



Agency Workers Policy

Review Committee

Date Adopted

Date of next review

Signed (Chair of Governors)

Policy and Resources

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OPERATIONAL SUMMARY

Policy Aim

The governing body recognises that from time to time it may need to hire workers from a temporary worker agency to, for example, provide cover for an absent employee, fill a vacancy on a temporary basis or meet short-term demands for extra staff.

This policy provides a framework within which agency workers can be used safely and effectively, and provides Headteachers and Managers with guidance on when it is appropriate to utilise agency workers and how to reduce liability and cost to the school and the local authority.

Policy Summary

This policy sets out the framework for the hire and use of agency workers by the school. It sets out the circumstances in which it is appropriate to use agency workers, the arrangements for the booking of agency staff, pre-employment checks, how they will be paid and their rights to access information and facilities. This policy aims to ensure a safe and effective process is in place to ensure that agency workers possess the correct knowledge and skills for the role they are employed to undertake.

Consultation Process

Trade union representatives have been consulted on this policy. The policy will be communicated to all affected managers and will be available on the Human Resources pages of the Intranet.

1. Introduction

Schools employ a number of agency staff in various roles for the purpose of enabling a degree of flexibility where staff are required to cover shifts at short notice or where suitable candidates for specialist roles are not able to be recruited, for whatever reason.

2. Purpose

The purpose of this policy is to:

- Provide a model of good practice for the recruitment of agency staff
- Ensure that pre-employment checks are carried out for all agency workers
- Take account of relevant legislation, agreements and policies and procedures.

3. Duties

The Policy Author is responsible for ensuring the policy;

- Is kept up to date, generally every 3 years, reflecting changes in legislation where necessary
- Has been screened to establish if it requires a full Equality Impact Assessment to ensure no minority group is discriminated against within the document.

Headteachers and managers are responsible for;

- Ensuring that they are familiar with this policy when recruiting agency workers
- Ensuring that all appropriate employment checks have been undertaken by agencies and recorded appropriately throughout this process
- Maintaining accurate information or data on agency staff use, employment checks, induction and employment
- Procuring agency workers when necessary.

4. Definition of terms used

For the purpose of this policy the term “agency worker” relates to individuals who are provided under a contract of service by an agency to a school in Northumberland.

The term “manager” relates to the individual who engages the services of the agency worker. This may be used interchangeably with Headteacher.

5. General Principles of the use of Agency Workers

The use of agency workers is best limited to short-term assignments. In circumstances where the assignment is expected to last for a period of more than eight weeks, it is recommended that the school recruits an employee on a fixed-term contract to avoid uncertainty regarding whether the agency worker’s status has changed over time.

Steps that can be taken to avoid the possibility of an agency worker claiming employee status:

- ensure that the contract is between the worker and the temporary worker agency and that it expressly excludes any employee status with the school. It should also state that the agency will exercise disciplinary control and that the agency will pay the worker;
- induction should cover health and safety, fire procedures, domestic arrangements, equality and diversity, smoking, objectives of the role/project and other basic training or procedures;
- give as much freedom as possible to determine how, where and when the agency worker does their work to avoid establishing an obligation to provide work;
- do not expect an agency worker to adhere to any school policy (except general legislative obligation, such as health and safety, smoking, equal opportunities);
- agency workers should not be covered by any formal performance management processes;
- do not treat agency workers as employees – for example, deciding when they may take holidays and by subjecting them to the same disciplinary and grievance procedures as employees (such issues should be passed back to the agency to resolve).

6. Process of arranging an Agency Worker

The school should ensure that it has a clear procurement process for hiring agency workers. Managers should ensure they have the necessary delegated authority to enter into a contractual relationship with an agency. Governors should ensure that appropriate guidance has been provided to managers who are engaging agency workers.

Schools should be aware of the likelihood that agencies will include “temp to perm” fees as part of their contractual terms so that they are due a financial payment if the agency worker secures a permanent job with the hirer. Schools may wish to negotiate with the agency to remove or minimise such fees before agreeing the terms of the contract.

7. Pre-Employment Checks

There are a number of legal and mandatory checks that must be carried out prior to the appointment of all staff. Failure to comply with these standards could potentially put the safety of children, staff and public at risk.

The Headteacher/Manager must therefore ensure that all agencies have complied with these checks and that a fully completed Pre-Employment Checklist has been received for each agency worker, see Appendix 1. It is the duty of the school to get this assurance and the school must not accept any agency worker unless all of the pre-employment checks have been carried out by the agency.

Required Checks

7.1 Verification of Identity Checks - agencies are required to verify the identity of all of their employees. It is important to ensure that the person provided by the agency is who he or she claims to be so the manager must always carry out an identity check by asking to see proof of identity such as a birth certificate, driving licence, or passport combined with evidence of address, before the individual is engaged. Some form of photographic identity should be seen except where for exceptional reasons none is available. This photographic evidence should be retained on file for inspection.

7.2 Right to Work Checks - agencies are required to check the entitlement to work in the United Kingdom for all of their employees. It is a criminal offence to employ someone who does not have permission to live and work in the UK.

7.3 Employment History and Reference Checks - an appointment to any position is conditional on satisfactory employment history and reference checks. All gaps in employment must be checked and accounted for.

7.4 Professional Registration and Qualification Checks - The purpose of registration and qualification checks is to ensure that a prospective employee is recognised by the appropriate regulatory body and that they have the right qualification to do the job (see the Professional Registration Policy for further advice).

7.5 Pre-employment health check - All agency staff must have a pre-appointment health check, which adheres to equal opportunities legislation and good occupational health practice. All offers of employment are subject to satisfactory medical clearance therefore all agency staff will be required to complete an Occupational Health questionnaire prior to commencement in their new post and undertake any health screening required. The Occupational Health Department will notify the manager in writing when the worker is health cleared.

7.6 Disclosure and Barring Service (DBS) Checks - Agencies must carry out Disclosure and Barring Service (DBS) checks on all relevant posts as per the DBS guidance available on the staff intranet. Staff recruited from overseas will have the necessary police check carried out in line with that country's justice system and UK requirements. The DBS Disclosure Form contains a unique 12 digit reference number and disclosure date. All

agencies must provide this information, together with the level of check undertaken and whether the DBS was satisfactory on the Pre-Employment Checklist. Where necessary the agency may need to provide a copy of the actual DBS certificate if requested by the school. The DBS check may not have included a check of List 99 and Children's and Adults' Barred Lists and there may be a requirement by law to carry out a fresh check with List 99 and Children's and Adults' Barred Lists

7.7 Safer Recruitment Checks - It is the school's responsibility to seek written confirmation from the agency that it has appropriate procedures in place to recruit workers in line with the statutory guidance for safer recruitment for working with children and young people.

8. IR35 Regulations

IR35 is also known as 'intermediaries legislation'. It's a set of rules that affect tax and National Insurance contributions for those contracted to work for a client through an intermediary e.g. their own limited company or a service company. If IR35 applies then the intermediary has to operate PAYE and National Insurance contributions on any salary or wages it pays to the individual during the tax year.

In April 2017, IR35 legislation was reformed. Public Sector authorities now have the duty to confirm IR35 status and to determine whether tax and National Insurance contributions should be taken at source i.e. PAYE.

For agency workers, the employment agency is responsible for applying IR35 legislation. Northumberland County Council does have a duty however to ensure that the appropriate checks have been taken by any agency in respect of agency workers paid through an intermediary.

For all agency appointments, the agency therefore needs to provide assurance that IR35 legislation has been applied and that all necessary checks have been made to ensure that correct tax and National Insurance contributions have been paid. Please see the vetting form at appendix one for this assurance.

9. Induction and Performance Management

On commencement of duties and for health and safety reasons the manager must ensure that an appropriate level of induction is carried out and recorded.

Managers/Headteachers using agency workers are responsible for the performance of service by the agency workers. Where the agency worker does not perform to the required standard, the manager should discuss concerns with the agency and if necessary terminate the use of the individual. Under no circumstances should a manager apply relevant employment policies e.g. the Capability and Disciplinary Procedures in relation to an agency worker. If an agency worker is not performing adequately this poor performance must be addressed with the agency under the terms of the contract between the Council and the agency. An agency worker should not be treated as an employee of the Council.

10. Agency Workers Regulations

The Agency Workers Regulations 2010 are a set of regulations which provide all agency workers with a right to equal treatment with their directly recruited equivalents employed within the Trust after twelve weeks within a given role/job.

The regulations came into force on 1 October 2011. Some equal treatment rights apply from day one of an agency employment assignment and are known as “day one rights”. Other equal treatment rights apply after a twelve week qualifying period.

Day one information includes:

- Access to information on job vacancies with the School
- Access to collective facilities and amenities (e.g. canteen, car parking).

After twelve weeks of employment, the agency worker is entitled to the same basic working and employment conditions as they would be entitled to for doing the same job had they been recruited by the Trust directly, these conditions cover:

- Pay
- Duration of working time
- Length of night work
- Rest periods and breaks
- Annual Leave (including bank/public holidays)
- Paid time off for ante-natal appointments.

Managers must:

- Be aware of the start and end dates for all agency assignments to enable the 12 week qualifying period to be calculated
- Ensure all agency bookings are given an end date – even if it is month to month
- Ensure that all agency workers have received information on their rights at day one and after the twelve weeks qualifying period.

Further information can be sought from the HR team.

11. Pregnant agency workers

Pregnant agency workers who have met the 12-week qualifying period are entitled to take paid time off for ante-natal care. The agency is primarily responsible for providing this right, and for paying the worker for the time off. However, the hirer should ensure that practical arrangements are put in place so that the worker is able to take the time off.

Hirers are required to carry out a risk assessment for pregnant workers, and where a risk is identified make reasonable adjustments to remove the risk. Where that is not possible, the agency will be responsible for offering alternative work, and where that is not possible, for paying the worker for the remainder of the assignment for any period that she cannot work due to the health and safety risk.

There is no obligation on a hirer to keep a role open for an agency worker who is on maternity leave.

12. Reviewing use of agency workers

The manager should review the assignment on a regular basis to ensure that there is a need to continue with an agency worker or whether other strategies, such as appointing to a fixed-term contract, are more appropriate. Consideration should also be given to whether the arrangement represents value for money.