



Department
for Education

Agency Workers Regulations 2010: supply teachers

**Departmental advice for maintained
schools, academies, free schools and
independent schools**

March 2014

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Summary

This is departmental advice from the Department for Education on the Agency Workers Regulations 2010 which came into force on 1 October 2011.

About this departmental advice

This advice is non-statutory, and has been produced to address issues relating to agency supply teachers and the application of the [Agency Workers Regulations 2010](#). The advice only addresses issues related to temporary agency workers who are supply teachers. It's therefore important that you read it in conjunction with the [main guidance for recruiters on the Regulations](#) provided by the Department for Business Innovation and Skills (BIS) to understand all the implications of the Regulations.

The Agency Workers Regulations implement the requirements of EU Directive 2008/104/EC. The purpose of the Directive is to ensure the protection of temporary agency workers by applying the principles of equal treatment so that after a qualifying period, they enjoy the same terms and conditions as workers who have been recruited directly by the hirer which is either a school or local authority for supply teachers.

Expiry or review date

This advice will be kept under review and updated when necessary

Who is this advice for?

This advice is for local authorities (LAs) and school leaders, school staff and governing bodies in all maintained schools, academies, free schools and independent schools.

Employing agency supply teachers

If a supply teacher is employed by a supply teacher agency, the [School Teachers' Pay and Conditions Document](#) (STPCD) does not apply and an agency can set the rates of pay and conditions of employment. Under the Agency Workers Regulations, after 12 weeks in the same role with the same school or local authority (LA), an agency supply teacher is entitled to be paid under the qualified teacher pay scales in the STPCD and to the same conditions of employment as teachers employed by the school/LA. Supply teacher agencies are regulated by the Department for Business Innovation and Skills' Employment Agency Standards Inspectorate.

The hirer

According to the Agency Workers Regulations, the “hirer” is a “person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person”.

A “hirer” will have its own legal identity and is responsible for supervising and directing the agency worker while they undertake the assignment. The question of who is the hirer is a matter of fact to be determined in the light of the circumstances of each case.

Maintained schools

In foundation schools, voluntary aided schools and foundation special schools, the “hirer” is the school’s governing body, being the legal entity to whom the worker is supplied and who is responsible for the supervision and direction of that worker.

In community schools, voluntary controlled schools, community special schools and maintained nursery schools, the “hirer” is either the local authority or the school’s governing body. It is a matter of fact to be determined in each case and depends on to whom the worker is supplied and who supervises and directs that person’s work.

An agency supply teacher can move between schools where the same local authority is the hirer without stopping the clock on the qualifying period unless it is a substantively different role. If an agency supply teacher moves to a school where a different local authority or a different governing body is the hirer, the qualifying clock resets to zero.

Academies and free schools

For academies, including free schools, the “hirer” is the proprietor of the school (often known as the “academy trust” - the legal entity that has entered into a funding agreement with the Secretary of State in relation to the running of the academy), being the legal entity to whom the worker is supplied and who is responsible for the supervision and direction of that worker.

An agency supply teacher can move between academies where the same academy trust is the hirer without stopping the clock on the qualifying period, unless it is to a substantively different role. If an agency supply teacher moves from an academy to a maintained school or into employment with a different academy trust, the qualifying clock resets to zero.

Independent schools

In independent schools, the “hirer” is the proprietor of the school.

Generally speaking, if agency teachers move from one independent school to another (which has a different proprietor), the hirer would change.

In some cases, a proprietor may have more than one school, so the qualifying period would not be broken if an agency teacher changes schools under the same proprietor unless it is a substantively different role.

The role of the hirer

If you hire temporary agency workers through a temporary work agency, you should provide your agency with up to date information on your terms and conditions so that they can ensure an agency worker receives correct and equal treatment as if they had been recruited directly, after 12 weeks in the same job. Hirers are also responsible for ensuring all agency workers can access their facilities and can view job vacancies from the first day of their assignment.

Exemptions from the Agency Workers Regulations

The Agency Workers Regulations allow an exemption from equal treatment, as regards pay, where an agency can offer an agency worker a permanent contract of employment. In order for this exemption to apply the contract must provide that the agency continues to pay the worker between assignments when there is no work. This means, however, that the worker will not, after 12 weeks in the same job, be entitled to the same pay conditions (such as holiday pay) that would ordinarily be included if recruited directly by the hirer. There are various conditions to satisfy for this exemption to apply - the agency worker must agree to sign one of these contracts and these contracts must set out that

the agency worker does not have any entitlement to the comparable pay if recruited directly by the hirer. However, an agency worker that signs one of these contracts does still get the day 1 rights of access to facilities and vacancies. After 12 weeks they will also be entitled to equal treatment in relation to the duration of working time, night work, rest periods and rest breaks and annual leave (the right to time off).

The definition of agency worker excludes individuals if there is a contract under which the hirer is a client or customer of a profession or business undertaking carried on by the individual (regulation 3(2)). People in this category are outside the scope of the AWR. The Department's view is that the relationship between hirers and agency teachers is not a "business to business" relationship but that agency teachers are under the supervision and direction of the hiring school. Therefore the AWR apply to agency teachers. However, the Department can only advise on the interpretation of the regulations and it is for the Courts to make an authoritative decision on whether an agency teacher is excluded from the definition of an agency worker.

Teachers employed by an umbrella organisation

Where agency teachers are employed by an umbrella company, they are still within scope of the AWR requirements unless they have signed a permanent contract of employment with the agency as detailed in the previous paragraph.

School closures

The Agency Workers Regulations recognise that in some instances a workplace might close due to the temporary cessation in the hirer's requirements for any worker to be at the establishment.

This could be applied to a school closure (for example, summer holidays). If an agency supply teacher is working before and after such a closure and is, for example, 6 weeks into a qualifying period for equal treatment, the qualifying period would pause at the end of one term and start again at the beginning of the next so long as the agency worker returns to the same job with the same hirer.

Pay for agency supply teachers

Holiday pay

After the qualifying period, agency supply teachers will be entitled to the same terms and conditions, including working time and annual leave, as direct recruits. It should not be necessary to pay agency supply teachers for additional leave to which direct recruits are not entitled. For permanent teachers in schools maintained by an authority in England and Wales there is no specific provision in the School Teachers' Pay and Conditions Document (STPCD) for holidays or annual leave. Agency supply teachers should receive payment for statutory annual leave when they take the leave in accordance with the Working Time Regulations 1998.

Cover supervisors and teaching assistants

The relevant rate of pay is determined by the nature of the job, not the qualifications of the teacher.

For example, if a school asks a temporary work agency to provide a cover supervisor or a teaching assistant, and the person engaged to do the work is a qualified teacher they would be expected to carry out the role of a cover supervisor or a teaching assistant and should be paid as cover supervisor or teaching assistant. The role of a cover supervisor is to supervise a class in carrying out a pre-prepared exercise but it does not involve teaching a class. If, however, the person is asked to do specified work (teaching) as part of this role then after the qualifying period, they must be paid as outlined below.

Teaching pupils

If the school asks a temporary work agency to provide a teacher to carry out specified work in a school and the person engaged to do the work is a qualified teacher they should be paid as a qualified teacher. If the person engaged to do the specified work is an unqualified teacher they should be paid as an unqualified teacher. "Specified work" means planning, preparing and delivering lessons and courses to pupils and assessing and reporting on the development, progress and attainment of pupils.

The pay ranges for teachers in schools maintained by a local authority in either England or Wales are set out in the [2013 School Teachers' Pay and Conditions Document](#) (STPCD) (this does not cover teaching assistants or other people who are employed to carry out specified work under paragraph 10 of Schedule 2 to the Education (Specified Work and Registration) England Regulations 2003).

Academies, free schools and independent schools are free to set their own pay and conditions of employment. As such if a temporary workers' agency is asked to supply a

teacher to one of these schools it will need to request information from the school as to the relevant terms and conditions to be applied to the agency supply teacher after 12 weeks in the same role with the same hirer (refer to main guidance). These are of course subject to the usual requirements under employment law.

Obtaining confirmation of pay

The Department for Education does not employ teachers in England and Wales and does not hold information on individual's pay and, therefore, is unable to provide written confirmation of pay. It should be noted that in September 2013, the STPCD removed portability of salary and a new employer may not recognise a teacher's previous salary when moving to a new post at a new school.

Supply teachers should check their previous payslips from their last period of employment in a maintained school, these will provide the salary you received and possibly the pay scale point. If you did not keep your payslips you could write to your last employer who might be able to help.

Alternatively, if you are a member of the Teachers' Pension Scheme you could contact Capita Teachers' Pensions to see if they can provide your last salary details:

Teachers' Pensions, Mowden Hall, Staindrop Road, Darlington, DL3 9EE

Telephone: 0845 606 6166

Teachers' Pensions website: www.teacherspensions.co.uk



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