



## **Contingent Labour Hiring Policy**

### **1. Policy Statement**

The University of Edinburgh is committed to ensuring that it delivers excellent academic, student and professional support services at all times. The University will, if necessary, use temporary Agency Workers to help and Interim Contractors to fulfil demands and maintain the highest standards of internal and external service.

### **2. Scope & Definitions**

#### **2.1 Scope**

This policy applies to all individuals responsible for hiring and managing temporary Agency Workers (including agency staff) and Interim Contractors while they are on assignment with the University of Edinburgh.

#### **2.2 Groups Within Scope**

- Temporary Work Agency ('agency') - Supplier of individuals to work temporarily for and under supervision of University of Edinburgh management
- Hirer - University of Edinburgh / Hiring Manager
- Agency Worker - An individual supplied by the agency to work temporarily for and under supervision of the Hirer and has a contract of employment or services with the agency.
- Contractor – An individual supplied by the agency to provide services to the Hirer. The Interim Contractor is not under the supervision of the Hirer and has a contract for services with the agency.

#### **2.3 Groups Outwith Scope**

Individuals outside the scope of the regulations include individuals on secondment or loan and the introduction of workers to a University of Edinburgh contract by recruitment agencies for fixed term or permanent employment. This policy does not apply to academic hires or students hired through Unitemps.

### **3. Principles**

Agency Workers and Interim Contractors can be used to provide short-term additional resources from time to time to enable flexibility. However, prior to hiring an Agency Worker or Interim Contractor all internal options must be exhausted to ensure effective utilisation of existing staff and minimise cost and disruption. This includes considering internal resources (including individuals on the Talent Register), a permanent hire or a fixed term contract.

### **4. Responsibilities**

#### **4.1 Agency Workers**

The Agency is the employer of the Agency Worker and responsible for pay and benefits for their staff. They must ensure that their staff are treated fairly and in compliance with Agency Workers Regulations 2010, working in partnership with the Hirer.

In addition, they must ensure that all Agency Workers are eligible to work in the UK and can fulfil the hours of the role they are assigned within any visa restrictions. They are also responsible for any disclosure checks if applicable.

#### **4.2 Interim Contractors**

Interim Contractors are hired via the Agency on a contract for services. They are genuinely self-employed and are responsible for paying their own tax and national insurance contributions. Contractors are not under the control of the Hirer and they will be able to determine how and where the work is carried out. They will also be covered by their own limited company employers, public and professional services insurance.

#### **4.3 Head of School / Director of Professional Services Group**

Head of School / Director of Professional Services Group has overall responsibility for ensuring that Agency Workers are treated fairly and in compliance with Agency Workers Regulations 2010. However, it is the responsibility of all managers to ensure that this policy is implemented.

#### 4.4 The Talent & Development Team

The Talent & Development team is responsible for creation, monitoring and review of this policy and procedure to ensure compliance to legislation. The Talent & Development team will also produce and analyse management information on the use of Agency Workers / Interim Contractors and disclose monthly information on use of agency temps to the recognised Unions where we are required to collectively consult on redundancy, TUPE transfers and collective bargaining.

#### 4.5 HR Partners

Local HR teams are responsible for monitoring the use of Agency Workers and Interim Contractors within their College / Professional Services Group area and will liaise with the School / Professional Services Group manager regarding the business need for the Agency Worker / Interim Contractor.

### 5. Determining Status

As part of the requisition process, it is important to determine if the scope of the assignment will fall under the control of the Hirer. Legislative changes came into effect on 6<sup>th</sup> April 2017 for off-payroll working in the public sector (also known as IR35 or intermediaries legislation). Higher Education Institutions are included in the definition of Public Sector.

Where the rules apply, people who work in the public sector through an intermediary, typically a Personal Service Company (PSC), will pay employment taxes in a similar way to employees. Temporary and interim workers may be affected by the [IR35 legislation](#) if they work for a client through an intermediary. The intermediaries can be their own limited company, a service or PSC or a partnership.

Specific rules apply where the worker's intermediary contracts with an agency to supply their services to a public sector client.

Prior to raising an official order with an agreed preferred framework supplier(s), hiring managers must define the scope of the assignment. Finance will then assess how the IR35 legislation will apply to the proposed assignment before each framework supplier is notified of the determination. This Status Determination will in turn influence if the Agency can hire a Worker or a Contractor to undertake the assignment.

## **6. Hiring Agency Workers**

Where it is necessary to hire an Agency Worker, this should be done directly through one of the University's preferred suppliers in discussion with local College / Professional Services Group HR teams. A list of agencies and further guidance on engagement procedures can be found on the [HR Webpages](#). Under no circumstances must the Hirer engage in contractual terms with an Agency, or accept any candidate submissions from an Agency, outside the framework.

If a manager requires an Agency Worker to take on a new assignment within the University or a manager is re-engaging an Agency Worker who has been used before, the manager must go through the normal ordering process for the University's contracted agencies or via local College / Professional Services Group HR teams.

The University considers that it is not appropriate to engage Agency Workers for long periods as this is not normally the most cost-effective option. The University policy is not to engage Agency Workers for longer than 12 weeks. However, in some circumstances and with agreement from local College / Professional Services Group HR teams, assignments may be extended beyond this period or Agency Workers with more than 12 weeks accumulated service may be hired if it makes commercial sense to do so.

Hiring managers must ensure that they do not create a pattern of assignments that can be viewed as designed to deliberately deprive an Agency Worker of their entitlements. If this is found to be the case then the University will be subject to financial penalties.

## **7. Hiring Interim Contractors**

If a Status Determination concludes that the scope of the role falls outside the control of the Hirer, the agency may provide an Interim Contractor to undertake the assignment. Using an Interim Contractor is similar to using a third-party consultant to carry out the work scope. When an Interim Contractor is hired it is important that they do not fall under the control of the Hirer and it may be necessary to take a different approach to assigning work and managing results. HR will be able to assist line managers with this distinction. It is also important to note

that Interim Contractors are not subject to the same employment rights as Agency Workers (see Appendix 1).

## **8. Assignment Review**

A review must be timetabled before the end of each assignment period. This is important to maintain compliance, review cost and ensure Agency Workers rights are met. The hiring manager must include HR, finance and procurement in any discussions to extend an assignment beyond the original period.

## **9. References, Information, Advice and Resources**

- [Agency Workers Regulations 2010](#) (SI 2010/93)
- [Temporary Agency Work Directive](#) (2008/104/EC)
- [Working Time Regulations 1998](#) (SI 1998/1833)
- [Guidance – Agency Workers and Interim Contractors](#)
- [IR35 and Employment Status Guidance](#)
- For further advice and information please contact your local HR team.

## Appendix 1

### **Agency Workers Regulations 2010**

The Agency Workers Regulations 2010 came into force on the 1 October 2011. They aim to protect Agency Workers by giving them the right to the same basic working and employment conditions as if they had been directly employed by the Hirer (subject to certain eligibility conditions). There are two sets of entitlement, some after day one and others which the Agency Worker is eligible for after the 12 Week Qualifying Period\*.

### **Day One Rights**

From the first day Agency Workers are entitled to be treated no less favourably than a comparable worker or employee in relation to access to collective facilities and amenities as well as information on job vacancies. The agency will provide details to Agency Workers of the organisation's facilities prior to the first day of their assignment. Agency Workers will have access to collective facilities such as:

- Canteen or other similar facilities
- Workplace crèche
- Transport services
- Toilet/shower facilities
- Staff common room
- Mother and baby room
- Prayer room
- Car parking

This does not mean that Agency Workers will be given 'enhanced' access rights. For example, where membership to a crèche involves joining a waiting list, the Agency Workers would also be able to join the list and would not be given an automatic right to a crèche place.

For Agency Workers who require a University of Edinburgh Access Card, this can be organised by managers using the [Visitor Registration System](#) (VRS).

All Agency Workers have the right to be provided with information about any relevant job vacancies that would be available to comparable employees. They should know where and how to access this information. This right does not apply where posts are ring fenced for redeployment purposes or internal moves which are a matter of restructuring and redeploying existing employees in order to prevent a redundancy situation. The Hirer (i.e. the University) is responsible for providing equal treatment for day one entitlements and for any breach of this obligation. Relevant information will be made available to the temporary worker by the agency before starting work.

A manager should not view having an Agency Worker as a testing ground for potential staff employment. However, if the Agency Worker applies for and accepts a fixed term or open-ended contract, for a similar position within the same department a 'temp to perm' fee will be applicable. For Scottish Government Framework suppliers, this is when the worker is offered an open-ended job less than 8 weeks after the end of their initial assignment, or less than 14 weeks after the Agency Worker started at the University. For other 'temp to perm' instances, please contact [TalentandDevelopment@ed.ac.uk](mailto:TalentandDevelopment@ed.ac.uk) for information on any applicable fee.

## **Additional Rights From 12 Weeks**

### *Equal treatment*

Following a qualifying period of 12 weeks the Agency Worker acquires further entitlements to terms that are at least as good as equivalent employees such as:

- Pay related to work undertaken on assignment
- Overtime/Unsocial premiums
- Annual increments (where they acquire the required service)
- Duration of working time
- Night work
- Rest periods
- Annual leave
- Paid time off for antenatal appointments and other adjustments for pregnancy - Annual Review (Appraisal)

### *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 additional payments for out of hours and on call.

The right to equal pay does not include occupational sick pay, occupational pensions, maternity, paternity or adoption pay (the Regulations do not affect an Agency Worker's statutory entitlements), redundancy pay (statutory or contractual), benefits requiring an eligibility period, occasional discretionary bonuses, or the right to participate in salary-sacrifice schemes such as childcare vouchers.

### *Working hours*

Agency Workers will work the same basic working hours as an employee or worker 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. Any worker who has not signed the opt-out or who has revoked their 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 or worker who is recruited directly to the same job would be entitled.

### *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 prorated to the length of the assignment and can be taken in the normal way or will be paid as part of the worker's daily rate in lieu of annual leave accrued above statutory minimum (5.6 weeks). The agency will be responsible for calculating and invoicing the hiring manager for the correct payment.



### *Other Leave*

Agency Workers are able to get Statutory Sick Pay (SSP), Maternity or Paternity Pay if they satisfy the criteria and if they work at the same agency for over three months. This is the responsibility of the agency not the University.

### *Maternity*

The Agency Worker is entitled to reasonable paid time off during working hours for antenatal care, provided she submits evidence of her appointments, although evidence is not needed for the first appointment. Agency Workers are encouraged to arrange medical appointments at suitable times to minimise disruption to their work. Agency Workers are encouraged to give early notification of their pregnancy to enable the University to plan ahead, and carry out necessary risk assessments.

Heads of School or Directors of Professional Services Group, or their nominated deputies, 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 arrange for a pregnant worker risk assessment to be undertaken, and also for any reasonable adjustments to be made as appropriate. If it is not possible to make reasonable adjustments to the role to remove the identified risk, the University will inform the agency and the agency will seek alternative work for the Agency Worker. This is particularly important where there are known personal or work area risks.

The Occupational Health Unit (OHU) can provide advice and guidance on health and safety implications relating to the Agency Worker and their 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.

### *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 and to take these through to employment tribunal.

Hiring managers must be aware that Agency Workers are protected from any form of detriment for asserting their rights under the Agency Workers Regulations 2010. A detriment could include terminating an assignment.

### *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 manager for information about such access

Within 28 days of receiving such a request, the manager must 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.

Anyone who receives such a request must contact their local College / Professional Services Group HR team for advice.

### *Employment and Working Conditions*

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) must, 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 organisation'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 their manager for a written statement setting out the relevant information relating to the basic working and employment conditions of the University employees and workers.

In these circumstances, the local College / Professional Services Group HR team, upon request from the hiring manager, 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 organisation's workers.

\*The 12 Week Qualifying Period will not necessarily be immediately transparent. It is, for example, possible for one Agency Worker to build up weeks towards the qualifying period through a series of different assignments through the same or different agencies provided that they are working for the same Hirer in "the same or similar role".

In the University, this could mean that unrelated but similar assignments in different Schools / Professional Services Groups contribute to a qualifying period. In addition, any week during the whole or part of which the Agency Worker works counts as a calendar week for these purposes. 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.

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;
- of up to 28 calendar weeks to allow them to perform jury service;
- caused by a regular and planned closure of the University e.g. Christmas and New Year.

Once an Agency Worker has completed 12 weeks with the University 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.