notice pay, or redundancy pay.

Working time and rest breaks

After the qualifying period, agency workers are entitled to equal treatment with regard to working time, e.g. an agency worker doing a job comparable to a support staff employee would work 36.5 hours each week and be eligible for overtime at standard rates. They are also entitled to the same rest and lunch breaks. The working hours of academic-related staff are normally those which are reasonably required to carry out the duties of the post, and are pro-rated to 37.5 each week.

Holiday entitlement

The University currently grants casual/temporary staff the statutory holiday entitlement of 28 days. Under the Regulations, agency workers with 12 weeks' qualifying service will be entitled to the same contractual holidays as direct employees, i.e. 38 days leave per annum (pro rata), including public holidays and locally-agreed fixed closure days. However, it is permissible under the Regulations to replace the contractual element of the holiday allowance (i.e. the additional 10 days) with payment in lieu.

Protection during pregnancy

Once they have completed the 12 weeks' qualifying service, pregnant agency workers have the right to reasonable paid time off to attend ante-natal appointments. Departments will need to conduct a health and safety risk assessment and make any reasonable adjustments. If the agency worker cannot complete the duties of the original assignment for health and safety reasons, it is the agency's responsibility to find them alternative work, at the same or higher pay. If alternative work cannot be found, the pregnant woman has the right to be paid by the agency for the remaining expected duration of the original assignment.

6. Calculating the 12-week qualifying period

Care needs to be taken in calculating when the 12-week qualifying service has been served. The agency worker is deemed to have qualified once:

- they have spent 12 successive weeks in the same or an equivalent job, regardless of how many hours or days they actually work;
- they have done a series of short stints in different university departments which together add up to 12 weeks; or
- they have accrued a total of 12 weeks in the University, even if there has been a break during or between assignments. The period of the break does not count towards service, but the work either side of the break does. Continuity is only broken if the break is longer than **6 weeks** or if the worker starts a substantively different assignment. A break of less than 6 weeks, or sick leave, or jury service of up to 28 weeks, or time off for annual leave, or industrial action only interrupts the accrual of service. Pregnancy or maternity-related absence is deemed not to interrupt accrual.

When taking on an agency worker, it is important that departments ask the agency if the worker has already accrued service with the University by working in any other university department during the previous six weeks. An agency worker who has completed the qualifying period remains qualified for equal treatment until there is a break in continuity of sufficient length.

Careful consideration also needs to be given to determining when an agency worker has taken on a substantively new role. Roles in different departments carrying out tasks at a similar grade are unlikely to be viewed as 'substantively different'. To count as different, a new role would need to involve new responsibilities, skills or equipment and/or a different line manager, location or working hours.

7. Provision of information to workers' representatives

The University has a legal obligation to disclose to the recognised trade unions the same types of information on agency workers as it does on direct employees, e.g. the total number of agency workers engaged, the areas of the business in which they work, and the type of work they undertake. Personnel Services will collect the necessary data from the Core HR system when it goes live in January 2012.

From 1 October 2011 departments are asked to keep and retain records of agency workers as new starters and to record any changes to their pay throughout the assignment. Departments should also record the agency worker as a leaver when they complete their assignment. (The appropriate forms are annexed at A, B, and C and will be available on the new Personnel Services website which will be launched in October 2011.) In order that the University may have a complete record of how long an agency worker has worked in any of its departments, departments that will be live on Core from January 2012 will be asked to enter the agency workers details retrospectively into the HR system, and those departments that are not live on Core should send the forms to have the details entered retrospectively in January to the central temporary input team.

From January 2012 departments that are live on Core will be asked to enter agency workers as new starters and leavers in a 'non-employee' bucket post on the Core system, and to record any changes to their pay. (Departments that are not yet live on Core will be asked to complete the agency worker new starter, pay change, and leaver's forms and pass them to a central temporary input team to enter into the new HR system.) All departments will then be able to run reports on agency workers, e.g. which agency workers are approaching 12 weeks' service. Further information about the arrangements for inputting information on agency workers on the Core HR system (either directly by departments or via the temporary input team that will be in place during the period that departments migrate to the new system) will be issued as part of the training for roll-out of the new system.

8. Compliance

An agency worker can bring a claim to an Employment Tribunal in relation to their rights under these Regulations.

9. Transitional arrangements

Agency workers on assignment in the University on 1 October 2011 will begin their qualifying period on that date. The earliest date for qualification will therefore be the week commencing 25 December 2011. Employment rights that have no qualifying period will apply from 1 October 2011.



10. Further information

Government guidance on the Agency Workers Regulations may be found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf>.

Further advice is available from Personnel Services.

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