

## Agency Workers Regulations (AWR) – What does it mean for schools and supply teachers?

### ***What & When?***

AWR gives supply teachers the right to equal treatment (e.g. pay) as directly employed teachers, after 12 qualifying weeks in a similar role and has been in force since 1<sup>st</sup> October 2011. Certain rights apply from day one, e.g. use of the canteen, parking, access to job vacancies and staff room.

Previous to the changes in School Teachers Pay and Conditions Document (STPCD) effective 1<sup>st</sup> September 2013 a supply teaching meeting the 12 week qualifying period would have been paid to their previous pay scale irrespective of the role in question.

From 1<sup>st</sup> September 2013, 4myschools are required to ask schools “on what terms would the agency worker be engaged if you engaged him/her directly after completion of the qualifying period?” The school is required to provide 4myschools details of their pay and conditions policy and crucially what rate of pay they would award the supply teacher if directly employed.

4myschools advice is that all supply teacher’s pay should be determined in the same way as contracted teachers (i.e. according to qualifications, experience and role) and that individual supply teachers should be paid on an appropriate point on the relevant scale as set out in the schools pay policy. We believe that there is potential for equal rights risk if employers set a single fixed rate for all supply teachers irrespective of role and experience.

***Determining the relevant pay scale:*** for day-to-day supply teachers meeting the qualifying period we anticipate pay will be largely on MPS range, this does not prevent employers from paying supply teachers on the UPS range as appropriate. 4myschools are satisfied that it would be acceptable to not to pay a supply teacher on the UPS range when they are not required to undertake the level of performance activity required of directly employed UPS teachers. Particularly some supply teachers are not generally required to make a contribution to the wider school. For supply teachers on a long term supply assignments we anticipate this will largely be the MPS range unless the role in question requires UPS levels of performance and the teacher has the experience required.

### ***What does equal treatment include for supply teachers?***

- Pay i.e. treated equally (but proportionately) to full time employees.
- Holiday entitlement
- Working hours
- Over time
- Rest breaks during the working day
- Access to facilities, parking, canteen, transport and staff room

### ***What does it exclude for supply teachers?***

- Statutory paid leave – e.g. jury service, union duties
- Pension contributions
- Occupational sick pay
- Redundancy pay
- Maternity or paternity pay
- Salary sacrifice schemes
- Subsidised membership

### ***What does a school need to do if it is using a 4myschools supply teacher?***

- If hiring a supply teacher via 4myschools the school is obliged to detail its normal pay terms and conditions for employed teachers to 4myschools - so the supply teacher (once qualifying after 12 weeks in substantially the same role within the school) is treated equally. For most schools this will mean paying individual supply teachers on an appropriate point on the relevant scale as set out in your pay policy appropriate for the role in question. 4myschools have always paid our teachers to scale for subject specific work, so not much change.
- Ensure the supply teacher has access to day 1 rights, e.g. the facilities such as the canteen, jobs board, parking, staff room and transport.
- Record the details of which supply teachers have been engaged by the school irrespective of the agency they were assigned by and the days they worked. 4myschools will provide you with details of all 4myschools teachers used, dates and days worked when requested. This is also available to your school over the internet if you would like to run the report yourself.

### ***What is the 12 qualifying weeks?***

The supply teachers qualifying period does not need to be continuous; they can work part time e.g. a day during any week (the first day being their first qualifying week) and whilst not working with the school their clock simply pauses.

Each teacher has their own clock with each school, irrespective of the agency through which the teacher is engaged.

The teacher may have multiple clocks running in parallel with different schools.

The teachers' qualifying clock only pauses during forced closures i.e. school holidays, industrial action, jury service, certified sick leave (for no more than 28 weeks).

The teachers' clock only resets when there is more than a 6 week continuous break from the school.

Example - A day in the first week on an assignment with the school starts the clock for that teacher. They then don't return to the school for 4 weeks when the clock pauses, they do a further single day in the 5<sup>th</sup> week at the school. This teacher will have 2 qualifying weeks so far. Christmas holiday will simply pause the clock. The teacher returns to the school in January and does one day a week for 10 weeks and therefore has met the 12 week qualifying period. Week 13 they are due equal pay as to their pay scale for the experience they have assuming this is the policy the school adopts.

### ***Who is the hirer for agency supply teachers?***

The "hirer" is a "person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person".

A "hirer" will have its own legal identity and is responsible for supervising and directing the agency worker while they undertake the assignment. The question of who is the hirer is a matter of fact to be determined in the light of the circumstances of each case.

#### **(a) Maintained schools**

In foundation schools, voluntary aided schools and foundation special schools, the "hirer" is the school's governing body, being the legal entity to whom the worker is supplied and who is responsible for the supervision and direction of that worker.

In community schools, voluntary controlled schools, community special schools and maintained nursery schools, the “hirer” is either the local authority or the school’s governing body. It is a matter of fact to be determined in each case and depends on to whom the worker is supplied and who supervises and directs that person’s work.

## **(b) Academies**

For Academies, including Free Schools, the “hirer” is the proprietor of the school (often known as the “Academy Trust” - the legal entity that has entered into a funding agreement with the Secretary of State in relation to the running of the Academy), 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 on the qualifying period, 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 after 6 weeks.

## ***Local Authority Supply Staff***

Where a supply teacher has been provided through the Local Authority supply pool or the LA agency provider the Local Authority would normally be the hirer rather than the school who may not have its own legal identity. Thus supply staff provided via the Local Authority to schools without their own legal identity are likely to meet their qualifying period quickly. Only when the supply teacher works at an Academy or a Free School or a school with its own separate legal identity will a separate clock for that teacher start (although the clock with the LA is only paused during these alternative assignments up to a maximum of 6 continuous weeks after which it is resets).

## ***Can the school decide not to engage the supply teacher beyond the 12 week qualifying period?***

Schools will continue to choose the duration of all engagements and may release a supply teacher at any time. However if this teacher had been released after 11 weeks on the first assignment and the same teacher was then reengaged with the school after the 6 week break in the same role for a further 11 weeks before release the school might be seen to be attempting to frustrate the 12 week qualification period and attempting to avoid their AWR obligations.

### ***Supply Teachers redress?***

If an agency worker felt that the school or agency had failed in their obligations under AWR they would initially discuss the issue with the hirer i.e. the school and the agency, who have 28 days to respond to the worker's request for information. If they fail to reach an agreement the teacher could seek redress through an employment tribunal.

### ***Who is liable?***

The school or the agency/s could both/all be liable if they have been involved in the assignment of the agency worker and would have to demonstrate that they had taken "reasonable steps" to provide the information required from the hirer.

### ***Supply Teachers obligations***

The agency staff must provide details to the agency of where they have worked in the past, the days they worked and if they have or are about to meet the 12 week qualifying period for equal treatment at a specific school. Whilst 4myschools maintains records of all assignments through 4myschools we are unable to maintain records of assignments undertaken at schools through other agencies without the overt support of the supply teacher.

### ***Cover supervisor and teaching roles?***

When the school asks 4myschools for a Cover Supervisor or a Teaching Assistant with the person assigned being expected to supervise children in undertaking prepared work then even if they are a qualified teacher the rate of pay would be to a Cover Supervisor and not as a qualified teacher for that assignment and after the 12 week qualifying period so long as their role remains as a supervisor. If the school asks 4myschools for a teacher to teach children and undertake "specified work" then the teacher would, after the qualifying 12 week period, be paid on the appropriate pay scale point or as per the policy of the school for all other employed teachers. "Specified work" means planning, preparing, delivering lessons and assessing and reporting on the development, progress and attainment of pupils.

### ***4myschools position:***

- No significant change - 4myschools have always paid our teachers to Main Scale for subject specific work, when the assignment was for a week or more, so little change for us or the schools that use 4myschools.
- Full compliance – 4myschools will comply fully with the obligations of the AWR.
- Charges – 4myschools charge rates for M1 to M6 and UPS1 to UPS3 (including Fringe) teachers, reflect the 1% increase awarded to teachers effective from 1<sup>st</sup> Sept 2013. AWR

compels us to extend our pay and charge range to all points on the spine and we have extended our rates to UPS1 to UPS3 and onwards to suit schools and teachers.

- If your school or academy has set its own salary structure then 4myschools will need to discuss this with you to ensure equal pay for the teacher in question.
- General Cover - We continue to offer General Cover rates for all our teachers until they meet the qualifying 12 week period either through us or other agencies when they will go to their appropriate pay scale.
- Margin - Our margin remains very similar across all pay scales.
- Holiday Pay – 4myschools pay at 195<sup>th</sup> of annual scale salary per day – this includes the teacher’s holiday entitlement which is rolled up in their pay and notified on every payslip.

4myschools believes that the information contained in this guidance is accurate, however, it should not be relied on and it is not intended to replace the need to take your own professional advice on AWR. If you have any questions or would like to seek clarification or to expand the contents of this guidance for others please contact us on 01245 353 808 or by email to:

[info@4myschools.org](mailto:info@4myschools.org)

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