

Policy – Agency Worker

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Version control

This document is subject to regular review due to legislative and policy changes. The latest versions of all our publications can be found on our website. Before contacting us about the content of this document, we recommend that you refer to the most recent version on the website and any relevant guidance.

Version	Date approved	Approved by	Notes / changes
v1.0	09/04/13	Full Council	New policy
v2.0	23/04/18	Andrea Malam	Reformatting
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TIMESCALES

Managers who require an agency worker beyond 12 weeks will need appropriate authorisation in the system.	12 weeks
To end an agency workers placement early will require notice to Matrix	Check with Matrix what the notice period is for each particular agency worker

ROLES AND RESPONSIBILITIES

Matrix (Agency)

- Ensure that the appropriate DBS checks and references are carried out and stored on CR.Net (Matrix)
- Process requests for agency workers by managers
- Process and pay the agency workers for hours that have been worked
- Responsible for informing managers of any annual leave that that agency worker has booked and make alternative arrangements if necessary
- Responsible for informing managers of any sickness absence

Managers

- Discuss the need for an agency worker with Human Resources as soon as a potential need is identified
- Ensure that effective monitoring processes are in place locally to ensure full compliance with this policy
- To engage an agency worker and/or instigate changes to an existing assignment, complete and submit an authorised 'Vacancy Control Form' to Human Resources, prior to using Matrix

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- Ensure that agency workers receive an induction on their first day and that regular meetings take place to clarify expectations and/or to provide support to the agency worker
- Ensure that any performance issues and/or changes in the work or duties and/or changes to the length of the assignment that an agency worker is undertaking are reported to the Matrix and Human Resources
- Carry out a pregnancy risk assessment and make any reasonable adjustments where needed. If this is not possible then the agency must be informed
- Ensure that the agency worker has the appropriate level of DBS certification by reviewing this with the agency before the first day of work
- Provide the relevant notice period to Matrix and agency worker if the contract is to be ended early

Human Resources

- Monitor and report on the usage of agency workers across the council
- Provide advice and guidance to managers who identify a need to engage an agency worker

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- Reporting any sickness absence to their agency
- Annual leave must be booked via their agency
- Agency workers must inform their agency when pregnant in order for appropriate risk assessments to be completed

Agency worker definition

An agency worker is defined as ‘an individual who is supplied by an agency to work temporarily for and under the supervision and direction of a hirer’. Agency workers who are on assignment at the council do not have a contract of employment with Denbighshire County Council. Agency workers remain an employee of the supplying Agency.

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Engagement of agency workers

Any requests for agency workers should be dealt with through the Matrix system.

Should a manager identify that there is a need to approach the services of an agency not named on the Matrix system, would be subject to separate approval and/or tender arrangements. For further information on the tendering process, please contact the Managed Agency Contract Manager.

The engagement of agency workers at the council must be authorised, prior to Matrix being contacted, by the Head of Service and Finance Officer.

Where an additional resource need has been identified, managers should in the first instance explore all opportunities to use existing staffing resources within the council. This does not include situations where the cost may be prohibitive such as applying overtime and other additional payments. If this proves unsuccessful, managers should then attempt to fill the role via our recruitment process. Only in circumstances where these options have been explored but not proved possible, should a request for an agency worker be put forward to Matrix.

Agency Workers Regulations (2010)

Denbighshire County Council must comply with the requirements of the Agency Workers Regulations (2010), effective from 1st October 2011.

Any agency workers who are on assignment at the council will be given access to the same facilities and access to information on job vacancies on their first day, as would any new employee during their induction.

Once agency workers have completed 12 weeks in the same role at the council, they are entitled to the same basic working and employment conditions as if they had been recruited directly by the council. Any entitlements will be pro-rata to the length of the assignment and hours worked. This includes:

- Basic pay
- Annual increments (where applicable)

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- Overtime payments (on same basis/qualifying conditions as Denbighshire County Council employees)
- Shift allowances (where applicable)
- Duration of working time
- Rest breaks/restrictions on night work
- Annual leave

Agency workers are **not** entitled to:

- Occupational sick pay
- Occupational and statutory redundancy and notice pay
- Occupational maternity/paternity/adoption pay
- Pensions
- Long service awards

An agency worker's continuity of qualifying service will be broken if there is a break of 6 weeks or more, or any change of role would have to be substantively different from the previous role. Continuity of qualifying service is preserved where an agency worker is absent due to a seasonal shutdown (for example, Christmas closure) or due to sickness, up to a maximum of 28 weeks. If an agency worker is absent due to a pregnancy-related illness or is on maternity leave, any qualifying service which has been accrued will be maintained and will be built upon when a return to work has taken place.

Information outlining the council's basic working and employment conditions is available from Human Resources and should be provided to Matrix, if an agency worker approaches 12 weeks in the same role at the council. The processes that the council must follow in order to ensure compliance with the Regulations are outlined in the remainder of this procedure.

Why use an agency worker?

It may be possible, subject to necessary approval processes, to engage agency workers in the following circumstances:

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- To provide cover for short-term, unforeseen and/or unexpected staff shortages
- To provide specialist skills which are not able to be sourced from within the council
- To assist during periods of peak workload
- To undertake a short-term project or task
- To provide services for a specific service or to meet a specific need, where for organisational reasons, such use is approved However, when determining whether it is appropriate to engage an agency worker, managers should give consideration to the following:
 - The duration of the assignment
 - Whether 'acting up' or a secondment would be more appropriate
 - The urgency with which the post must be filled
 - Value for money and budgetary implications

Agency workers must not be used to cover a permanent or fixed term vacancy which has not, or is not, being advertised on a long-term basis.

Engagement of agency workers on an ad-hoc basis

Once it has been determined that there is a need to engage an agency worker, the manager should complete the Vacancy Control Form(which can be found within the Recruitment and Selection procedure) and submit this to the Head of Service and Finance Officer for approval. The form should then be submitted to Human Resources.

Once the form has been fully authorised and the redeployment register has been checked, Human Resources will notify the manager and confirm that the process for the engagement of agency workers can be initiated. The manager should contact Matrix and ask for an agency worker to be supplied as per the requirements outlined on the Vacancy Control Form.

DBS checks and references

The supplier is responsible for carrying out all checks and references and must upload these onto CR.Net (Matrix). It is the responsibility of the hiring manager to review the DBS check on the first day/prior to the candidate starting work.

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First day of assignment

On the first day of an assignment, managers must carry out an induction with the agency worker and ensure that day one rights are discussed. Managers should refer to our Denbighshire County Council Induction information for guidance.

During the Assignment

Safety, health and wellbeing responsibilities

The responsibilities managers have for the health and safety of their employees applies equally to agency workers. Managers have an obligation to manage the implications of any health and safety issues which may arise whilst an agency worker is on assignment at the council. Particular attention should be given to induction of new staff and risk assessments. For further information on managerial responsibilities in relation to Safety, Health and Wellbeing, please contact Corporate Health and Safety and Occupational Health.

Working hours and rest breaks

Denbighshire County Council's standard working week for full-time staff is 37 hours per week. Managers should ensure that the hours worked by agency workers are in accordance with this standard.

Managers should also ensure that agency workers take at least 30 minutes for lunch during their working day.

Timesheets

Agency workers receive payment directly from Matrix, based on the number of hours they have worked and this is done via the Matrix system.

Performance issues

Should a manager have concerns about the performance of an agency worker, this should be reported to Matrix.

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Sickness absence

In the event of sickness, agency workers are required to report the absence to the Agency. Matrix is responsible for notifying the manager of the agency worker's absence.

Annual leave requests

If an agency worker requests annual leave, this should be booked through the Agency. Matrix is responsible for notifying the manager of the agency worker's annual leave dates and will make arrangements for a replacement, if necessary.

Pregnancy and agency workers

In the first instance, agency workers are required to notify the Agency of their pregnancy. This should then be followed up in writing to the manager within the service to which they have been assigned.

The council is required by law to carry out a health and safety risk assessment for employees at work, who are pregnant. This requirement is also extended to agency workers. Where a risk is identified, the council is required to make reasonable adjustments. If an adjustment is not possible or reasonable and would not remove the risk, the manager should notify the agency. The agency will then make arrangements for a replacement agency worker. It is the responsibility of the agency to find suitable alternative work for the agency worker. For further advice or guidance on risk assessments, please contact Corporate Health and Safety.

Once agency workers have completed 12 weeks in the same role, they are entitled to paid time off to attend ante-natal appointments. Agency workers should notify Matrix if an ante-natal appointment falls during working hours. Matrix is responsible for notifying the manager of the agency worker's appointments.

Maintaining contact with Matrix

Managers must notify Matrix if there are any changes to the work or duties that an agency worker is undertaking. Human Resources should also be notified of any changes.

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Matrix may make contact with managers during the course of an assignment in order to check that the required standards are being met by the agency worker.

Extending an assignment or transferring an agency worker to a new assignment

If it is determined that an assignment needs extending beyond the end date originally stated on the Vacancy Control Form or if an agency worker is required to undertake a new assignment, managers should complete a new Vacancy Control Form and submit this to the Head of Service and Finance Officer for authorisation. The form should then be submitted to Human Resources.

Once the form has been fully authorised and the redeployment list checked, Human Resources will notify the manager and confirm that Matrix can be contacted to request the change(s) to the assignment.

Ending an assignment

Unless notified otherwise, agency workers should assume that the end date of their assignment is as they were originally informed by Matrix and as originally stated on the vacancy control form.

However, should there be a need to end the assignment earlier than planned; managers should refer to the terms and conditions originally agreed with the Matrix to confirm the notice period. In most cases, managers will be required to provide at least one week's notice to Matrix and agency worker. Managers must notify Matrix that the agency worker is no longer required. Human Resources should also be notified of the change.

Monitoring of agency workers

In line with statutory obligations, in particular circumstances, Denbighshire County Council must provide information to Trade Unions about the employment situation at the council including the total number of agency workers engaged, the areas in which they are utilised and the roles being undertaken.

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Managers should ensure that effective monitoring processes are in place locally to ensure full compliance with the Regulations and this policy.

FAQ's

Where can I get advice on temporary staff and the process?

In the first instance you should contact your HR Business Partner and discuss your requirements.

What is the purpose of the Agency Workers Directive?

Its purpose is to give agency workers entitlement to equal treatment with respect to basic employment and working conditions if and when they complete a qualifying period of 12 weeks. In other words, their basic terms and conditions of employment must be no less favourable than the terms they would have been entitled to had they been recruited directly by the council.

Who do these regulations apply to?

The Regulations apply to individuals who have a contract with a temporary work agency and who are supplied by that agency to work temporarily under the supervision and direction of a 'hirer' - the council.

When do agency workers qualify for equal treatment?

From the first day of employment, the following entitlements apply:

- Access to facilities; such as the staff canteen, transport facilities, car parking and child-care facilities
- Access to vacancies; the right to be notified of any job vacancies within the council

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Where we have a vacancy that is restricted to internal applicants' only (existing employees) would we have to include agencyworkers within the definition of internal applicant?

Yes, all advertised vacancies with the council must be easily accessible to their qualifying agency workers.

This obligation for the council relates only to the information about vacancies and does not significantly constrain employers' freedom regarding how they treat applications, qualification, experience requirements etc.

This right will not apply in the context of a genuine 'headcount freeze' where organisational restructuring is in place to avoid redundancies. The right extends only to vacancies in this context.

After 12 weeks in the same role, these additional new equal treatment entitlements relate to 'relevant terms and conditions', namely pay and other basic working conditions and will only come into effect after an agency worker completes a 12 week qualifying period with the same hirer, in the same role.

- Key aspects of pay related to work undertaken on assignment
- Duration of working time
- Night work
- Rest periods
- Rest breaks
- Ante-natal appointments

The right to equal treatment will not apply until an agency worker has worked in the same role for a hirer for 12 continuous weeks. Importantly, any change of agency during the 12 week period will not affect qualification.

Pregnant agency workers will now be allowed to take paid time off for ante-natal appointments during any assignment.

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How many working hours per week are required for qualification?

There is no minimum amount of work that needs to be completed in order for a week to count as one of the 12 for qualification purposes.