

AGENCY & OTHER OFF-PAYROLL WORKING GUIDANCE

This document applies to **all** Schools.

Updated February 2021

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INTRODUCTION

The purpose of this guidance is to give schools information about engaging agency and other workers who are not paid on the school's payroll (off-payroll workers i.e. Contractor/Consultant/Interim).

KEY PRINCIPLES

The school should only use off-payroll workers to provide additional resources to allow for flexibility on a short-term basis for the following reasons:

- Cover for a permanent leaver (if not possible to appoint a member of staff through the proper recruitment process due to time restraints or lack of suitable candidates).
- To cover, or backfill, for a secondment.
- Cover for paternity/parental leave.
- To respond to planned/unplanned peak periods at work.
- Project Work - Project work requiring specialist skills.
- Cover for short/long term sickness.
- Cover for other unplanned absences.

Agency and other off-payroll workers should not be used for maternity cover as it is known a temporary vacancy will arise and a fair and open recruitment process to recruit to the temporary position should be undertaken.

If an additional resource is likely for a longer term then the school's recruitment process should be followed.

It is illegal for off payroll workers to be used to cover employees on strike.

Where a permanent vacancy has been advertised externally and a competitive recruitment process undertaken, no 'agency worker to permanent fees' are payable.

RESPONSIBILITIES

HEAD TEACHERS

Apply the provisions of this policy.

Ensure compliance with the procedure for the use of off-payroll workers.

Contractor/Consultant/Interim

Complete the HMRC CEST (Check Employment Status for Tax) tool for all off-payroll workers and forward a copy of this to HR Admin for retention.

Satisfy themselves about the identity of the off-payroll worker by checking photographic proof of identity. Further checks can include Enhanced DBS certificates (if relevant), Right to work documents, qualifications and professional memberships.

Agency Workers

Ensure that agency workers in public facing roles meet the requirements of the **Fluency Duty** by having the ability to speak English to the necessary standard for the role they are undertaking.

In the case of an agency worker, organise an appropriate induction to ensure that entitlements are explained. See the '**Managers Induction Checklist**' and provide

the agency worker with a copy of the '[Agency Worker Entitlement](#)' leaflet on their first day working within the Council.

Review the assignment where an agency worker is engaged continuously for six months to cover a single post/set of duties.

For vacancies - work towards replacing agency workers with employees at the earliest opportunity.

Off Payroll Working Rules (IR35)

All interim/consultant/contractor workers **MUST** be assessed in terms of their IR35 status when they are appointed. It is the responsibility of the school to determine if someone is covered by IR35, it is not the individual's responsibility – and there can be serious consequences for the school if they fail to carry this assessment out. No person should be appointed without the IR35 process being carried out, via the HMRC CEST Tool. This determines whether or not they should be treated as an employee (and paid via payroll) or whether the individual should be treated as self-employed and payments made on receipt of an invoice. **Further information is available in the Off Payroll Working Process Section.**

HMRC regularly review organisation's payment records and may decide that an individual should have been contracted as an employee rather than a self - employed worker. Where this decision is made, the school may be subject to a penalty fee, and become responsible for any underpaid tax and national insurance contributions back dated over a six year period. **It is therefore important to get the employment status right as it affects the way Tax and National Insurance contributions are calculated and whether or not the school have to operate PAYE on the earnings and pay through Payroll.**

Off Payroll Working (IR35) Process

1. School identify an additional resource is required and determine whether this can be undertaken by an existing employee, agency worker or consultant/contractor/interim.

If an employee can undertake the additional work, then the employee would submit an additional hours claim which the school will submit for payment via their Payroll provider.

If an Agency Worker is identified, the school should contact an appropriate employment agency to engage a worker.

2. If the school determines a Consultant/Contractor/Interim should be used as an additional resource, the school should procure through the established procurement process. The Head Teacher/Hiring Manager needs to determine whether or not IR35 applies via the online HMRC Check Employment Status for Tax ([CEST](#)) Tool. This is for the purpose of determining whether the School is likely to be responsible for the Tax and National Insurance deductions of the worker, or the worker will be responsible for the deductions themselves.

This assessment will be carried out in **all** cases and a copy will need to be saved with the individuals name and sent to their HR provider regardless of whether the outcome indicates the assignment would be in or out of scope of IR35.

Outcomes of Assessment

- A. Off-payroll working rules (IR35) apply – the manager has a statutory duty to inform the worker that National Insurance and Tax will be deducted at source.
- B. Off-payroll working rules (IR35) do not apply – the manager has a statutory duty to inform the worker that Tax and National Insurance payments will not need to be deducted.
- C. Unable to make a determination (for whether the off-payroll working rules apply).

Where CEST is not able to make a determination, further guidance and information will be provided. The HMRC Employment Status and Intermediaries helpline is available by telephone: 0300 123 2326 or by e-mail at ir35@hmrc.gov.uk. Please ensure that you keep a record of your query and the response received.

- 3. Head Teacher/Hiring Manager sends the letter at Appendix A to the worker along with the appropriate Status Determination Statement (SDS) (Appendix C) to notify them of the IR35 assessment outcome.

Head Teacher/Hiring Manager would need to ensure that, following the required process, a suitable formal written contract is in place with the worker.

NB. If the individual disagrees with the determination of the CEST they will need to submit an appeal within 45 days of the completed date of the SDS to the Head Teacher who will recomplete the CEST and confirm final outcome to individual.

- 4. If the off-payroll working rules do apply, the School is responsible for the tax and NI contributions. The School Business Manager/Bursar completes an IR35 New Starter form, and sends this, the outcome of CEST, SDS and any supporting documentation and advice received to their HR Provider. If you have a different payroll provider you will need to liaise with them regarding how payment can be made.

If Serco provide your payroll you will need to complete the IR35 Worker New Starter Form, which can be found in Appendix B and send this, with the outcome of CEST, SDS and any supporting documentation and advice received to HRSchoolsTeam@lincolnshire.gov.uk. Tax and national insurance payments will be deducted and Accounts Payable will then make the necessary adjustments to payments against invoices.

- 5. The HR Provider sets up the worker under company supplier code and adds them to the register.
- 6. HR Provider uploads workers bank details to the payroll and the School Business Manager raises a Purchase Order.

7. Worker submits an invoice to the HR Provider who inputs the gross payment details and the payroll system calculates and deducts Income Tax and National Insurance contributions in the next available payroll processing period.
8. Accounts payable are advised of the net payment following the payroll system calculation and pays the worker.
9. When an off-payroll worker's contract ends the School Business Manager/Bursar must complete a Leavers Form when the final invoice has been received and payment has been made to the individual and send to their HR Provider who will process and issue the individual with a P45.

NB. If any part of an off-payroll worker's brief or working arrangements change including any extension whilst working with the School, the application of the 'IR35' rules to the engagement should be reassessed and a further IR35 assessment completed.

As previously outlined, HMRC can undertake reviews at any point in time to ascertain if organisations are adhering to the IR35 legislation it is therefore important that managers follow the above process.

Additionally, the use of such workers will be subject to regular monitoring to ensure compliance with the above process and legislative requirements.

AGENCY WORKER REGULATIONS 2010

From the first day of an assignment all agency workers will be given the same access to the organisation's collective facilities and amenities as a comparable worker who is recruited directly. Agency workers will have access, for example, to:

- Staff rooms and toilet and shower facilities
- Information about any relevant internal job vacancies within the organisation and to have the opportunity to apply for these vacancies.

After 12 weeks on assignment within the school, the agency worker is entitled to equal treatment i.e. the same basic employment and working conditions as an employee who has been directly recruited to the same job. This includes:

- Basic pay (including, where appropriate additional risk payments for hazardous duties /overtime pay /unsocial-hours allowance /shift allowance)
- Pro-rata annual leave
- Paid time off for antenatal appointments
- Working hours
- Rest periods

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),

- The right to participate in salary-sacrifice schemes such as childcare vouchers.

Head Teachers must ensure they are satisfied that all pre-employment checks necessary for the work to be undertaken have been completed satisfactorily by agencies.

All agency workers should be treated with dignity and without discrimination and there are certain statutory protection rights in place which include:

- The right not to be discriminated against on the grounds of race, sex, age, disability, sexual orientation, religion or belief.
- Disabled candidates who meet minimum criteria should be offered an interview where a manager chooses to go through an interview selection process.
- Rights under the Working Time Regulations e.g. maximum number of hours and the right to statutory paid holidays.
- Rights under the whistle-blowing provisions to protection from detriment on making a protected disclosure.

HEAD TEACHER'S INDUCTION CHECKLIST FOR AGENCY WORKERS

This form is to be used by Head Teachers for all agency workers and should be completed prior to the worker commencing duties and be retained by the school.

INDUCTION CHECKLIST – AGENCY WORKERS

The purpose of the following checklist is to ensure the worker has an introduction to their immediate working environment.

Workers Name

Work place familiarisation	Additional Guidance	Yes/No/Partial Completed
Welcome introductions to colleagues		
Tour of school		
Building security: <ul style="list-style-type: none"> • Car parking • Access cards, codes, ID protocols. • Cycle racks and security • Out of hours working 		
Personal belongings/insurance, mobile telephones	Explain to the worker they are responsible for security of personal belongings	
Health & Safety and Wellbeing (issues which may be encountered during first week explained)	Additional Guidance	Yes/No/Partial Completed
Safety, health and hygiene requirements specific to the role		
Emergency evacuation procedures/fire extinguishers/fire exits		
Discuss first aid and emergency policy and arrangements specific to the location		
Consideration of relevant workplace assessments e.g. DSE		
Conditions of employment	Additional Guidance	Yes/No/Partial Completed
Clarify job role		
Discuss hours of work		
Procedure for reporting sickness/absence notification after notification of the agency	Provide suitable contact details for worker to use to report sickness/absence.	
Code of Conduct	Refer to Code of Conduct	

Familiarisation with relevant school policies including safeguarding and whistleblowing.		
Technology/Systems	Additional Guidance	Yes/No/Partial Completed
Use of IT	Refer to Information Security Policy Refer to Social Media Policy	
Worker has received Agency Worker Leaflet	Refer to Agency Worker Information Leaflet	
Worker aware of e-recruitment process and that they can apply for internal vacancies	How to log in for internal posts refer to Jobs	
School specific information		Yes/No/Partial Completed
Any additional items to be covered (use this section to add any role/ department related information relevant to the worker:		

Workers signature:	Manager's signature:
Date:	Date:

The school should retain a copy of this form

Note: The manager and worker should sign once all sections are marked as complete.