

Learning Accord Multi Academy Trust

Agency Workers Policy



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Contents	Page
1. Introduction	3
2. Purpose and scope	3
3. The Agency Worker Regulations	3
4. Who is covered by the regulations?	3
5. Who is NOT covered by the regulations?	4
6. Qualifying for equal treatment – Day 1 rights	4
7. After 12 weeks in the same job	5
8. Calculating the qualifying period	5
9. New hirer	6
10. Substantially different role.....	6
11. Basic working and employment conditions and a comparator	6
12. Supply teachers	7
13. Basic terms and conditions – inclusions and exclusions.....	7
14. Working time and holiday entitlements	8
15. Calculating holiday pay entitlements.....	8
16. Responsibilities.....	9
17. Liabilities	9
18. Relevant legislation and additional information	10
Appendix 1: Process for agency worker to obtain information relating to equal treatment...	11
Appendix 2: Record of Day 1 information given to the agency worker.....	12

1. Introduction

- 1.1 The academy is committed to ensuring that it delivers excellent educational provision to its pupils and to the community it serves. The academy may, where necessary, use agency workers on a temporary basis to meet the needs of those pupils, ensuring that the commitment to safeguarding and promoting the welfare of children is maintained.
- 1.2 This policy is applicable to all agency staff while they are on assignment within, or on behalf of, the academy as well as being relevant to all individuals within the academy who may be responsible for engaging agency workers on a temporary basis.

2. Purpose and scope

- 2.1 The purpose of the policy is to ensure that the engagement of agency workers meets the genuine business needs of the academy and is carried out in full compliance with relevant legislation.
- 2.2 From time to time the academy may use agency workers to provide additional resources and allow for flexibility – this will be on a short-term basis only.
- 2.3 The academy may hire workers from carefully selected agencies to assist in the following circumstances:
 - to cover a permanent post where the recruitment campaign has failed to attract a suitable candidate
 - to fill a vacancy/new position/secondment
 - to cover for maternity/paternity/adoption/parental leave
 - to respond to a planned or unplanned peak period of work
 - in relation to project work requiring specialist skills
 - as cover for short-term/long-term sickness absence
 - as short-term cover for unpaid leave of absence
 - as short-term cover for any other unplanned absence.
- 2.4 The above list is not exhaustive. It is, however, recognised by the academy that it is illegal for agency workers to be used to cover the absence of employees taking industrial action.

3. The Agency Worker Regulations

- 3.1 The Agency Worker Regulations 2010 came into force on 1 October 2011. These regulations give agency workers entitlements to the same (or no less favourable) treatment as comparable employees in respect of basic employment and working conditions.
- 3.2 Entitlements to specific employment and working conditions are dependent on qualifying periods of engagement which are explained later in this policy.

4. Who is covered by the regulations?

- 4.1 The Agency Workers Regulations are applicable to:
 - individuals who work as agency workers

- individuals or companies involved in the supply of agency workers, either directly or indirectly to work temporarily for and under the direction and supervision of a hirer (in other words umbrella companies or master vendors/neutral vendors)
- hirers (in other words the end user, such as a school or academy)

5. Who is NOT covered by the regulations?

5.1 The Agency Workers Regulations **do not apply to:**

- those genuinely in business on their own account (self-employed business entities) where the hirer has the status of a 'profession or business undertaking' such as a lawyer or builder
- in-house staffing banks for short-term assignments (for instance a supply teacher employed directly by the school or academy)
- individuals on secondment from one organisation to another
- managed service contract staff (such as cleaning staff working for a contract company)

6. Qualifying for equal treatment – Day 1 rights

6.1 As the hirer of agency workers the employer (school or academy) must ensure the agency worker has access to both of the following from the first day of the assignment:

6.1.1 Job vacancy information

The hirer must inform the agency worker as to where and how to access this information. This right will not apply where posts are ringfenced for restructure and intended for redeployment purposes as a means of avoiding a redundancy situation.

6.1.2 Collective facilities

These are facilities provided by the hirer that are available to a comparable individual such as a permanent worker or employee. Examples include:

- canteen facilities
- toilets/shower facilities
- staff room
- crèche facilities
- food and drinks machines
- car parking
- prayer room.

6.2 Agency workers are not entitled to 'enhanced rights of access' – for example, if membership of a crèche necessitates joining a waiting list, the agency worker can join the list but would not be given an automatic right to have a crèche place without waiting.

6.3 Agency workers are not entitled to off-site facilities provided by the hirer such as subsidised access to an off-site gym if these are provided as part of a benefit package.

7. After 12 weeks in the same job

- 7.1 Upon completion of a qualifying period of 12 calendar weeks with the same hirer, in the same role (regardless of whether they have been supplied by one or more agencies over that period), the agency worker will be entitled to the same basic terms and conditions as a permanent worker or employee.
- 7.2 The agency worker is then entitled to the same treatment in respect of:
- key elements of pay, including bonus payments, shift allowances, overtime, payments for hazardous duties and automatic increments
 - working hours (including rest periods)
 - night work
 - annual leave.

8. Calculating the qualifying period

- 8.1 The qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks. A calendar week will comprise any period of 7 days starting with the first day of the assignment. Calendar weeks will be accrued regardless of how many hours the agency worker works on a weekly basis.
- 8.2 For the purposes of calculating the qualifying period, continuity will normally be broken by a break of **6 weeks** between assignments in the same job, or where the agency worker takes up a new role with the hirer where the whole or main part of the duties in the new role are substantially different to those in the old role.
- 8.3 Breaks between assignments due to certain specified reasons (as specified below) will not constitute a break in the qualifying period but will instead 'pause' the qualifying period (in other words the qualifying period does not continue but picks up where it left off when the agency work recommences). The specified reasons for 'pauses' are:
- breaks between assignments of not more than 6 weeks
 - sickness absence (for up to 28 weeks)
 - jury service (for up to 28 weeks)
 - industrial action
 - annual leave
 - planned shutdown of the workplace (such as school closure during holidays).
- 8.4 The agency worker's qualifying period continues to run (in other words 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.
- 8.5 An agency worker's qualifying period similarly continues to run during any breaks that occur because the worker is taking maternity leave, adoption leave or paternity leave from the agency.
- 8.6 Agency workers who have completed the qualifying period of 12 weeks and who are pregnant are entitled to reasonable paid time off to attend antenatal appointments.

- 8.7 An agency worker who is pregnant or who has given birth in the last 6 months or who is breastfeeding should inform (in writing) both the agency and the hirer as soon as possible to allow a risk assessment to be carried out in relation to the duties to be performed.
- 8.8 If any potential risks to health and safety are identified the hirer should make reasonable adjustments to the role to remove those risks. If it is not possible to remove the risks identified the hirer must inform the agency, who should then seek alternative work for the agency worker.

9. New hirer

- 9.1 A new hirer must be an organisation with its own legal entity. The qualifying period will restart when an agency worker moves between different legal entities. Where a hirer has multiple sites, merely moving the agency worker from one site to another will not usually break continuity, unless the agency worker undertakes a substantially different role.

10. Substantially different role

- 10.1 If there is a substantive change to a job role within the same hirer, the qualifying period is reset. The work duties which make up the whole or main part of the role must be substantially different.
- 10.2 A combination of the following characteristics can help to establish if the duties are substantially different:
- are different skills and competencies used?
 - is different equipment involved?
 - is the pay rate different?
 - is the work in a different location?
 - is the line manager different?
 - are the working hours different?
 - does the role require extra training and/or qualifications not necessary for the previous role?

11. Basic working and employment conditions and a comparator

- 11.1 Equal treatment can be established by giving the same basic working and employment conditions as if the agency worker had been appointed as a permanent employee or worker. The basic working and employment conditions are included in such documents as the standard contract, pay scales, collective agreements and employee handbooks.
- 11.2 It is not necessary to find an employee comparator to establish equal treatment: however, this would generally be interpreted as someone who is:
- engaged in broadly similar work (although specific skills and qualifications can be taken into consideration to justify a higher level of pay for the comparator)
 - working at the same workplace, or another of the hirer's workplaces
 - working under the direction and supervision of the hirer.

12. Supply teachers

- 12.1 If a supply teacher is required to carry out 'specified work' and they are a qualified teacher, they should be paid as a qualified teacher. After 12 weeks in the same role, with the same hirer, a qualified teacher undertaking teaching duties will be paid on the appropriate pay scale in accordance with the academy's pay policy.
- 12.2 The use of supply teachers between different schools will only count towards the 12 week qualifying period where the 'hirer' is the same legal entity (in the case of community schools, voluntary controlled schools, community special schools and maintained nursery schools this may be either the local authority or the school's governing body, depending on to whom the worker is supplied and who supervises and directs that person's work).
- 12.3 Holiday pay for supply teachers: after the qualifying period, agency supply teachers will be entitled to the same terms and conditions as permanent employees or workers, including working time and annual leave. Agency supply teachers who have completed the qualifying period should therefore receive 1/1265th of their relevant annual hourly rate (which includes holiday pay).

13. Basic terms and conditions – inclusions and exclusions

- 13.1 Having completed the qualifying period of 12 weeks the agency worker is entitled to the same basic terms and conditions as a permanent employee or worker. The following paragraphs clarify what is included and what is excluded with regards to pay.
- 13.2 The following elements are **Included**:
- basic pay based on the annual salary an agency worker would have received if recruited directly
 - overtime payments, subject to any requirements (such as meeting a specified number of qualifying hours)
 - shift/unsocial hours allowances
 - risk payments for hazardous duties
 - payment for annual leave (any entitlement above the statutory minimum of 5.6 weeks can be added to the hourly or daily rate)
 - vouchers which have monetary value (and which are not 'salary sacrifice' schemes)
 - additional discretionary non-contractual bonuses that are linked to personal performance (such as one-off payments)
 - annual pay increments.
- 13.3 The following elements are **excluded**:
- occupational sick pay (agency workers are only entitled to statutory sick pay)
 - occupational pension scheme*
- *If the agency is responsible for paying the worker it will also be responsible for automatic enrolment with a pension provider. However, costs will be passed onto the hirer, who should check any agreements they may have with such agencies.*
- occupational maternity, paternity or adoption pay (agency workers are only entitled to the statutory payments)
 - redundancy pay (statutory and contractual)

- notice pay (statutory and contractual, linked to loss of employment)
- payment for time off for trade union duties
- guarantee payments, if laid off
- advances in pay or loans (for example season tickets for travel purposes)
- expenses (for instance reimbursement of accommodation and travel costs)
- overtime or similar payments where the agency worker has not fulfilled qualifying conditions (such as working over and above standard hours)
- benefits in kind given as an incentive or reward for long service
- any payments that require an eligibility period of employment/service to qualify, if not met by the agency worker or if the agency worker is no longer on assignment when the payment is due
- bonuses which are not directly linked to the contribution of the individual (such as a flat rate bonus to all employees/workers).

14. Working time and holiday entitlements

14.1 After the qualifying period of 12 weeks the agency worker will be entitled to the same terms and conditions as a permanent employee or worker in relation to:

- the duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- pay for overtime worked.

14.2 Hirers may decide to offer some (or all) of the above entitlements to agency workers from the first day of employment. This is entirely at their discretion.

14.3 Duration of working time will depend on the role undertaken by the agency worker. The agency worker should not be expected to work excessive hours nor to work any times (such as anti-social hours) that a direct employee would not be expected to work.

15. Calculating holiday pay entitlements

15.1 All workers have a statutory entitlement to 5.6 weeks per year **paid** annual leave, based on their working pattern (for example someone working 5 days a week is entitled to 5.6 x 5 = 28 days) which can include bank and public holidays. If a hirer provides more generous contractual leave entitlement, the agency worker should receive the same enhanced entitlement once the qualifying period of 12 weeks has been reached.

15.2 Hirers can deal with any **additional** entitlement over and above statutory entitlement as part of the hourly/daily rate.

15.3 Payment of the statutory entitlement to annual leave should be made when the leave is taken to ensure that individuals do take the leave to which they are entitled.

16. Responsibilities

- 16.1 The supplying agency must record details (as per the Conduct Regulations) about the vacancy before they supply an agency worker to the hirer. It would be good practice for the agency to ask for basic employment terms and conditions early if it is clear from the outset, or becomes clear early in the engagement, that the duration of the assignment is likely to exceed the qualifying period of 12 weeks. The agency and the hirer should liaise with each other to ensure that this information is obtained.
- 16.2 Where an assignment is scheduled to last less than 12 weeks but is extended the agency should obtain the information on basic employment terms and conditions from the hirer as soon as possible. The agency worker can request the information on basic terms and conditions in writing any time after the qualifying period of 12 weeks.
- 16.3 The agency cannot supply an agency worker to a hirer without providing certain information as per the Conduct Regulations. This information consists of:
- the identity of the hirer, the nature of their business and their location
 - the start date and duration of the assignment
 - the job role, responsibilities and hours
 - any experience, training, qualifications or other authorisation which the hirer deems necessary, or that is required to work in that position either by law or by any relevant professional body
 - any risks to health and safety known to the hirer (and details of action taken to prevent or control such risk)
 - any expenses payable by, or to, the agency worker.
- 16.4 As the hirer it will be the academy's responsibility to provide the following information if (or when) an agency worker completes the qualifying period of 12 weeks, although it is advisable to provide the information as early as possible:
- basic pay (based on the annual salary the agency worker would have received as a permanent employee or worker)
 - whether (and if so when) overtime payments, shift work/unsocial hours allowances or risk payments for hazardous duties are payable
 - types of bonus schemes, details of how individual performance is appraised and information on annual pay increments
 - whether the hirer offers vouchers that have monetary value
 - annual leave entitlement.

17. Liabilities

- 17.1 It is in the interests of all parties to exchange information in a timely manner.
- 17.2 For failure to provide Day 1 entitlements the liability rests with the **hirer**.
- 17.3 For failure to provide basic working and employment conditions the liability can rest with **the agency and/or the hirer**.

- 17.4 Even if the agency will be initially responsible for the breach of the equal treatment principle, it will have a defence if it can show that it took 'reasonable steps' to obtain information from the hirer.
- 17.5 The hirer will be liable for any breach by the extent that it is responsible for the infringement. Therefore, if a hirer fails to provide information to the agency worker about basic working and employment conditions and the agency worker is not receiving appropriate treatment, the liability could be the sole responsibility of the hirer.
- 17.6 In a tribunal claim, where the responsibility or breach of regulations is not clear, the agency worker may claim against both the agency and the hirer.

18. Relevant legislation and additional information

- 18.1 The following regulations/directives/guidance may be of relevance:
- Agency Workers Regulations 2010 (SI 2010/93)
 - Agency Workers Regulations Guidance (PDF Format) on BIS website
 - Temporary Agency Worker Directive (2008/104/EC)
 - Working Time Regulations 1998 (SI1998/1833).

Appendix 1: Process for agency worker to obtain information relating to equal treatment

Agency workers are entitled to information relating to their equal treatment entitlements, if they believe their entitlements have been infringed.

If the agency worker is requesting information about Day 1 entitlements:

The hirer can provide this information either directly to the agency worker or to the agency, which in turn passes it to the agency worker. The information about Day 1 entitlements can be requested any time after the start of the assignment.

The agency worker should make a written request to the hirer for the information before making any claim. The hirer has 28 days to respond in writing from the date the request was received by them.

The hirer should provide a response containing the following information:

- a written statement with all the relevant information relating to the rights of a comparable worker or employee
- reasons for any difference in treatment of the agency worker.

If the agency worker is requesting information about Week 12 entitlements:

The agency is required to provide this information to the agency worker. The agency worker can only request this information after the qualifying period of 12 weeks has been completed.

The agency worker should make a written request to the agency for the information before making any claim. The hirer has 28 days to respond in writing from the date the request was received by them. In their response they must set out:

- all relevant information relating to basic working and employment conditions;
- any relevant information or factors considered when determining the basic working and employment conditions; and (where equal treatment is based on a comparable employee)
- relevant information in relation to the terms and conditions applicable to a comparator, and an explanation of any difference in treatment.

If an agency worker has not received a written statement from the agency within 30 days of making their request, the agency worker can write to the **hirer** requesting the same information.

If the agency worker does not receive a response from either party, or is dissatisfied with the response they have received, they can submit a claim to an employment tribunal in relation to their rights under the Agency Worker Regulations 2010.

A tribunal will not consider a complaint unless it is presented within 3 months of the actual breach.

Appendix 2: Record of Day 1 information given to the agency worker

Employers are required to give the following Day 1 information to the agency worker.

Employers should complete this form and give one copy to the agency worker while keeping a duplicate record for their file.

Name of agency worker	Start date of assignment

1. Information on job vacancies

The employer advertises information using the following methods:

Job vacancy information (such as bulletin, internal notice board, website)	Date explained to agency worker

2. Access to collective facilities

The employer has the following collective facilities to which you will have access:

Collective facility (such as canteen, staff room, parking)	Date explained to agency worker

Line manager to sign to confirm information has been provided to the agency worker:

Signed: _____ Date: _____

Agency worker to sign to confirm receipt of information:

Signed: _____ Date: _____