



Name of Policy: **AGENCY WORKERS REGULATIONS GUIDANCE**

Issue Status: **Created by Essex County Council June 2013**
Edited by PJM on 08/03/16
Reviewed by T&F Group 20/04/17

To be reviewed by: **June 2020, unless changes suggested by the Trust's HR advisors**

Approval Signature: _____
Chair of the Board
Date:

Agency Workers Regulations – Guidance for Academies in the Trust

<u>Contents</u>	<u>Page</u>
1. Introduction	5
2. Parties who are ‘In Scope’	5
3. Parties who are ‘Out of Scope’	5
4. Qualifying for Equal Treatment.....	6
4.1 <i>Day 1 Rights</i>	6
4.1.1 <i>Job Vacancy Information</i>	6
4.1.2 <i>Collective facilities</i>	6
4.2 <i>12 Week Qualifying Period</i>	7
4.2.1 <i>After 12 Weeks in the Same Job</i>	7
4.2.2 <i>Calculating the 12 Week Qualifying Period</i>	7
4.2.3 <i>Accrual of 12 week qualifying period</i>	7
4.3 <i>Agency Workers working for Multiple Agencies and Hirers</i>	8
4.4 <i>The Qualifying Clock</i>	8
4.5 <i>Definition of ‘New’ Hirer</i>	9
4.6 <i>Substantively Different Role</i>	9
4.7 <i>12 Week Assignments and Anti-Avoidance Provisions</i>	10
4.8 <i>‘Basic Working and Employment Conditions’ and a “Comparator”</i>	10
4.8.1 <i>How Equal Treatment is established</i>	10
4.8.2 <i>Comparator</i>	10
5. Supply Teachers	11
5.1 <i>Determination of the Hirer for Supply Teachers</i>	11
5.1.1 <i>Maintained Schools</i>	11
5.1.2 <i>Academies</i>	11
5.1.3 <i>Independent Schools</i>	11
6. Pay.....	12
6.1 <i>Annual Pay Award</i>	13
6.2 <i>Performance Appraisals</i>	13
7. Working Time and Holiday Entitlements	14
7.1 <i>Working Time</i>	14
7.2 <i>Calculating Holiday Pay Entitlements</i>	14
7.3 <i>Payment in Lieu of Annual Leave</i>	14
8. Pregnant Workers and New Mothers	14
8.1 <i>Responsibility of the AW</i>	14
8.2. <i>Responsibility of the TWA</i>	14
8.3 <i>Responsibility of the Hirer</i>	15
8.4 <i>‘Suitable’ Alternative Work</i>	15
8.5 <i>Ante-natal Appointments</i>	15
9. Information Requests, Liability and Remedies	15

9.1	<i>Information Requests</i>	15
9.1.1	<i>TWA Responsibilities</i>	15
9.1.2	<i>Compliance information required by a TWA from a hirer</i>	15
9.1.3	<i>Working through Multiple TWA's</i>	16
9.1.4	<i>Process for an AW to obtain information relating to Equal Treatment</i>	16
9.1.5	<i>If an AW is unsatisfied with the response or does not receive a response:</i>	17
9.2	<i>Liability and Remedies</i>	17
Appendix A – Record of Day 1 information given to the Agency Worker		18
Appendix B – Responsibilities of Temporary Worker Agency to provide information to agency worker		19

Abbreviations & Glossary

Abbreviations

AW	-	Agency Worker
AWR	-	Agency Workers Regulations
TWA	-	Temporary Worker Agency

Glossary

Agency Worker (AW)

Is someone who has a contract with a Temporary Worker Agency but works temporarily for and under the direction and supervision of a hirer and the individual in questions is not in a business on their own account (where they have a business to business relationship with the hirer who is a client or customer).

Assignment

Is the term used for a period of work that an AW provides to a hirer.

Hirer

Is a school or academy, company, partnership, sole trade or a public body which is engaged in economic activity and which books agency workers via a TWA. A hirer will have its own legal identity.

Intermediary Companies i.e. Umbrella Companies or Master or Neutral Vendors

Sometimes the supply of agency workers is managed on behalf of a hirer by a master vendor or neutral vendor that may or may not engage and supply workers directly or indirectly. These arrangements exist where a hirer appoints one agency (the master vendor) to manage its recruitment process, using other recruitment agencies as necessary (second tier suppliers) or appoints a management company (neutral vendor) which normally does not supply any workers directly but manages the overall recruitment process and supplies temporary agency workers through others.

Managed Service Contracts Staff

Where a company provides a specific service to a customer i.e. catering or cleaning, which is based on a contract for services that will set out certain service level agreements. The Managed Service Contractor (MSC) has the responsibility for managing and delivering the service, rather than just supplying the staff. The MSC must be genuinely engaged in supervising and directing its workforce on site on a day to day basis and must determine how and when the work is done. If is the customer that determines how the work is done, it is more likely the AW will be in scope.

Temporary Worker Agency (TWA)

Supplies agency workers to work temporarily for a third party – the hirer. Under the regulations, a TWA is a person in business, whether operating for profit or not and including both public and private sector bodies, involved in the supply of temporary agency workers. This could be a 'high street agency' but also an intermediary such as an umbrella company or a master or neutral vendor if they are involved in the supply of the agency worker.

1. Introduction

The Agency Workers Regulations (AWR's) apply to:

- Individuals who work as temporary agency workers (AW's)
- Individuals or companies involved in the supply of temporary AW's, either directly or
- Indirectly, to work temporarily for and under the direction and supervision of a hirer
- And hirers

2. Parties who are 'In Scope'

Parties that fall in scope of the AWR's are:

- Temporary Workers Agencies (TWA's) including intermediaries, who supply AW's Hirers (end-users) i.e. School / Academy
- An AW in a tripartite relationship i.e. hirer, agency and AW, and AW's working through intermediaries i.e. umbrella company or a master or neutral vendor

It is important that the correct information from the hirer is shared between parties in the chain of supply of the AW to ensure that whoever pays the AW is aware of their entitlements.

Examples

Characteristics that demonstrate 'in scope'

- A school has a staff canteen managed by an in-house catering manager. A member of their catering staff is absent and is replaced by a worker supplied by a TWA. During her assignment the worker is supervised and directed by the school's catering manager. She fits the definition of an agency worker and is in scope.
- Where one legal entity employs temporary workers and places them into another legal entity (e.g. the individual's contract is with one company but they work for another, including other associated companies), then they are likely to be acting as a TWA and the workers are in scope.

3. Parties who are 'Out of Scope'

Parties that fall out of scope of the AWR's are:

- Those genuinely in business on their own account i.e. self-employed business, where the hirer has the status of 'a profession or business undertaking' e.g. lawyer.
- In-house temporary staffing banks i.e. supply teacher employed directly by the school
- Individuals on secondment from one organisation to another.
- Managed Service Contract staff, i.e. cleaning staff working for a contract company.

Examples

Characteristics that demonstrate 'out of scope'

- A school contracts out the management of its canteen. A contractor manages the entire operation of the canteen and is responsible for the direction and control of its own catering staff. Although staff are working on the customer's premises, they are not AW's because they are not subject to direction and control by the customer.
- An individual works in school A, but is on secondment to school B, who pays the individual until they return to company A when the secondment ends. Company A is not acting as a TWA as their main activity is not the supply of workers.

4. Qualifying for Equal Treatment

4.1 Day 1 Rights

As a hirer of agency workers, from Day 1 of the assignment you must ensure they have access to:

4.1.1 Job Vacancy Information

The hirer should inform the AW as to where and how to access this information. This right will not apply where posts are ring fenced for redeployment purposes which are a matter of restructuring and redeployment in order to prevent a redundancy situation.

The need to inform AW's of vacancies is limited to where there is a comparable permanent employee or worker currently based at the same establishment.

4.1.2 Collective facilities

These are facilities provided by the hirer that are given to a comparable worker i.e. a permanent worker or employee. Examples are given below:

- A canteen
- Toilets / shower facilities
- Staff room.
- Mother and baby room
- Food and drinks machines
- Car parking

AW's are not entitled to 'enhanced' access rights', e.g. membership to a crèche involves joining a waiting list, the AW can join the list but would not be given an automatic right to have a crèche place.

AW's are not entitled to off-site facilities which are not provided by the hirer, i.e. subsidised access to an off-site gym, which are given as part of a benefit package.

The hirer should establish if there are any comparable workers or employees. A comparable worker or employee is defined as someone who is:

- Doing the same or broadly similar work to the AW.

- Working at the same location as the AW or, if there is no such person, be in another location owed by the hirer.

If there are no comparable workers or employees, the AW is not entitled to equal treatment for collective facilities.

Summary

Comparator for Day 1 Rights	Access to Facilities	Access to Job Vacancies
Employee or worker	Yes	Yes
Working for and under the supervision and direction of the hirer	Yes	Yes
Engaged in same or broadly similar work	Yes	Yes
Based at same establishment	Yes	Yes
Based at different establishment	Yes	No
Must still be employed at the time of the breach of the regulations	Yes	Yes

4.2 12 Week Qualifying Period

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 when an AW takes up a new role with the hirer where the whole or main part of the duties in the new role are substantially different from the whole or main part of the duties in the old role. However breaks between assignments due to a number of specified reasons i.e. illness, maternity or pre-determined closure periods (e.g. school closures during holidays) will not break the qualifying period.

4.2.1 After 12 Weeks in the Same Job

Upon completion of a 12 calendar week qualifying period with the same hirer in the same role, (regardless of whether they have been supplied by more than one TWA over that period of time), the AW will be entitled to the same basic terms and conditions as a permanent employee or worker. They are entitled to the same treatment in respect of:

- key elements of pay
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- paid time off for ante natal appointments

4.2.2 Calculating the 12 Week Qualifying Period

The 12 week qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks. A calendar week will comprise of any period of 7 days starting with the first day of the assignment. Calendar weeks will be accrued regardless of how many hours the AW works on a weekly basis.

4.2.3 Accrual of 12 week qualifying period

An AW will only start to accrue the 12 week qualifying period after the AWR's come into force on 1 October 2011, even if the assignment started before this date. In order that the

AW receives their correct entitlement, the TWA will normally ask the AW for their up to date work history.

4.3 Agency Workers working for Multiple Agencies and Hirers

An AW might work for more than one hirer during a week resulting in more than one qualifying period running at any one time.

The TWA should ask the AW for their work history to ensure the AW receives their correct entitlement.

Examples

Working through multiple agencies

- An AW works for a school for 6 weeks with one TWA and is placed with the same school in the same job 3 weeks later by another TWA for a further 8 weeks. There has been no break of 6 weeks or more between assignments so the AW is eligible for equal treatment after 12 weeks from the start of the first assignment.

Working for multiple hirers

- An AW has an assignment to work as a Teaching Assistant one day a week for 4 different schools. The AW will qualify for equal treatment in each of the schools after 12 weeks.

4.4 The Qualifying Clock

There are various circumstances that determine the 12 week qualifying period. This is best explained by thinking of the qualifying period as a clock which runs from 0 to 12 and the various circumstances are summarised under the 3 categories below:

- i) Reasons for the clock to 'reset to zero':
- ii) Reasons for the clock to 'pause':
- iii) Breaks where the clock continues to 'tick'.

Types of absence that affects the 12 week qualifying period	Effect on 12 week qualifying period
AW begins a new assignment with a new hirer	Clock resets
AW remains with the same hirer but is no longer in the same role	Clock resets
Break between assignments of 6 weeks or more (which is not one which 'pauses' the clock or during which it continues to 'tick')	Clock resets
Any reason where the break is less than 6 weeks	Pauses the clock
Sickness absence	Pauses the clock for up to 28 weeks
Annual leave	Pauses the clock
Shut downs – e.g. school holidays	Pauses the clock
Jury service	Pauses the clock for up to 28 weeks
Industrial action	Pauses the clock
Pregnancy and maternity-related absence	Clock keeps ticking *
Statutory maternity, paternity or adoption leave	Clock keeps ticking **

* The protected period for a pregnant AW begins at the start of the pregnancy and ends 26 weeks after childbirth (or earlier if she returns to work).

** Where an AW has a contract of employment with an agency and is entitled to this type of leave.

Examples

Workplace closure

- Where an AW does an assignment which starts for 2 weeks before the school closes for the summer period and continues when it re-opens after the summer. As the school closes, the 'clock' will pause and continue running from where it left off when they re-open.

Different types of consecutive absences

- An AW has a break of 5 weeks between assignments, then is absent for 2 weeks due to sickness. The sickness absence 'pauses' the clock, which then resumes ticking when the AW returns to the same role. Here, the break is longer than 6 weeks but continuity is not broken as the clock pauses after 5 weeks.

4.5 *Definition of 'New' Hirer*

A new hirer must be an organisation with its own legal entity. The qualifying period will restart when an AW moves between different legal entities. Where a hirer has multiple sites, merely moving the AW from one site to another will not usually break continuity, unless it is a substantively different role. For Supply Teachers see Section 5.

4.6 *Substantively Different Role*

If there is a substantive change to a job role within the same hirer, the clock is reset to zero. The work or duties which make up the whole or main part of a role must be substantively different. A combination of the following characteristics can help to establish if the duties are substantively different:

- Are different skills and competences used?
- Is the pay rate different?
- Is the work in a different location?
- Is the line manager different?
- Are the working hours different?
- The role requires extra training and/or qualification that wasn't needed before?
- Is different equipment involved?

Examples

Substantially Different Role or Not?

- An AW works as a Teaching Assistant. She is then moved to a Midday Assistant role which requires little training and uses similar skills. The role is not substantively different. A move between these roles would not re-start the clock without a break between assignments of more than 6 weeks.
- An AW has worked as a Teaching Assistant but then moves to an Administrator role. This is likely to be considered substantially different and the qualifying period

would start again.

In order for the 12 week qualifying clock to be reset to zero, the hirer must notify the TWA and the AW of the following:

- A hirer must notify the TWA in writing when there is a new role that is substantively different and record details of the job requirements.
- The TWA must provide a description of the new role in writing to the AW. The TWA should record the new vacancy details and notify the AW that their role has substantively changed and the qualifying period will start again.

4.7 12 Week Assignments and Anti-Avoidance Provisions

Hirers can decide not to engage AW's beyond the 12 week qualifying period and there is nothing in the AWR's to prevent this. However, hirers and TWA's should monitor and address any situation where a pattern of assignments emerge that are deliberately depriving an AW of their entitlements to equal treatment.

Example

An AW completes 2 or more assignments with the same school, where they have already worked for 11 weeks with a 6 week break and then a further 11 weeks with another 6 week break. If the AW is taken on for a third assignment, this could be considered as anti-avoidance. This would be a matter for the tribunal in the event of a claim. Note - these breaks between assignments have not been due to specific reasons i.e. illness, maternity or pre-determined closure periods i.e. school closures during holidays, and therefore they have not broken the qualifying period.

4.8 'Basic Working and Employment Conditions' and a "Comparator"

4.8.1 How Equal Treatment is established

Equal treatment can be established by giving the same basic working and employment conditions as if the AW had been a permanent employee or worker. The basic working and employment conditions are included in documents i.e. standard contracts, pay scales, collective agreements and employee handbooks.

4.8.2 Comparator

It is not necessary to find an employee comparator, however they would be someone who is:

- engaged in broadly similar work, but their skills and qualifications can be taken into account to justify a higher level of pay for the comparator.
- working at the same or, if there is no comparable employee in the same workplace, in another of the hirer's workplace.
- employed by the hirer.

If there isn't an employee comparator, it should still be possible to identify the appropriate basic working and employment conditions.

Examples

Where a hirer has pay scales

- A school has a pay scale for its permanent workforce. An AW is recruited as a

Teaching Assistant and has many years' relevant experience, yet they are paid at the bottom of the pay scale. Is this equal treatment?

- Yes, but only if the school would have put that individual at the bottom of the pay scale if they were a permanent employee or worker. However, if the individual's experience results in them starting higher up the pay scale if they were a permanent employee or worker, then the AW would need to be treated the same.

Equal treatment for AW's who work through umbrella companies

- Where an AW works through an umbrella company, their pay should be the same as if they had been a permanent employee or worker. However, this does not mean the AW has to be paid more than they would have received if recruited directly.

5. Supply Teachers

5.1 *Determination of the Hirer for Supply Teachers*

The hirer is determined in the light of the circumstances of each of the following:

5.1.1 *Not used*

5.1.2 *Academies*

For Academies, including Free Schools, the "hirer" is the proprietor of the school ie the Academy Trust, 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, 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.

5.1.3 *Independent Schools (not applicable)*

In independent schools, the "hirer" is the proprietor of the school. Generally speaking, if an agency supply teacher moves 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 supply teacher changes schools under the same proprietor unless it is a substantively different role.

Examples

Moving to a different Local Authority or Governing Body or Trust

- An AW working as a supply teacher moves to a different LA or a different Governing Body (or to an independent school, Academy or Free School which is a separate legal entity), the qualifying period will start again i.e. the qualifying clock resets to zero.

5.2 *Rates of Pay for Supply Teachers*

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. 'Specified work' means planning, preparing and

delivering lessons and courses to pupils and assessing and reporting on the development, progress and attainment of pupils.

After 12 weeks in the same role with the same hirer, a qualified teacher undertaking teaching duties should be paid on the pay level as they would have been paid if engaged directly by the school/academy, in accordance with their Pay Policy.

If the person engaged to do the 'specified work' is an unqualified teacher, they should be paid as an unqualified teacher on the pay level as they would have been paid if engaged directly by the school/academy, in accordance with their Pay Policy.

If the person is engaged as a Cover Supervisor or a Teaching Assistant, the AW is expected to supervise pupils in carrying out a pre-prepared exercise, even if they are a qualified Teacher and in this case, they would be paid as a Cover Supervisor, not as a qualified Teacher.

In this case the TWA will need to request information from the hirer as to the terms and conditions to be given to agency supply teacher after 12 weeks in the same role with the same hirer.

5.3 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 should receive 1/1265th of their relevant annual hourly rate which includes holiday pay.

6. Pay

Having completed the 12 week qualifying period, the AW is entitled to the same basic terms and conditions as a permanent employee or worker. The following explains what is included and excluded:

What is included:

- Basic pay based on the annual salary an AW would have received if recruited directly.
- Overtime payments, subject to any requirements i.e. meeting a 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 are not "salary sacrifice schemes" e.g. child care vouchers.
- Additional discretionary, non-contractual bonuses, e.g. a one-off payment.

What is excluded:

- Occupational sick pay (AW's are entitled to statutory sick pay).
- Occupational pensions (AW's will be covered by new automatic pension enrolment, phased in October 2012). See www.dwp.gov.uk/policy/pensions-reform
- Occupational maternity, paternity or adoption pay (AW's are entitled to statutory entitlements).
- 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 e.g. season tickets.
- Expenses i.e. accommodation and travel expenses.
- Overtime or similar payments where the AW has not fulfilled qualifying conditions, e.g. 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, if not met by the AW or if the AW is no longer on assignment when the payment is due
- Bonuses which are not directly linked to the contribution of the individual e.g. a flat rate bonus
- Additional discretionary, non-contractual bonuses, as long as these payments are not made with such regularity that they have become custom and practice.

6.1 Annual Pay Award

Where a hirer gives an annual pay increment, an AW should receive the increment as if they were a permanent employee or worker.

The TWA and hirer should liaise to ensure the AW receives the correct pay entitlements.

6.2 Performance Appraisals

AW's do not need to be part of the full performance appraisal system, however, the hirer can conduct modified appraisals as the AW would normally have clear objectives to help them undertake the assignment.

Summary

PAY	What is included	What is excluded
Basic Pay	'Pay for work done'; the annual salary usually converted into an hourly/daily rate. (The hirer may add some or all other contractual elements i.e. unsocial hours).	Occupational pension contributions; redundancy / severance payments, expenses, occupational sick pay, occupational maternity, paternity and adoption pay. (AW's are entitled to statutory sick pay)
Overtime pay	Extra pay for additional overtime hours.	An automatic entitlement for extra pay as an AW will still need to qualify for overtime as if a permanent employee or worker
Bonus or incentive payment linked to personal performance	'Pay for work done' and directly attributable to the individual.	Bonuses based solely on company performance, discretionary one-off bonuses.
Holiday pay	Above the statutory minimum can be given as leave or paid in lieu as part of the hourly/daily rate.	Other contractual and statutory paid leave, (e.g. compassionate leave, paid time off for union duties or jury service)

Vouchers or stamps	Of fixed monetary value i.e. luncheon vouchers	Other benefits in kind, financial participation schemes, child care voucher scheme.
Paid time off for antenatal appointments	After the 12 week qualifying period, paid at hourly rate for the time it takes to attend the appointment	

7. Working Time and Holiday Entitlements

7.1 Working Time

After 12 weeks, the AW will be entitled to the same terms and conditions relating to the duration of working time, night work, rest periods, rest breaks, annual leave and overtime pay as a permanent employee or worker. Hirers may decide to offer some or all of these entitlements to AW's from Day 1. E.g. where a permanent employee or worker would have had more generous entitlement to rest than the statutory minimum i.e. a lunch hour rather than the minimum 20 minute rest during a shift of more than 6 hours.

Duration of working time might cover a variety of conditions e.g. if a direct recruit would not be expected to work more than 48 hours, the AW should be treated the same.

7.2 Calculating Holiday Pay Entitlements

All workers have a statutory entitlement to 5.6 weeks per year to paid annual leave (e.g. based on their working pattern, someone working five days a week is entitled to $5.6 \times 5 = 28$ days) which can include bank and public holidays. If a hirer provides more generous contractual leave entitlement the AW should receive the same enhanced entitlement once the 12 week qualifying period has been reached. For Supply Teachers See Item 5.3.

7.3 Payment in Lieu of Annual Leave

Hirers could deal with any additional entitlement over and above the statutory entitlement as part of the hourly/daily rate. Such arrangements would only relate to additional, contractual leave which is in excess of the statutory minimum.

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.

8. Pregnant Workers and New Mothers

AW's who are pregnant or new mothers have the same protection i.e. against any direct or indirect discrimination, as permanent employees or workers.

8.1 Responsibility of the AW

The AW should notify the TWA and the hirer of her pregnancy in writing. They should also inform the TWA of ante-natal appointments so they will continue to be paid.

The TWA may approach the hirer on her behalf and ask for a health and safety risk assessment. If the hirer identifies a risk, they will need to make reasonable adjustments. If this is not possible, the TWA should offer alternative suitable work if available, and the AW is paid at the same rate until the end of the assignment.

8.2 Responsibility of the TWA

The TWA will ask the hirer to undertake a risk assessment and ensure reasonable adjustments are made, if necessary.

If this is not possible, the TWA will need to seek alternative suitable work, paid at the same rate and ensure the AW is paid for any period of the assignment when she could not work due to the health and safety risk.

8.3 *Responsibility of the Hirer*

The hirer is responsible for carrying out a risk assessment. Where a risk is identified, reasonable adjustments should be made. If this is not possible, the hirer should inform the TWA who will offer suitable alternative work if available.

8.4 *'Suitable' Alternative Work*

If the health and safety risk cannot be reasonably removed by the hirer, the AW cannot continue in her present role and the TWA will need to offer the AW suitable alternative work, paid at a rate that is no less favourable than the last assignment. The clock will continue to tick and the AW will continue to accrue weeks in relation to both the original hirer and the new hirer if she is working in another role. If the TWA cannot offer suitable alternative work, the AW's assignment will be ended on maternity related health and safety grounds and the TWA will have to pay them at the same rate for the duration of the assignment. If the end date of the assignment is not known, the TWA will be required to pay the AW for the likely duration of the assignment.

8.5 *Ante-natal Appointments*

After the 12 week qualifying period, an AW is entitled to be paid for ante-natal appointments. Antenatal care may include relaxation or parent craft classes. The hirer and TWA can request to see evidence of her appointments. Hirers can reasonably ask AW's to try and arrange these appointments outside working hours.

9. Information Requests, Liability and Remedies

9.1 *Information Requests*

9.1.1 *TWA Responsibilities*

The TWA must record details (as per the Conduct Regulations) about the vacancy, before they supply an AW to the hirer. It may be clear that the assignment will last for more than 12 weeks and in this case it would be good practice for the TWA to ask for basic employment and terms and condition information early on or before the assignment starts. The TWA and hirer should liaise with each other to ensure this information is obtained.

Where the assignment is scheduled to last for less than 12 weeks but is extended, the TWA should obtain basic employment and terms and condition information from the hirer, as the AW can request this information in writing, any time after the 12 week period. Where multiple TWA's are involved in the supply of the AW, the TWA who has the direct contractual relationship with the hirer should undertake this action.

9.1.2 *Compliance information required by a TWA from a hirer*

A TWA cannot supply an AW to a hirer without certain information below (as per Conduct Regulations):

- the identity of the hirer, nature of business and location

- start date and duration of assignment
- job role, responsibilities and hours
- experience, training, qualifications and any other authorisation which the hirer considers necessary, or that required by law, or any professional body in order to work in the position
- any risks to health or safety known to the hirer and has taken to prevent or control such risk
- any expenses payable by or to the work-seeker

A hirer will need to provide the TWA with the following information if and when an AW completes the 12 week qualifying period.

- Basic pay (based on the annual salary an AW would have received, as a permanent employee or worker if and when there are overtime payments, shift/unsocial hours allowances or risk payments for hazardous duties.
- Types of bonus schemes, how individual performance is appraised and information on annual pay increments
- If the hirer offers vouchers which have monetary value
- Annual leave entitlement

Although Day 1 entitlements are the responsibility of the hirer, the TWA should enquire about collective facilities on the hirer's premises and how job vacancy information is provided.

9.1.3 Working through Multiple TWA's

It is essential that correct hirer information is supplied from one TWA to another where there are intermediaries involved in the supply of an AW i.e. as master or neutral vendor arrangements or umbrella companies. In the event of a claim, the courts would decide which party was responsible for any breach.

9.1.4 Process for an AW to obtain information relating to Equal Treatment

AW's are entitled to information relating to their equal treatment entitlements, if they believe their entitlements have been infringed. If the AW is requesting information about:

Day 1 entitlements - then the hirer can provide this information either directly to the AW or to the TWA which in turn passes it to the AW. (The information can be requested any time after the start of the assignment).

12 Week entitlements - then the TWA is required to provide this information. (The AW can only request information after the 12 week period).

In relation to Day 1 entitlements, an AW should make a written request to the hirer for information before making a claim. The hirer has 28 days to respond in writing from receipt of the request.

The hirer should provide:

- a written statement with all relevant information relating to the rights of a comparable worker or employee; and
- reasons for the treatment of the AW

If the request is in relation to basic working and employment rights applicable after 12 weeks, the AW cannot request information until the 12 week period. The AW can request

a written statement from the TWA about any aspect of equal treatment they believe they were entitled to.

The TWA has 28 days from receipt of the request setting out:

- relevant information relating to basic working and employment conditions
- any relevant information or factors that were considered when determining the basic working and employment conditions
- where the equal treatment is based on a comparable employee, the information describes the terms and conditions applicable to that employee, and explains any difference in treatment.

If an AW has not received a written statement within 30 days of making that request, the AW can write to the hirer requesting the same information.

9.1.5 If an AW is unsatisfied with the response or does not receive a response:

An AW can bring a claim to an employment tribunal in relation to their rights in the AWR's. A tribunal will not consider a complaint unless it is presented within 3 months of the actual breach.

9.2 Liability and Remedies

It is in the interests of all parties to exchange information in a timely manner.

For failure to provide For Day 1 entitlements, the liability rests with the hirer.

For failure to provide basic working and employment conditions, the liability can rest with the TWA and/or the hirer.

Even if the TWA 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.

The hirer will be liable for any breach to the extent that it is responsible for the infringement. So if the hirer fails to provide information to the TWA about basic working and employment conditions and the AW was not receiving appropriate treatment, the liability could be the sole responsibility of the hirer.

In a tribunal claim, where the responsibility or a breach of regulations is not clear, the AW may claim against both the TWA and the hirer.

Appendix A

Record of Day 1 information given to the Agency Worker

Schools are required to give the following Day 1 information to the Agency Worker. Schools should complete this form and give a copy to the agency worker and keep a record for their file.

Name of Agency Worker	First day of Assignment

Information on Job Vacancies

The school should provide the agency worker with information about where to access job vacancy information.

Job Vacancy Information Detail below where information can be accessed - i.e. Jobscape, internal notice board	Date explained to agency worker

Access to Collective Facilities

The school should provide agency workers with information about their collective facilities, e.g. as part of their induction and giving them a copy of the induction handbook, if this available.

Provision of Collective Facilities (e.g. canteen facilities) Detail below the type of collective facilities available	Date explained to agency worker

Appendix B

Responsibilities of Temporary Worker Agency to provide Information to Agency Worker

Temporary Worker Agencies (TWA's) are required to give certain information to the Agency Worker (AW) and/or take certain actions.

Schools should give a copy of this form to the TWA to ensure they undertake their responsibilities under the Agency Worker Regulations (AWR's). The school should keep a copy of this form for their own records.

Name of Temporary Worker Agency	
Name of Agency Worker	
First day of Assignment	
Name of Person responsible for the AW	
Name of School	
Date given to Temporary Worker Agency	

1) Accrual of 12 Week Qualifying Period In The Same Role With The Same Hirer – Equal Treatment

In order that the AW receives their correct entitlement to basic terms and conditions and pay, the TWA should normally ask the AW for their up to date work history.

2) Agency Workers working for Multiple Agencies and Hirers

An AW might work for more than one hirer during a week resulting in more than one qualifying period running at any one time. The TWA should ask the AW for their work history to ensure the AW receives their correct entitlement to basic terms and conditions and pay.

3) Substantively Different Role

The TWA must provide a description of the new role in writing to the AW. The TWA should record the new vacancy details and notify the AW that their role has substantively changed and the qualifying period will start again.

4) Annual Pay Award

Where a hirer gives annual pay increments, an AW should receive an increment as if they were a permanent employee or worker. The TWA and hirer should liaise to ensure the AW receives the correct pay entitlements.

5) Pregnant Workers and New Mothers

The TWA should ask the hirer to undertake a health and safety risk assessment and ensure reasonable adjustments are made, if necessary. If this is not possible, the TWA will need to seek alternative suitable work for the AW, paid at the same rate and ensure they are paid for any period of the assignment when she could not work due to the health and safety risk. The TWA can request to see evidence of her ante-natal appointments.

6) Information Requests and Liabilities

The TWA must record details as below (as per the Conduct Regulations) about the vacancy, before they supply an AW to the hirer.

- the identity of the hirer, nature of business and location
- start date and duration of assignment
- job role, responsibilities and hours
- experience, training, qualifications and any other authorisation which the hirer considers necessary, or that required by law, or any professional body in order to work in the position
- any risks to health or safety known to the hirer and has taken to prevent or control such risk
- any expenses payable by or to the work-seeker

Despite whether the assignment is likely to last less than or more than 12 weeks, it would be good practice for the TWA to ask for basic employment and terms and condition information early on or before the assignment starts. The TWA and hirer should liaise to ensure the correct information is obtained.

Although Day 1 entitlements are the responsibility of the hirer, the TWA should enquire about collective facilities on the hirer's premises and how job vacancy information is provided.

Where multiple TWA's are involved in the supply of the AW, the TWA who has the direct contractual relationship with the hirer should undertake this action. It is essential that correct hirer information is supplied from one TWA to another where there are intermediaries involved in the supply of an AW

Process for an AW to obtain 'equal treatment' information

An AW can request a written statement from the TWA about any aspect of equal treatment they believe they were entitled to. (The AW can only request information after the 12 week period). The TWA has 28 days from receipt of the request setting out:

- relevant information relating to basic working and employment conditions
- any relevant information or factors that were considered when determining the basic working and employment conditions
- where the equal treatment is based on a comparable employee, the information describes the terms and conditions applicable to that employee, and explains any difference in treatment.