



Guidance for Agency Workers during COVID-19

Purpose

This guidance is provided to Councils in relation to agency workers whose assignments have been disrupted by the response to COVID-19. It addresses concerns regarding agency workers continuing to attend a Council workplace whilst ill with COVID-19 or when they should be self-isolating, if they would not otherwise be paid.

Employment Status

An agency worker is a contingent worker who is provided by an employment agency and who is not a council employee. An agency worker is therefore not part of the SJC workforce. Their contractual employment relationship is with the employment agency. These workers are paid directly by the agency and may be substituted by the agency at their discretion. A worker provided through an agency may be carrying out other assignments for the agency and may also be engaged with other agencies.

A Council that uses workers provided through an employment agency will be bound by the contractual provisions agreed with the agency, and any procurement framework in place.

Legal advice obtained from Clyde & Co in the last month confirms that the SJC, (and our other employer negotiating bodies) do not have authority to form agreements, binding on Councils, about agency workers.

Agency workers and their employers may be eligible for compensation through the UK Government's "Furlough" scheme.

Sick Pay

There is a concern that, because of potential loss of pay, an agency worker may be motivated to attend work while COVID-19 symptomatic or when they should be self-isolating. This would pose a risk for our service users, employees and other workers. Payment of sick pay is a matter for the agency and therefore cannot be directly addressed by a council.

The Agency Worker Regulations 2010 require that after 12 weeks in a role an agency worker must receive the same basic terms and conditions as a direct employee doing the same kind of work. These conditions are pay; the duration of working time; night work; rest periods; and annual leave. They **do not** include contractual sick pay, which remains a matter for the employment agency.

When procuring agency worker providers and in discussion with current providers about how their workers should be treated during the COVID-19 pandemic, councils should raise awareness of Fair Work principles.

Safety

Whether a worker can attend one of our workplaces is a contractual matter between the agency and the council. It is recommended that the right to require an agency worker to leave the workplace and be substituted by an alternative worker should be made clear.

Responsibility for health and safety in a council workplace for service users and workers, (both employees and workers contracted through an agency), remains with line management.

Councils should ensure that managers are aware of, follow and enforce national COVID-19 guidance. This includes workers adhering to appropriate social distancing, using PPE, and observing all hygiene measures in place.

Managers must be clear that a worker who reports to work with COVID-19 symptoms or develops them whilst at work should be sent home in line with the national self-isolation advice.

COSLA Employers Team

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