

Engaging workers/non WCC employees

A guide for recruiting managers

1. Introduction

There are occasions when managers need to respond quickly to changes in service demands and, to do so, may require additional staff who are not WCC employees. This guide has been developed to assist managers to understand the corporate and legal requirements in relation to the engagement and use of workers/non WCC employees.

There are two key points to consider when engaging contingent workers. Firstly what are the agreed terms of the appointment and secondly what are the tax implications of the workers employment status.

Contingent Workers should only be used to provide services for which the organisation does not otherwise employ its own resources or when a short-term need for additional resources or special skills exists and the hiring of additional employees is not warranted (e.g., a special project or a short-term increase in work load).

2. Definition of a contingent worker

For the purpose of this guide a contingent worker is defined as a non-employee engaged to provide services to the organisation outside of the organisation's core workforce. This includes temporary agency workers, interims, consultants, casual workers, office holders etc. A full definition of the different types of workers is provided at the back of this guide.

3. Importance of clarifying the terms of appointment when hiring contingent workers

Generally if workers are hired via an agency who have a contractual agreement to supply workers (e.g. Pertemps) no additional contractual agreements with each worker are required. For any other arrangement to appoint workers it is important that the conditions of appointment are understood and agreed by the worker. Please contact Legal Services for further guidance and support.

4. Importance of identifying the employment status of contingent workers

To avoid significant penalties and scrutiny from HMRC it is very important that the appropriate employment status for workers is applied. This ensures that the authority is protected from any liability for unpaid tax and NI.

The employment status of a worker is not a matter of choice, it is based on the relationship the authority has with the individual including the terms and conditions of the agreement that the council has with them.

Recently the council has been challenged by HMRC in relation to the employment status of individuals working on behalf of the council. The workers, who were previously classed as self employed and paid via invoice, were deemed to be casual workers for tax and NI purposes and the council was therefore liable for the unpaid tax and NI (employers and employees) plus accrued interest.

Ultimately if you are not engaging workers via an agency please contact the Resourcing Service for guidance.

4. Determining a worker's employment status

HMRC have defined certain factors for determining a worker's employment status and as a general rule if the individual does not have the risks of running a business they are an employee. Set out below are the criteria which HMRC apply to determine if someone is an employee. If the answer to the majority of the questions is 'yes' then individual should be classed as an employee and should be paid via the authority's payroll.

- Does the worker have to do the work themselves?
- Can you tell the worker where to work, when to work, how to work or what to do?
- Can you move the worker from task to task?
- Does the worker have to work a set number of hours?
- Is the worker paid a regular salary?
- Is the worker responsible for managing anyone else engaged by you?

The criteria for determining if an individual is self employed are as follows. If the answer to the majority of the questions is 'yes' that individual can be classed as self employed for the purposes of tax and NI.

- Can the worker hire someone to do the work or take on help at their own expense?

- Can the worker decide where to provide the services of the job, when to work, how to work and what to do?
- Can the worker make a loss as well as a profit?
- Does the worker agree to do a job for a fixed price regardless of how long the job may take?
- Does the worker risk his own money?
- Does the worker provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?
- Does the worker have to correct unsatisfactory work in their own time and at their own expense?
- Do they regularly work for a number of different people?

5. Approved routes for sourcing interims and temporary agency workers

Managers are required to engage interims and agency workers via the approved corporate contracts. This is usually Pertemps (although other contracts are in place for IT and Legal). Managers should familiarise themselves with the guidance in relation to accessing workers via these contracts available on the [intranet](#)

When it has not been possible to engage an agency worker via an approved contract you should contact the Resourcing Service in the first instance. Under no circumstances should you engage any worker outside of a corporate contract without discussing this with the Resourcing Service first.

6. Consequences of non compliance

Non compliance of HMRC requirements in relation to a worker's employment status can lead to significant fines. Any fines incurred as a result of a violation of the procedure will be charged to the service responsible for hiring the worker. In relation to use of off contract agencies; disciplinary action may be taken up to and including termination.

Contact the Resourcing Service | 01926 418125 | recruitment@warwickshire.gov.uk

Full definition of the types of 'workers'

1. Agency workers

Hourly rate workers engaged through temporary agencies. Agency workers are 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.

Since October 2011 Agency Worker Regulations have stipulated that agency workers are entitled to the same basic employment and working conditions as if they had been recruited directly (eg facilities and access to job vacancies). If and when they complete a qualifying period of 12 weeks in the same role (regardless of moves to other teams covering the same role during this period) they are entitled to the equivalent terms and conditions of a direct hire (eg pay and annual leave) . Please ensure you factor in any increases to pay rates after the 12 week AWR period when budgeting for temporary staff. Further information in relation to AWR can be found [here](#).

Pertemps Recruitment provide a managed service for all WCC temporary recruitment activity (excluding Legal and IT) Temporary staff can be requested via their online systems (PAWS) you can contact the Warwickshire team on 01926 316400 or via email warwickshire@pertemps.co.uk

If the interim is supplied via Pertemps or another approved agency then the agency is responsible for ensuring that the worker has appropriate and lawful tax arrangements.

Under no circumstances must a manager engage an agency worker without going through Pertemps first. If this route is not successful please contact the Resourcing Service for further support.

2. Interims

Interims are defined as senior grade managers covering a substantive post within the Council and are concerned with the fulfilment of particular professional functional or senior management positions within the organisational structure. They usually cover business-as-usual activities/providing cover for a role and are ideally engaged on a short term basis. They normally would have line responsibility for staff if this is an element of the role they are covering.

Interim managers would normally be sourced as a worker via the council's temporary staffing managed service (Pertemps). Alternatively a normal recruitment process can be followed and the individual can be employed by the organisation on a fixed term contract

and their salary paid via payroll.

Due consideration needs to be given to how the interim is sourced and selected, what checks are undertaken (e.g. references, DBS checks, eligibility to work in the UK, qualifications etc.) and how much the individual is to be paid and how this will be benchmarked.

Under no circumstances must a manager engage an interim without going through Pertemps first. If this route is not successful please contact the Resourcing Service for further support.

3. Consultants

Usually external consulting firms who provide professional/specialist expert advice. For the purpose of this guide the definition of a consultant is:

"Any party, whether an individual or a firm, engaged, outside the mandatory temporary staff contract, for a limited period to provide professional advice or services. A consultant transfers skills and/or expertise to an organisation which, it either does not possess in-house, or which require an independent evaluation/assessment to be made"

Consultants are not held against an existing post on the establishment.

Whilst it may be preferable for the same individual to carry out the task, with consultants, in certain circumstances another individual with the same skill/knowledge level could be substituted.

Consultants are not managed in the same way as employees or interim workers, they are paid a fixed fee for the completion of a specific task rather than on the number of hours/days they complete.

Although there may be a requirement for them to attend council offices on occasions for meetings etc. the consultant would not be expected to carry out the majority of their work on the premises.

Engaging a consultant is a procurement activity. It is important that any expenditure in relation to engaging consultants must be in accordance with the Councils "Rules for Contracts".

4. Casual workers

Casual employment is appropriate for front line services where the need to cover absences at short notice is critical in order to deliver essential services.

For the purpose of this guide the term "casual worker" relates to those people where there is no "mutuality of obligation". This means the Council is not obliged to offer work. Equally the worker is not obliged to take work. A casual worker is never an employee and must not have an agreed pattern of work of 13 weeks or over.

Casual workers must be issued with a letter from the HR Service Centre that makes clear their casual status with the council.

Casual workers should claim for their dates of attendance via claim forms authorised by the line manager and submitted to the HR Service Centre for payment.

5. Secondees

There may be occasions where a worker is seconded from another organisation, in these situations a formal secondment agreement must be drawn up with Legal Services.

6. Office holders/Public appointments

An office may be created by a charter, statute or other document which is, or forms part of the constitution of an organisation or which governs its operation'. Roles which come within this definition include panel chairs/members and school improvement partners.

Historically, these roles had been treated as self employed, however, following recent HMRC guidelines, all payments to office holders must be treated as employment earnings and processed via payroll as a casual worker for PAYE and NI purposes.

Office holders must claim for their dates of attendance via claims forms authorised by the line manager or budget holder and submitted to the HR Service Centre for payment.

Under no circumstances should an office holder/public appointment submit invoices or be paid via the agresso system.