**Agency Worker Guidance for Managers**

**Updated August 2020**

1. **Introduction**

This guidance sets out the principles governing the approach to the ongoing utilisation, monitoring and future engagement of agency workers (i.e. “temps” hired from a recruitment agency) to critical areas of activity across the University under the post-Covid emergency recovery programme with revised approval arrangements in the context of ongoing reviews and implementation of cost saving and efficiency measures associated with transition priorities as part of the five work streams of the Employee Programme Board and where there are significant links and interdependences with the Financial Sustainability and Campus reopening priorities.

With effect from 1st September 2020 managers wishing to engage a new agency worker have to obtain prior approval by the Head of School/Director/Director of Faculty Operations under the procedure set out below.

1. **Approval and booking procedure**

Managers should consider carefully in all cases whether the use of an agency worker is necessary or justified, particularly in consideration of efficiencies and cost saving measures. Where the engagement is likely to last for 12 weeks or more, the Agency Worker Regulations 2010 will provide certain additional rights for agency workers and in which case a fixed-term contract of employment might be more appropriate in some circumstances. Managers should seek advice from their Human Resources Partner. For other options consult the [Temporary/Casual Staff Guidance for Managers](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=781).

Before booking an agency worker, managers must obtain approval to fill the post using a [Placement Details Form AWR1](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=19313) (appendix 1) which must be approved by the Head of School/Director/Director of Faculty Operations (or designated deputy). Once approved, the manager may then contact one of the [preferred supplier agencies](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=16197).

Following discussion with the agency about the requirements of the work and appropriate levels of pay, a [Placement Details Form AWR1](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=19313) (appendix 1) must be completed to confirm the details. A copy must be sent to the agency and a copy must be kept by the hiring manager.

**The Agency Worker Regulations 2010**

The Agency Worker Regulations 2010 provide certain rights for agency workers. This guidance sets out our obligations under these regulations and the University procedures which must be followed.

The majority of the agency workers will be paid by their agency or through an umbrella company with PAYE deductions. However, if the agency proposes supplying an individual who is employed through a Personal Services Company (usually they will be called a limited company), the University has a legal duty to assess their employment status to determine whether HMRC rules on off-payroll working in the public sector apply (See [Determination of Employment Status Guidance](http://documents.manchester.ac.uk/display.aspx?DocID=11011) for details).

Due to the nature of our contract with the agencies (i.e. to supply temporary workers), we have assessed that the rules will normally apply, and therefore the agency will be responsible for ensuring PAYE deductions are made from their payments.

In exceptional circumstances, if there is some doubt about whether the rules will apply, the manager must undertake an assessment using the [HMRC Employment Status Service tool](https://www.gov.uk/guidance/check-employment-status-for-tax). The outcome must be printed off, discussed and verified by the relevant HR Partner and a copy must be given to the agency together with the AWR1 form.

Agency workers should normally be paid on the bottom point of the comparator grade from Day 1 (i.e.) the grade staff employed by the University to do the same work would be paid. If in doubt as to the appropriate grade for the work, please seek advice from the appropriate Human Resources Partner. After 12 qualifying weeks it is a legal requirement that they are paid at the same comparator salary.

The agencies will also check and confirm whether the agency worker has worked on another assignment at the University within the previous 6 weeks and whether that time will count towards the 12 week qualifying period. (It will not count if it was a substantially different role).

The preferred supplier agencies have been given details of the University pay scale and annual leave allowances. However, the manager will be responsible for providing this information to the agency if, in exceptional circumstances, a non-preferred supplier is used.

1. **Managing agency workers**

The manager of the operational area is responsible for the day to day supervision of the agency worker and should treat them the same as University staff in terms of allocating and overseeing their work, i.e. treat them as “one of the team”.

If a problem arises such as a grievance or disciplinary matter, an agency worker cannot lodge a grievance under the University Grievance Policy nor can s/he be disciplined under the University Disciplinary Policy. If the matter cannot be resolved informally by the manager, it should be referred back to the agency. The agency is the employer of the agency worker and will follow their own employment policies to address the matter.

During its tendering process, the University will seek assurances from the agencies that they have robust employment policies in place.

1. **Rights to which agency workers are entitled from the first day of their assignment**

From the first day of any assignment, agency workers will have a number of rights. The University is responsible for ensuring these are provided:

1. The right to be told of any vacancies in the University;

This means agency workers can apply for internal vacancies unless they are ring-fenced for existing University staff, for example, as part of a restructure or marked for redeployees/red-circled staff only. However, to be considered for the post they must still be working here when the selection interviews take place.

1. The right to be treated no less favourably than a comparable employee in relation to canteen or other similar collective on-site facilities, childcare facilities or the provision of transport services.

This right enables agency workers to access and use the on-site facilities whilst they are working here. This right does not include other benefits or services available to staff (e.g. discounts on shops / entertainment offered by other organisations through Staff Benefits, funding for optician appointments and glasses, etc). A full list of what agency workers are entitles to is attached at appendix 2.

1. **Rights to which agency workers are entitled after 12 weeks in an assignment**

After a 12-week qualifying period working for the University in the same role, an agency worker is entitled to the same “basic working and employment conditions” as if he or she had been directly recruited by the University instead of through an agency. The right to “equal treatment” under the Regulations is limited to working time, night work, rest periods, rest breaks, annual leave and pay.

The responsibility for ensuring equal treatment after 12 weeks lies with the agency as they are the employer. The rights after 12 weeks are to:

1. Equal pay

This right includes basic pay, holiday pay, overtime and shift premia.

It excludes occupational sick pay, pensions, retirement payments, compensation payments for loss of office, maternity, paternity or adoption pay, redundancy pay.

In practice this means that after 12 weeks the agency worker must be paid the same grade for the job as University staff doing the same work. The agency worker will be paid on the bottom point of the appropriate grade, however, if they are here long enough they will be entitled to annual increments and to annual pay awards.

1. Holiday pay

After 12 weeks the agency worker will receive an increase in their annual leave allowance to the appropriate University annual leave allowance for the grade (see section 7 below).

1. Working hours and rest breaks

An agency worker comparable to support staff grades 1 – 5 will be entitled to a 35 hour week, any additional hours worked will be paid as overtime at the University enhanced rates.

An agency worker comparable to grade 6 and above will be expected to work the hours necessary for the proper discharge of their duties and will not be entitled to overtime payments.

Managers must also ensure that workers receive the same rest breaks as University staff doing the same work.

1. Paid time off work to attend ante-natal appointments – to be paid by the agency

Should an agency worker request time off for an antenatal appointment, the manager should refer this matter to the agency. The University will allow time off as necessary, but the agency will be responsible for paying the agency worker for the time off.

The University must liaise with the agency and where necessary make reasonable adjustments to the working conditions or hours, if the agency worker is pregnant or breastfeeding.

1. **The 12 week qualifying period**

The equal treatment provisions apply only to agency workers who have been in an assignment (i.e. in the same role) for 12 weeks or more. Any week or part of a week during which the agency worker is on the assignment at the University counts (even if the agency worker changes agency).

If there is a break between assignments of longer than 6 weeks, or the agency worker starts a new and substantially different role, the qualifying period starts again when the new assignment begins. However if there is a break of 6 weeks or less between assignments in the same role the qualifying period will be paused and resume on their return to work. Other circumstances which ‘pause’ the qualifying period are annual leave and sick leave.

The Regulations contain anti-avoidance provisions in order to stop hirers from artificially preventing a worker from accruing the 12 week qualifying service period. This means that where an individual is artificially moved between assignments, the Regulations are likely to still apply. The University could be fined up to £5,000 for breach of the anti-avoidance provisions.

1. **Annual leave, bank holidays and closure days**

From Day 1 agency workers will be given the statutory annual leave allowance of 28 days per year which is inclusive of bank holidays (pro rata for part-time).

After 12 weeks the agency worker must be given the appropriate University annual leave allowance for the grade plus bank holidays (pro rata for part-time). The following rates will apply:

On short-term assignments up to 12 months:

1. Agency workers (on grades 1 – 5) will be entitled to 31 days (23 days + 8 bank holidays)
2. Agency workers (on grades 6 – 8) will be entitled to 37 days (29 days + 8 bank holidays)

On long-term assignments of 12 months or more:

1. Agency workers (on grades 1 – 5) will be entitled to 35 days (23 days + 8 bank holidays + 4 closure days)
2. Agency workers (on grades 6 – 8) will be entitled to 41 days (29 days + 8 bank holidays + 4 closure days)

It is the agencies responsibility to pay agency workers for annual leave days and they reflect this in the rate they charge the University. Therefore the charge rate will increase after 12 weeks.

1. **Time off on bank holidays and closure days**

Agency workers with less than 12 weeks service at the University will need to use their leave allowance (as above) or take unpaid leave on bank holidays and closure days.

Agency workers with 12 weeks or more service at the University on short-term assignments will need to use their leave allowance (as above) or take unpaid leave on bank holidays. However they will be paid if they cannot attend work due to a closure day. The agencies have agreed to charge us at cost, ie. hourly rate but no admin fees and they will not accrue further annual leave for these days.

Agency workers with 12 weeks or more service at the University on long-term assignments will need to use their leave allowance (as above) or take unpaid leave on bank holidays and closure days.

1. **Management Information Reports**

The preferred supplier agencies track the length of assignments and provide a monthly report to the University, confirming all relevant details including the names of the agency workers, where they are working, and how many weeks they have been engaged at the University.

The Directorate of Finance also produce a monthly report showing the amount spent on agency workers (based on invoices) in each area.

HR will provide these monthly reports to Faculties/Directorates and review this information with managers as necessary.

Directorates/Faculties are required to monitor agency worker usage and submit a monthly update to confirm any changes along with justification for ingoing usage where appropriate.

1. **Summary - Managers checklist**

|  |  |
| --- | --- |
| **Action** | **Completed** |
| Consider whether an agency worker is the most appropriate way to cover the post/work. (Advice available from HR Partner and other options in [Temporary/Casual Staff Guidance for Managers](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=781)) |  |
| Obtain approval from Head of School/Director/Director of Faculty Operations (or designated deputy) to proceed with the appointment using a [Placement Details Form AWR1](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=19313) (appendix 1) which must be approved |  |
| Check the appropriate grade/rate of pay for the work to be undertaken with HR Services/HR Partner |  |
| Contact [preferred supplier agenc](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=16197)ies and complete an [AWR1 form](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=19313) for the selected agency worker confirming booking details, income tax and national insurance position |  |
| On commencement managers must ensure agency workers: |  |
| * obtain a temporary ID pass from HR Services
 |  |
| * if IT access is required, complete [IT account application form](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=24359)
 |  |
| * are aware of, or are given a copy of [Day 1 rights](http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=19312) - appendix 2
 |  |
| Faculties/Directorates are required to monitor agency worker usage on a monthly basis |  |
| Quarterly reports will be submitted to the EPB for scrutiny |  |

**Appendix 1**

**Agency Worker Placement Details – Form AWR1 (2020)**

**Section 1 – Subject to approval by the Head of School/Director/DoFO (below) to be completed by the Hiring Manager with the Agency to confirm details of the booking**

|  |  |
| --- | --- |
| Agency Worker’s Name |  |
| School / Department |  |
| Location |  |
| Job title / brief description of work |  |
| Hours |  |
| Start date of placement |  |
| Agency Worker hourly pay rate (from Day 1) |  |
| Agency hourly charge rate(from Day 1) |  |
|  |  |
| Has this worker previously worked at the University? |  |
| Will this count towards the qualifying period? |  |
| If yes above, has the worker left under a VS scheme in the last three years? (if yes, managers must refer to HR Partner before any engagement is confirmed) |  |
| Date qualifies for equal treatment(i.e. end of 12 weeks) |  |
|  |  |
| Agency Worker hourly pay rate (after 12 weeks)(University comparator grade & pay spine point agreed with Manager) |  |
| Agency hourly charge rate(after 12 weeks) |  |
| Annual leave allowance (after 12 weeks) |  |

**Section 2 - to be completed by the Hiring Manager where applicable.**

Intermediaries legislation - off-payroll working in the public sector -where an agency worker is employed through a personal services company (e.g. a limited company).

**The University has assessed that “the intermediaries’ legislation applies” –therefore** **deductions of income tax and national insurance should be made prior to payment**

|  |
| --- |
| In exceptional cases, if the statement above does not apply, provide details here and attach a copy of the HMRC Employment Status Service Tool outcome |

**Details above agreed / acknowledged by**

|  |  |  |  |
| --- | --- | --- | --- |
| Hiring Manager name |  | Agency contact name |  |
| Signature |  | Signature |  |
| Date |  | Date |  |

**Section 3 – Approval by the Head of School/Director/DoFO or delegated representative**

|  |  |
| --- | --- |
| **Head of School/ Director/DoFO**Name |  |
| Signature |  |
| Date |  |

**Appendix 2**

**Rights to which agency workers are entitled from the first day at the University**

From the first day of any assignment, as an agency worker you have the following rights:

1. The right to be told of any vacancies in the University;

This means you can apply for internal vacancies unless they are ring-fenced for existing University staff, for example, as part of a restructure or marked for redeployees /red-circled staff only. However, to be considered for a post you must still be working here when the selection interviews take place.

2. The right to be treated no less favourably than a comparable employee in relation to canteen or other similar on-site facilities, childcare facilities or the provision of transport services. To use these facilities you must show your University temporary ID card.

This entitles you to the following:

|  |  |  |
| --- | --- | --- |
| **On site facility**  | **Includes** | **Entitlement**  |
| Catering | All catering outlets operated by and on University premises  | To be charged at staff rates |
| 147 bus | Travel between Sackville St and Oxford Road | Free travel, must show ID card |
| Sport | SPORT run fitness classes on campus, Sugden Sport Centre, Aquatics Centre | To be charged at staff rates, must show ID card |
| Manchester Museum and Whitworth Art Gallery  |  | Free entry |
| Martin Harris Centre | Performance events at lunchtimes and after work | To be charged at staff rates, some of which are free to staff |
| Prayer and religious observance | All dedicated places on campus | Free to use |
| Car parks | Campus car parks | To apply for a space at discounted rates – there is a waiting list for spaces |
| Day nurseries for childcare | Echos and Dryden St nurseries operating on campus | To apply for a place to be charged at staff rates whilst working at the University- there is a waiting list for places. |
| Libraries  | All libraries on campus | Access to use the facilities – must show ID card |
| Peer Support Network groups |  | To participate in peer support network groups |

Details of all of the above are available on the University intranet.

Note the Agency Worker Regulations do **not** make you eligible for other University staff benefits or discounts.