

## **Agency Workers Regulations 2010 – Management Guidelines**

### **Aim**

Great Yarmouth Borough Council is committed to ensuring that it delivers an excellent service to its customers at all times. The organisation will, where necessary, use temporary agency workers to help to fulfil customer demands and maintain the highest standards of service.

The purpose of these guidelines is to ensure the Council properly complies with its obligations under the Agency Workers Regulations.

These guidelines apply to all individuals responsible for hiring temporary agency workers and to all temporary agency staff while they are on assignment with Great Yarmouth Borough Council.

### **When agency workers will be used**

The organisation will normally use temporary agency workers to provide additional resources as well as if it is perceived that a post might be difficult to recruit to. The organisation will hire temporary agency workers from carefully selected agencies to assist in relation to:

- occasional work, such as one-off projects
- seasonal peaks
- sudden increases in demand for the organisation's services; and
- in the absence of employees, for example due to holiday or sickness.

### **Process for hiring agency workers**

If a manager wishes to hire an agency worker the manager should initially contact Human Resources (HR) to ensure that this requirement need cannot be filled by other means, for example by an existing employee on the redeployment register, additional hours offered to other Council employees, etc. If after consulting with HR, the manager still wishes to hire an agency worker they will need to complete a Request to Fill Vacancy form and gain approval by their Head of Service as well as the Head of Resources & Governance.

The written request for additional resources must set out the:

- agency worker's intended start date;
- approximate length of the assignment;
- reason why additional resources are required;
- appropriate rate of pay (please contact HR if clarification is required);

Once the form has been completed, the manager should forward this to HR who will forward a copy of the form to UNISON. **The recruiting manager and HR will liaise and negotiate with the agency to ensure that the**

**Council receives the best commercial rates, while bearing in mind a fair rate for the work involved ensuring compliance with the Agency Workers Regulations.**

The recruiting manager and the HR department will review the continued business need for the agency worker at weeks 4, 8 and 10.

An agency worker's contract should not be extended past 12 weeks without the agreement of the Head of Service.

It is the responsibility of all managers to ensure compliance with this process. HR will assist the employing manager in adhering to the legislation and monitoring the use of agency workers.

**From day one of an assignment**

*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 recruiting manager will provide details to agency workers of the Council's facilities on the first day of their assignment. Agency workers will have access to facilities such as:

- the intranet;
- all toilet and shower facilities in the relevant area of work;
- the staff common room; and
- coffee machines

*Information on relevant vacancies*

From day one of an assignment with the Council, agency workers will be provided with information about any relevant job vacancies as a comparable worker via the Council's intranet. Agency workers will be able to apply for vacancies within the Council, however Council employees will be given preference, where the vacancy is advertised internally only.

**After 12 weeks of an assignment**

*Equal treatment*

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

## *Pay*

All agency workers will be entitled to the same basic pay to which an employee who has been directly recruited to the same job would be entitled to. This includes pro rated salary and any other additional payments such as overtime pay, unsocial-hours allowance and shift allowance, etc.

## *Annual leave*

Agency workers will be entitled to the same paid annual leave to which an employee who is recruited directly to the same job would be entitled to. This leave entitlement will be pro rated to the length of the assignment. This should be agreed with the recruitment agency prior to the assignment.

## *Working hours*

Agency workers will work the same basic working hours as an employee who is recruited directly to the same job. There may be circumstances in which agency workers will, if they wish, be able to opt out of the maximum 48-hour working week under the Working Time Regulations 1998. Written confirmation of this will be required. Any agency worker who has not signed the opt-out or who has revoked his/her opt-out will not be requested or permitted to work more than the maximum number of working hours permitted under the Working Time Regulations 1998.

## *Rest periods*

Agency workers will be entitled to the same rest periods and breaks to which an employee who is recruited directly to the same job would be entitled to.

## *Night work*

Agency workers will be entitled to the same arrangements for night work to which an employee who is recruited directly to the same job would be entitled to.

## **Information for agency workers**

### *Facilities and relevant vacancies*

An agency worker who believes that he/she has not been provided with equal access to collective facilities or relevant vacancies may make a written request to their agency for information about such access.

Within 28 days of receiving such a request, the organisation 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 he/she 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 his/her 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. 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 his/her agency within 30 days of making the request, he/she 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.

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 organisation or a manager is re-engaging an agency worker who has been used before, the manager should consult with HR prior to the assignment.

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, which are set out below.

The recruiting 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.

## **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 he/she has a break:

- of up to 28 weeks because he/she is incapable of work due to sickness or injury;
- for the purpose of taking annual leave;
- of up to 28 calendar weeks to allow him/her to perform jury service;
- caused by a regular and planned shutdown of the workplace, or
- caused by industrial action, for example a strike within the organisation.

## **Family-friendly rights**

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

If an agency worker is pregnant, has given birth within the previous six months or is breastfeeding, she should inform her agency and the recruiting manager in writing as soon as possible. The manager will carry out a risk assessment in relation to the role carried out by any agency worker who is pregnant, has given birth within the previous six months, or is breastfeeding.

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

A pregnant agency worker who has completed 12 weeks with the Council in the same assignment is entitled to paid time off for antenatal appointments. All workers are encouraged to arrange antenatal appointments outside

working hours where possible. The manager may request written evidence of the antenatal appointment (except for the first appointment).

### **Responsibility**

The agency, recruiting manager and the HR department have overall responsibility for ensuring that agency workers receive the correct access to collective staff facilities, information on vacancies and other entitlements under these guidelines.

**However, it is the responsibility of all managers to ensure that these guidelines are implemented.**