

## ENGAGING AGENCY WORKERS

### GUIDANCE FOR MANAGERS

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## 1. Introduction

There are occasions when departments need to respond quickly to temporary changes in service demands and, to do so, they may hire temporary workers.

Managers are encouraged to engage Casual Workers for short periods, up to 12 weeks, on an “as and when” basis to cover temporary needs and should familiarise themselves with the College’s “[Engaging Casual Workers - Guidance for Managers](#)” and [Temporary Staff Bank](#). For longer term engagements of more than 13 weeks, please refer to the Annualised and Zero Hours section of the [Contract Guidance](#).

When it has not been possible to engage a casual worker, an agency worker may be considered. Agency workers are often used to meet these demands where the work can be performed on an “as and when” basis. Their relationship with the College is distinct from employees as they are not required to be available for work, and are free to turn down work if offered by their agency.

### Agency Terms

The College’s Purchasing Department has agreed favourable terms with a number of [preferred agencies](#) and these should be contacted in the first instance to provide any temporary agency workers.

If you require agency workers from an agency with which the Purchasing Department has not agreed a contract, please liaise with Purchase Order Enquiries ([po-help@imperial.ac.uk](mailto:po-help@imperial.ac.uk)) prior to agreeing terms of business. You will also be required to provide the agency with copies of the College’s Core Terms and Conditions, relevant Job Family Terms and Conditions and a copy of the relevant College salary scale, these documents can be accessed from <http://www.imperial.ac.uk/human-resources/salaries-terms-and-conditions/>

The Purchasing Department will ensure that the terms of business agreed with the preferred agencies include the completion of pre-employment checks e.g. reference checks, proof of the agency worker’s identity, their eligibility to work in the UK, and any other screening documentation, etc. For all other agencies, it is your responsibility to request that these requirements are included in the terms of business you agree with the agency. If the agency does not provide you with copies of these documents, you should request copies before the agency worker starts work and verify any relevant documents upon their arrival at the College.

For preferred agencies, the Purchasing Department has negotiated agreed introduction fees. For all other agencies, please liaise with the Purchasing Department regarding the rate the agency would charge if the agency worker was appointed to a College role to ensure this is in line with the negotiated rate charged by the preferred agencies. Please note that where you engage an agency worker via a non agreed agency and the introduction rate is above

the College norm then the department to which the individual has been appointed will be given the option to request that you pay the difference.

When requesting an agency worker you should use the Adecco booking form or the generic booking form as applicable (<http://www.imperial.ac.uk/finance/purchasing/>) and retain a copy on file to ensure that invoices can be reconciled.

Departments/divisions are required to ensure that agencies comply with the terms of their contract and to report any major variance to the Purchasing Department.

## 1.1 Equality and Diversity

The College treats equality of opportunity seriously and has an equality framework that is applicable to staff in order to promote and ensure equality of opportunity. Implementation of this procedure must be clear and transparent and not subject to any unfair discriminatory practices.

Line managers and supervisors are required to familiarise and understand this procedure.

## 2 Agency Workers Regulations

The Agency Workers Regulations [AWR] provide any agency workers engaged on or after 1 October 2011 with the right to Equal Treatment.

From **Day 1** of their assignment with the College agency workers are entitled to:

- access to the Common Rooms;
- access to Ethos;
- access to showers;
- access to mother and baby room – contact [Occupational Health](#) for details;
- access to [Employee Assistance Provider](#)
- add their name to the Early Years Education Centre [nursery] waiting list; and
- access to prayer room
- information on internal vacancies.

To ensure compliance with the AWR, agency workers can apply for and should be considered for “**internal only**” vacancies.

It is **important** to be aware that agencies normally charge an introduction fee if an agency worker is appointed to a College vacancy whilst on a temporary assignment. There are exceptions to this with some of the preferred agencies to the College, namely Adecco and Hudson. Please contact Alex Martin [[alex.martin@imperial.ac.uk](mailto:alex.martin@imperial.ac.uk)] in the Purchasing Department for further information.

Agency workers who complete **12 weeks' continuous service** in the "same or broadly similar" job as members of the College have the right to the same **basic** employment and working conditions as College employees, these are:

- basic rate of pay (based on the relevant Job Family);
- the duration of working time;
- night work;
- rest periods;
- rest breaks;
- paid time off for ante natal appointments;
- College annual leave, including College closure days - 39/40 days per year.

For example, from weeks 1 to 12 an agency worker hired to undertake the duties of a Catering Assistant, can be paid the rate of pay deemed appropriate [providing this is not below the minimum wage] and has a right for that rate to be uplifted by the equivalent statutory holiday entitlement of 28 days. Upon 13 weeks' continuous service with the College in the "same or broadly similar" job they are entitled to:

- Level 1a hourly rate
- Level 1a overtime rate [if applicable]
- One hour without pay for lunch
- Equivalent of 39/40 days' annual leave added to hourly rate

Agency workers are only entitled to the above mentioned basic employment rights; they have **no entitlement** to occupational sick leave and pay, pension, redundancy, notice and family friendly leave and pay.

The responsibility for ensuring that the agency worker is receiving the correct rate of pay, holiday, etc lies with the agency. The College has an obligation to provide the agency with details of our terms and conditions and salary scales. For agencies with which the College's Purchasing Department has agreed terms this will be done by the HR Division. For all other agencies, it is the responsibility of the engaging department or manager to provide this information; this can be obtained from <http://www.imperial.ac.uk/human-resources/salaries-terms-and-conditions/>

If an agency worker is hired to undertake an assignment where no similar role exists within the College, for example, stuffing envelopes, they will not have a comparator with whom to compare their basic pay. During weeks 1 to 12 the manager can decide on an appropriate rate of pay [providing this is not below the minimum wage] and the agency worker has the right for that rate to be uplifted by the statutory holiday entitlement of 28 days. Upon 13 weeks' continuous service with the College in the "same or broadly similar" job, the rate of pay should be uplifted to the bottom of the College salary scale and the hourly rate further increased to reflect their entitlement to the equivalent College annual leave benefit of 39/40 days.

For agency workers engaged to undertake part of the duties normally undertaken by an existing College employee or more than a basic administrative or operational role where there is no obvious comparator, managers should consult their HR representative for assistance with identifying the appropriate hourly rate.

## 2.1 Calculating the 12 week qualifying period

The 12 week qualifying period is triggered by ***working in the “same or broadly similar” job with the College for 12 calendar weeks***. Service accrues in calendar weeks and not by the hours worked. For example, an agency worker placed with the College 1 day per week for 12 weeks will accrue the right to equal treatment at week 12.

An agency worker who has continuously undertaken a number of different assignments with the College where they have undertaken the same duties and have received the same rate of pay in a number of different College departments will have the right to the same basic employment and working conditions as College employees at week 12. Therefore the department that has engaged the agency worker at the point they have accrued 12 weeks’ service will be required to pay the higher rate of pay and holiday even if the agency worker has only been working in the department for a week. It is therefore advisable to establish the agency worker’s previous work history with the College. To determine if 12 weeks’ service has been accrued, please see the table below. Unless there has been a break in the assignment of more than 6 weeks or the agency worker commences a new or substantially different role then the agency worker will be deemed to qualify for equal treatment.

The AWR have taken into account that agency workers generally have irregular working patterns and gaps in assignments are treated like a “clock” that is “reset to zero”, “paused” and “continues to tick”. The table below shows the impact of different breaks on the qualifying clock:

Type of absence that affects the 12 weeks qualifying period	Effect on 12 week qualifying period
Agency worker begins a new assignment with a new hirer	Clock resets
Agency worker remains with the same hirer but is no longer in the same role [further information below]	Clock resets
A 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
College closure	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 for the originally intended duration of the assignment, or the likely duration of the assignment – whichever is longer*
Statutory maternity, paternity or adoption leave	Clock keeps ticking for the originally intended

	duration of the assignment, or the likely duration of the assignment – whichever is longer **
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\*The protected period for a pregnant agency worker begins at the start of the pregnancy and ends 26 weeks after childbirth [or earlier if she returns to work]

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

Where agency workers hired by the College are assigned to a “**substantially different**” assignment during this period, it is important to inform the agency in writing so that the qualifying clock can be reset to zero. Factors that may make the work or duties substantially different are where:

- different skills and competences are used [it is advisable to outline in writing the skills required for each assignment];
- rate of pay is different;
- work is undertaken in a different location/cost code;
- line manager is different;
- working hours are different;
- extra training is required to undertake role; and
- different equipment is used.

## 2.2 12 week assignment and anti-avoidance provisions

The AWR include anti-avoidance provisions to ensure that neither agencies nor the College can structure agency worker assignments so as to avoid the regulations. An agency worker can lodge a case with an Employment Tribunal if they believe their assignment[s] had been constructed to avoid their right to equal treatment. To determine if the agency worker has been prevented from exercising their right to equal treatment they would need to demonstrate to the Employment Tribunal that they were unable to complete the 12 weeks because they were passed through a number of agencies, or made to perform different roles, and that the most likely reason for the structure is that either the agency that supplied them or the College was seeking to avoid their obligations.

Below are a number of examples of assignment structures where an agency worker could claim the College was attempting to avoid its obligations:

- completes 2 assignments with the College in the same job for 11 weeks with a 6 week break and is given a further 11 week assignment with another 6 week break;
- is hired on 2 or more occasions;
- assignments are less than the qualifying period; or
- assignments are terminated prior to the period for which they were originally engaged by the College; and
- is undertaking the “same or broadly similar” job as previous role.

Please note: the above list is not exhaustive

### **3 Pregnant Agency Workers**

The College may be approached by the agency worker's agency and asked to conduct a health and safety risk assessment on her assignment. If the College identifies a risk, it will need to make an adjustment if it is reasonable. If it is not reasonable the College will need to inform the agency, which is obliged to offer the agency worker alternative suitable work.

### **4 Information on Agency Workers**

The College is obliged to provide the Joint Trades Unions with information on agency workers when conducting a redundancy or Transfer of Undertaking exercise.

### **5 Imperial College Temporary Staff Bank**

The College has set up a [Temporary Staff Bank](#) that contains the details of individuals who are available to undertake casual work. Line managers are able to add casual workers that they would recommend to the Bank. These individuals are not covered by the AWR but are instead covered by the College's "[Engaging Casual Workers – Guidance for Managers](#)".

### **6 Further Information**

If you require information on the Agency Workers Regulations and the College's legal obligations please contact your local [Human Resources representative](#).

If you require information on the temporary agencies the College has agreed favourable business terms with please view the information available on the Purchasing website: <http://www.imperial.ac.uk/finance/purchasing>

In order to obtain a security card, College username and email address for an Agency Worker you should create a Contingent Worker record in the Imperial College Information System (ICIS) using the Agency Temp (CWK) person type. Contingent Worker guidance notes and training material are available from:

<http://www.imperial.ac.uk/admin-services/ict/self-service/admin-systems/icis/set-up-contingent-workers/>