



## Agency Workers Policy and Procedure

### Introduction

West Oxfordshire District Council ('the Council') prides itself on being an employer of choice. With an incredibly varied role in delivering the very best for our residents, communities and businesses, our employees are committed and really make a difference. In return we seek to support and empower our employees, to give their best.

The Council is committed to ensuring that we deliver excellent services to our residents, communities and businesses at all times. We will, where necessary, use temporary agency workers to help to fulfil this demand and maintain the highest standards of service.

This policy applies to all individuals responsible for hiring temporary agency workers and to all temporary agency staff while they are on assignment with the Council.

The Agency Workers Policy and Procedure ('the Policy') does not form part of your Contract of Employment and we reserve the right to amend or withdraw it at any time.

### Definition of an agency worker

An agency worker is an individual who:

- Has a contract with an employment agency or employment business, but
- Works temporarily under the supervision and direction of a hirer (for example, the Council).
- Agency workers are sometimes referred to as temporary agency workers, temps, or agency staff. They are not employees of the hirer, and their contractual relationship is with the agency supplying them.

Under the Agency Workers Regulations 2010, an agency worker is someone who:

- Is supplied by an agency to work temporarily for a hirer
- Is paid by the agency (not the hirer)
- Works under the hirer's supervision and direction
- Is not genuinely self-employed and not working as part of a managed service contract

### When agency workers will be used

The Council will use temporary agency workers only to provide additional resources and allow for flexibility on a short-term basis from time to time. We will hire temporary agency workers from carefully selected agencies to assist in relation to:

- occasional work, such as one-off projects

- sudden increases in demand for our services and
- the absence of employees, for example due to holiday or sickness.

### Process for hiring agency workers

Where additional resources are required, the hiring manager should submit a request to recruit via the Applicant Tracking System (ATS) for approval following input from Finance and Human Resources. No agency worker will be hired without the appropriate written approval.

In the written request for additional resources, the hiring manager must set out the:

- agency worker's intended start date;
- approximate length of the assignment;
- guaranteed hours of the assignment (if they will be required to regularly work consistent hours);
- reason why additional resources are required;
- appropriate rate of pay;
- job description; and
- names of any preferred individual, if a choice of workers is offered by the agency.

Once approval has been given to proceed, the hiring manager, must liaise and negotiate with the relevant agency to secure the best commercial rate.

Hiring managers must liaise with Human Resources regarding using an agency to provide an agency worker before they commence the process. The Recruitment Team are able to advise on appropriate agencies. There are agreed terms and non-compliance by hiring managers may result in the agencies requesting penalty clauses be enacted against us if they were not made aware of roles.

It is the responsibility of all hiring managers to ensure compliance with this process and if they have any queries, to speak with Human Resources or the Recruitment Team in the first instance.

### From day one of an assignment

#### **Induction**

Agency workers will receive an induction to the Council by the line manager and will be issued with their IT equipment.

#### **Access to collective facilities**

All agency workers will be given the same access to the Council's collective facilities and amenities as a comparable worker who is recruited directly. This access will be given from the first day of the agency worker's assignment with the Council. The line manager will provide details to agency workers of our facilities on the first day of their assignment. Agency workers will have access to:

- all toilet and shower facilities
- the employee Staff Room;
- first aid room and
- car parking.

## **Information on relevant vacancies**

From day one of an assignment with us, agency workers will be able to access on the Council portal, information about any relevant job vacancies within the Council.

We will provide information about relevant vacancies via the Council employee portal. This will be explained to agency workers on their first day of an assignment with the Council.

After 12 weeks of an assignment

## **Equal treatment**

Once an agency worker has completed 12 weeks with the Council in the same role, they will be entitled to the same basic working and employment conditions that would apply to employees or workers who have been directly recruited to the same job. This includes pay, duration of working time, rest periods and breaks, and annual leave. We will liaise with the agency to ensure that the agency worker receives equal treatment.

Managers are responsible for ensuring that the agency worker is achieving a satisfactory performance and acceptable level of attendance. Any concerns or issues will be raised by the manager with the agency under whom the agency worker is employed.

## **Pay**

All agency workers will be entitled to the same basic pay to which an employee or worker who has been directly recruited to the same job would be entitled. This includes pro-rated salary and where applicable overtime pay.

## **Pension**

The Council will not enrol the agency worker into the Local Government Pension Scheme. The agency with whom the agency worker is registered, is now required to offer access to a workplace pension scheme to workers on their books. All agency workers between 22 and State Pension Age and earning over the "earnings threshold" of £10,000 should be 'auto-enrolled' into a workplace pension scheme.

## **Annual leave**

Agency workers will be entitled to the same paid annual leave to which an employee or worker who is recruited directly to the same job would be entitled. This leave entitlement will be pro-rated to the length of the assignment. The line manager will liaise with Human Resources for the leave entitlement details and advise the agency accordingly.

## **Working hours**

Agency workers will work the same basic working hours as an employee or worker who is recruited directly to the same job unless advised otherwise. The line manager is responsible for ensuring that the agency worker records their hours correctly and checks them before submitting to the agency.

## **Rest periods**

Agency workers will be entitled to the same rest periods and breaks to which an employee or worker who is recruited directly to the same job would be entitled. At least half an hour must be taken for lunch.

## Information for agency workers

### Facilities and relevant vacancies

An agency worker who believes that they have not been provided with equal access to collective facilities or relevant vacancies may make a written request to their line manager in the first instance for information about such access.

Within 28 days of receiving such a request, the line manager will provide the agency worker in writing with the:

- relevant information about access to collective facilities and/or access to vacancies; and
- reasons for the treatment of the agency worker in relation to access to collective facilities and/or access to vacancies.

### Equal treatment

An agency worker who believes that they may not have been treated equally in respect of basic employment and working conditions (after 12 weeks in the same assignment) should, in the first instance, make a written request to their agency for further information. The agency is required to provide a written statement to the agency worker setting out the relevant information relating to the basic working and employment conditions of the Council's employees and workers. The agency has to do this within 28 days of receiving the request.

If the agency worker has not been provided with a statement from their agency within 30 days of making the request, they can make a written request to the Council for a statement setting out the relevant information relating to the basic working and employment conditions of the Council's employees and workers.

In these circumstances, the Council will provide a written statement within 28 days of receiving the agency worker's request containing information relating to the relevant basic working and employment conditions of the Council's employees.

### Moving agency workers to new assignments/roles

If a manager requires an agency worker to take on a new assignment within the Council or a manager is re-engaging an agency worker who has been used before, the manager should seek prior approval from the Senior Leadership Team.

If the agency worker is simply undertaking a new assignment within the same role, the agency worker's qualifying period will continue to accrue. The agency worker will be deemed to be continuing to work in the same role unless:

- the work or duties that make up the new role (or the main part of it) are substantially different from the work or duties that made up the previous role (or the main part of it); and
- the agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role.

If the new assignment is a different role or there is a break of more than six weeks between assignments, the agency worker's qualifying period will accrue from the start date of the new assignment for the purposes of calculating the agency worker's qualifying period. However, this is subject to certain exceptions (refer to [Absences](#) and [Family-friendly rights](#) sections below). Any new assignment will need to be approved on the ATS.

The hiring manager will notify the agency if the agency worker's work or duties have changed and this information must be passed to the agency worker. It will be up to the agency to provide the agency worker in writing with:

- notification that the role is a new one that is substantially different from the previous role;
- a description of the new role; and
- an explanation that the qualifying period will start again.

If concerns arise with the agency workers conduct or performance, the line manager will speak to Human Resources for advice in the first instance and then where necessary, address the conduct or performance concerns directly with the agency as the agency worker's employer.

If an agency worker has a concern or wishes to make a complaint, they should contact their agency to outline their concerns and the agency will then contact the line manager or Human Resources regarding the Councils process to handle this.

For either an extension of a current assignment or the termination of a current assignment the line manager should speak to Human Resources to seek advice on the process to follow and the communication with the agency who directly employs the agency worker.

## Absences

There are exceptions where a break of more than six weeks between assignments "pauses" the qualifying period (i.e. the qualifying period does not continue but picks up where it left off when the agency worker returns). Reasons for the agency worker's qualifying period to "pause" include that they have a break:

- of up to 28 weeks because they are incapable of work due to sickness or injury;
- for the purpose of taking annual leave or any other leave to which they are entitled;
- of up to 28 calendar weeks to allow them to perform jury service; or
- caused by industrial action, for example a strike within the Council.

## Family-friendly rights

The agency worker's 12-week qualifying period continues to run (i.e., it continues to accrue during the absence) if the break is due to pregnancy, childbirth or maternity, and the absence occurs during pregnancy or up to 26 weeks after childbirth. This includes, for example, pregnancy-related sickness absence or absence because there is a health and safety reason why the agency worker cannot carry out the role.

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

If an agency worker is pregnant, has given birth within the previous six months, or is breastfeeding, they should inform both their agency and the Council in writing as soon as possible. The Council will carry out a risk assessment for any agency worker in these circumstances.

If any potential health and safety risk is identified, the Council will, where possible, make reasonable adjustments to the role. If it is not possible to remove the risk through adjustments, the Council will inform the agency, and the agency should seek suitable alternative work for the agency worker.

## Antenatal Appointments

An agency worker who has completed 12 weeks in the same assignment with the Council is entitled to take paid time off to attend antenatal appointments. This entitlement applies to pregnant agency workers and to agency workers who are the partner of a pregnant woman (or the intended parent in a surrogacy arrangement).

The time off must be for an appointment that has been recommended by a registered medical practitioner, midwife or nurse. The agency worker may be asked to provide evidence of the appointment and a declaration that the time off is for antenatal care.

## Adoption Appointments

An agency worker who has completed 12 weeks with the Council in the same assignment is entitled to take paid time off to attend adoption appointments. Where a couple are jointly adopting a child, they may choose which partner will take paid time off for up to five appointments, and which partner will take unpaid time off for up to two appointments. The appointment must be arranged by, or at the request of, the adoption agency and must take place before the date of placement.

In summary:

Right now, agency workers have:

### Day one

- Access to facilities
- Access to job vacancies
- Day-one paternity leave
- Day-one parental leave
- Neonatal care leave
- Shared parental leave (in most cases)

### After 12 weeks

- Equal pay and annual leave
- Paid antenatal appointments
- Paid/unpaid adoption appointments
- Pregnancy-related protections

## Responsibility

The Strategic People Lead has overall responsibility for ensuring that agency workers receive the correct access to collective employee facilities, information on vacancies and other entitlements under this policy.

However, it is the responsibility of all managers to ensure that this policy is implemented.

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