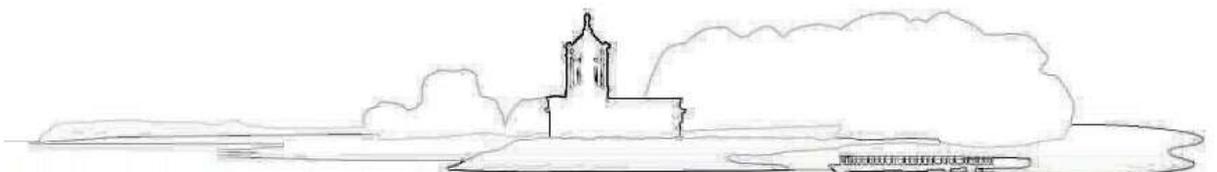


Rutland County Council

GUIDANCE NOTES FOR ENGAGING AGENCY AND INTERIM WORKERS



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1.0 INTRODUCTION

These Guidance Notes should be read in conjunction with the Council's Policy on the Use of Agency and Interim Workers, which can be accessed on the Council's Intranet under HR Policies/Agency and Interim Workers.

The guidance sets out the procedure for managers to follow for engaging Agency/Interim Workers. Where the phrase 'agency worker' is used, this refers to employment agency workers and interims. Information is also provided on the Agency Workers Regulations 2010, to facilitate an understanding of and compliance with this legislation. Appendix A summarises the key features of an Agency Worker engagement.

2.0 THE AGENCY WORKERS REGULATIONS 2010

2.1 Scope - The Agency Workers Regulations apply to:

- Individuals who work as temporary agency workers;
- Individuals or companies (private, public and third sector e.g. charities, social enterprises) involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer;
- Hirers (private, public and third sector)

Those who are likely to be outside the scope of the Regulations

- Individuals who find work through a temporary work agency but are in business on their own account (where they have a business to business relationship with the hirer who is a client or customer)
- Individuals working on Managed Service Contracts where the worker does not work under the direction and supervision of the host organisation
- Individuals working for in-house temporary staffing banks where a company employs its temporary workers directly (and they only work for that same business or service)
- Individuals who find direct employment with an employer through an "employment agency"
- Individuals on secondment or loan from one organisation to another – this is usually where the main activity of the organisation seconding the individual is not the supply of individuals to work temporarily under the supervision and direction of another party

An Employment Tribunal will consider if the description of the arrangements reflects the reality of the relationship, if there is a dispute about whether someone is within the scope of the Regulations.

2.2 Key Principles

From Day One

An agency worker will be entitled to:

- the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer
- be informed about job vacancies.

After a 12-week qualifying period

An agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, specifically:

- pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
- working time rights - for example, including any annual leave above what is required by law

Agency workers (regardless of their employment status) will also be entitled to paid time off to attend ante-natal appointments during their working hours.

2.3 General Guidelines

Council employees may receive some terms and conditions after a specific length of service e.g. incremental progression and enhanced annual leave. This would also apply for agency workers from the beginning of the 12 week qualifying period. However, the regulations do not afford the agency worker any preferential treatment.

The Council needs to maintain accurate records of all agency workers, as the 12 week qualifying period could incorporate the agency worker undertaking the same or similar job at the Council via several different agencies. However, if the agency worker is supplied by the Council's chosen agency worker provider, they will have records on this.

A full week does not have to be worked by an agency worker for it to count as a qualifying week. For example, even if an agency worker only works two days of a week then that week will count as one week towards the 12 week qualifying period. The 12 week qualifying period can accumulate from one assignment or several, and can be undertaken through the same or different agencies provided they are continuous.

If an agency worker leaves the Council and commences work for another employer, the 12 week qualifying period starts again with the new employer. Alternatively, if an agency worker leaves the Council and has more than a six week break in service and then returns to the Council, the 12 week qualifying period starts again. If an employee moves to a different role within the Council, then the qualifying period is

also broken. For example, moving from one Directorate to another in an administrative role would not be classed as a different role and accordingly the qualifying period will continue.

If the break between assignments in the same role is less than six weeks then the qualifying period will not be broken. Neither will it be broken when the breaks are for protected circumstances such as sickness absence or injury (up to 28 weeks), taking leave to which the agency worker is entitled, jury service (up to 28 weeks), shut downs or industrial action. This will also be the case with breaks in relation to pregnancy, maternity, paternity, adoption and family friendly policies.

2.4 12 week assignments and anti-avoidance provisions

A hirer can decide not to engage agency workers beyond the 12 week qualifying period. There is nothing in the Regulations to prevent an agency worker being released after, for example, 11 weeks or for assignments of 12 weeks to be the usual practice of any hirer. However, hirers and Temporary Work Agencies should be aware of anti-avoidance provisions which address any situation where a pattern of assignments emerge that are designed to deliberately deprive an agency worker of their entitlements.

2.5 Agency Workers recourse for redress

If an agency worker believes he/she has not received their entitlement then they can ask the Agency and Council to provide details of how pay and conditions have been determined and ultimately may be entitled to make a claim through the Employment Tribunals system. In addition, it should be noted that whilst the regulations do not give agency workers employee status, there may be comparator issues should there be a discrimination claim.

3.0 PROCEDURE FOR HIRING AGENCY WORKERS

3.1 Checklist and Request to Engage a Temporary Agency Worker/Interim

If it is necessary to hire an Agency/Interim Worker, the hiring manager should complete the Checklist and Request to Engage a Temporary Agency Worker/Interim and obtain the necessary approval (Form can be accessed on the Intranet/HR Policies/Agency and Interim Workers). The form should then be returned to Human Resources either by hand or by e-mail to hr@rutland.gov.uk. The Checklist must include a brief explanation of the nature of the work, the reason why an Agency Worker/Interim is required, the rate and approximate costs that are anticipated. Managers must ensure that there is budget provision and clarification of where the costs will be met, prior to placing an order. These records will be maintained against the individual's record on Agresso.

Agency workers should not commence employment or be issued with ID cards or e-mail accounts until the Checklist has been completed and returned to Human Resources. The manager should ensure that the agency worker reads and signs the Council's Employee Code of Conduct either before commencing with the Council or at the beginning of their first day of work at the Council. Agency/Interim workers

should complete any mandatory training applicable to all staff. An e-mail account will not be released by IT until IT has received confirmation that the Worker has completed the Data Protection e-learning module. Regular 1-1s are necessary to help keep track of progress against objectives and to discuss any challenges or support needed.

3.2 Record Keeping

Once the Checklist, Employee Code of Conduct and any other relevant documents are received, Human Resources will be able to set up a record on Agresso for the agency/interim worker and attach the documents. This is important for the purposes of:

- Ensuring that the individual is set up for reporting and approval purposes
- Monitoring
- Reporting
- Audit

Any extension to the originally proposed end date must be notified to Human Resources so that the Agresso record can be up-dated and not closed.

3.3 Temporary Work Agency – Service Provider

Agency workers should be obtained via the Council's agreed Temporary Work Agency service provider. Human Resources can arrange for the hiring manager to be set up with the service provider, to enable the hiring manager to place orders for assignments. The hiring manager will need to provide the cost centre to which costs will be charged. Details should also be provided of anyone who should be added for the purposes of ordering and approving timesheets, in the hiring manager's absence. Once this has been done, the service provider will issue the hiring manager with an ID and password. The hiring manager will then be able to place orders. If an agency worker is sought via the Council's Temporary Work Agency service provider, then all arrangements for CVs, interviews and hiring can be made via the one system; the framework provider will ensure the assignment is notified to relevant agencies in order to source candidates for management selection. All requests and subsequent submissions will be managed by the service provider. The guidance documents for the service provider's ordering process and timesheet approvals is on the Intranet/HR Policies/Agency and Interim Workers.

If, having initially gone through the Council's service provider, the hiring manager is unable to source an appropriate person and the manager wishes to pursue other alternatives outside of the service provider framework, they must contact Human Resources to discuss this. In these circumstances, an Agency on the ESPO framework should be used. Subsequently, any terms of business provided by an alternative agency must be discussed with Human Resources, prior to the manager committing to them. In all cases, the Manager must ensure compliance with Contract Procedure Rules.

3.4 Time limits

Agency/Interim Workers can initially be engaged for a maximum of 12 weeks following Head of Service approval. Assignments over 12 weeks will require Director Approval, as will extensions resulting in the assignment being over 12 weeks.

3.5 Rates for Interim Workers outside of the Temporary Work Agency Service Provider Framework

For interims that cannot be procured through the service provider framework, e.g. senior level posts of a highly specialised nature, there are recommended daily rates. Managers will need to contact Human Resources for the current rates. For these rates, Director approval must be obtained in addition to Head of Service approval, on the Checklist and Request to Engage a Temporary Agency Worker/Interim. For daily rates beyond the framework, approval must be sought from the Chief Executive in advance of confirming an assignment.

3.6 Working hours

Agency Workers will work the same basic working hours as an employee or worker who is recruited directly to the same job. The agency worker should not work more than a maximum of 37 hours per week.

3.7 Annual leave

The agency will be responsible for calculating and paying annual leave. As Rutland has an occupational annual leave scheme, Agency workers will receive benefit of the increased annual leave by an uplift to their hourly rate, 12 weeks after commencing their assignment with the Council.

3.8 Other Leave and Maternity Leave

Agency workers are able to get Statutory Sick Pay (SSP), Maternity or Paternity Pay if they satisfy the criteria. This is the responsibility of the agency and not the Council.

Maternity Leave

After 12 weeks in the job an agency worker can get paid time off to go to 'antenatal care' if she can't arrange it outside working hours. Antenatal care includes antenatal classes, appointments and parenting classes, if they've been recommended by a doctor or midwife. She must also be paid for the travel time if it is during working hours.

Agency workers may be able to get statutory maternity pay (but not statutory maternity leave) if they are paid through PAYE with tax and national insurance deducted by their Agency. The Agency will be responsible for the pay and benefits with regard to this.

The agency worker will need to submit evidence of her antenatal care appointments, although evidence is not needed for the first appointment. In order to minimise

disruption to their work, agency workers should be encouraged to arrange medical appointments at suitable times. Agency workers are encouraged to give early notification of their pregnancy to enable the Council to plan ahead, and carry out necessary risk assessments.

Managers have responsibilities for protecting the health and safety of their workers, including those who are pregnant and those who have given birth within the previous six months. Once a manager has been informed that an agency worker is pregnant, they should arrange for a pregnant worker risk assessment to be undertaken. The appropriate risk assessment form must be completed and returned to Human Resources. Any reasonable adjustments should be made for the worker, as appropriate. If it is not possible to make reasonable adjustments to the role to remove an identified risk, the manager should inform Human Resources, who will inform the agency. The agency will then be able to seek alternative work for the agency worker. This is of particular importance where there are known personal or work area risks. Occupational Health, via Human Resources, can provide advice and guidance on health and safety implications relating to the agency worker and her job.

The agency worker's qualifying period continues to run during any breaks that occur because the worker is taking maternity leave, adoption leave or paternity leave from the agency.

3.9 Agency Worker Information Requests

Where an Agency Worker has a concern that they are being treated less favourably in terms of their rights under this legislation, they are entitled to raise their concerns in writing with both the agency and the hirer and ask for information and identify comparators where applicable. A hirer will need to be able to respond to and justify any such concerns. If not satisfied, Agency Workers do have the right to raise discrimination claims

4.0 FURTHER INFORMATION

Further information on these Guidance Notes or clarification of its content can be obtained from Human Resources.

Key features of an Agency Worker engagement

The table below summarises the key features of an Agency Worker engagement

Relationship	Agency Worker
Description	<p>No employment relationship between the Council and an Agency Worker. Agency Workers may be either:</p> <ul style="list-style-type: none"> • Self-employed with the role of the Agency being to put them in contact with end users who need their services or • On the books of or fully employed by an Employment Agency Business
Features	<p>Can provide quick access to a wide range of skills and experience. However, agency usage should be limited where possible in order to control cost. Prior to proceeding to engage an agency worker the manager should assess needs and the potential options available, as there may be more cost effective means of meeting these.</p> <p>If an agency worker gains employment with the Council, during the course of working for the Council as an agency worker and subsequently becomes an employee of the Council, there may be a fee payable to the Agency. The manager should check the terms and conditions with regard to such fees, with the Agency.</p> <p>Agency workers should be sourced via the approved Temporary Agency Work service provider. However, there may be occasions when the service provider is unable to source a worker and other agency providers may be required to source the specialist work.</p>
Authorisation	<p>Requires prior approval by Head of Service and/or Director or relevant budget holder.</p>
Recruitment Process	<p>Recruitment is carried out as per the Council's Temporary Work Agency service provider or the relevant Agency/Employment Business's own recruitment processes.</p> <p>The hiring department must provide set information to the Agency/Employment Business including:</p> <ul style="list-style-type: none"> • Its nature of business • Date on which an agency worker is required to commence • Likely duration of work • Equivalent Council grade and point for the work to be

	<p>undertaken (as if they had been employed by the Council to undertake the work). This would normally be the bottom point of the grade</p> <ul style="list-style-type: none"> • Position available (including type of work, the location, the hours, any Health and Safety risks, steps taken to control such risks) • Experience, qualifications and training required • Expenses payable to the agency worker e.g. parking expenses when attending meetings on Council business (expenses for accommodation and travelling to and from work are not paid by the Council) <p>The Agency/Employment Business must obtain confirmation of the following (and provide in writing):</p> <ul style="list-style-type: none"> • The agency worker's identity • That the worker has the required experience, training, qualifications or authorisation for the role • The individual is willing to work in the position available • If they have been engaged for service or under a contract of employment <p>Before providing services, an Agency/Employment Business must also agree terms with the manager hiring the temporary worker. The manager should seek advice from the Head of Human Resources on this before agreeing to any terms.</p>
Statutory Obligations	<p>Disclosure and Barring Service (DBS) Criminal Record Checks must be made if the individual will be working with vulnerable adults or children. These should be undertaken by the Agency. Immigration Checks – If using an Agency other than the Council's service provider, consider negotiating a term with the employment agency that they will confirm that they have undertaken the immigration checks for agency workers.</p>
Health & Safety	<p>The hiring manager also has a duty of care towards agency workers with regard to health and safety.</p>
Allocation of Work	<p>Based upon information supplied by the hiring manager, the Agency would identify an individual/s with appropriate skills and experience. Day-to-day work activity is the responsibility of the hiring manager.</p>
Record Keeping/Agency Worker Checklist	<p>Responsibility for administration and record keeping is between the hiring manager, the agency worker and the Agency/Employment Business and Human Resources. The hiring manager will need to complete the Checklist and Request to Engage a Temporary Agency or Interim Worker for all workers recruited through the Council's service provider, outside of the service provider framework and for interims. The Checklist can be accessed on the Intranet/HR Policies/Agency and Interim Workers. The completed Checklist must be provided to Human</p>

	<p>Resources. Human Resources will then be able to set up a record on Agresso.</p> <p>Agency workers should not commence employment or be issued with ID cards or e-mail accounts until the Checklist has been completed and returned to Human Resources. An e-mail account will not be released by IT until IT has received confirmation that the Worker has completed the Data Protection e-learning module. The manager must ensure that the agency worker reads and signs the Council's Employee Code of Conduct either before commencement or at the beginning of their first day of work at the Council.</p>
Working Time	If the agency worker is paid by the Agency/Employment Business, the Agency will be responsible for ensuring that the Working Time Regulations are complied with.
Payment	As per the Council's service provider framework or the Agency/Employment Business Contract with the hiring manager. If the Agency/Employment Business is responsible for paying the individual it will be the agency's responsibility to make appropriate deductions for tax and national insurance.
Induction	Refer to the Worker Induction Checklist on the Intranet/HR Policies/Agency and Interim Workers for a suggested minimum.