

## Agency Worker Regulations (AWR) Guidance

### **What are the Agency Worker Regulations?**

The Agency Workers Regulations 2010 (AWR) gives supply staff who are provided by an agency such as WwS a right to equal treatment once they have been in the same assignment with the same “hirer” for more than 12 weeks.

This means an entitlement to the same basic rights that would have applied if the “hirer” had recruited the staff directly.

There are also “Day One” rights to which agency supply staff are entitled from the first day of any assignment.

### **Who is the Hirer?**

The hirer for the purposes of AWR varies – but generally is the legal body responsible for supervising and directing agency supply staff while they work in an assignment, generally:-

#### ***Academies and free schools***

The hirer is the proprietor of the school usually called the ‘academy trust’.

***Foundation schools, voluntary aided schools and foundation special schools*** The hirer is the school’s governing body.

**Community schools, voluntary controlled schools, community special schools and maintained nursery schools**

### **Day One Rights**

From day one of an assignment, agency supply staff are entitled to:-

***The right to access information on job vacancies; and***

***The right to access collective on-site facilities.***

Collective facilities mean things like car parking, childcare facilities, canteen facilities and any transport services provided to the staff employed directly by the school.

*(However please note however that if there is a waiting list for e.g. car parking spaces or childcare provision, , agency supply staff won’t be automatically entitled to a place, but subject to the same criteria to access the facility as permanent staff).*

The school has the sole responsibility for ensuring agency supply staff receive any Day One rights so if WwS staff have any queries, these should be addressed to the school directly.

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### School Responsibilities

As well as responsibility for [Day One](#) rights, schools should provide WwS with up-to-date information on staff terms and conditions, so that WwS can ensure agency supply staff receive the correct equal treatment after 12 weeks in the same assignment with that school. WwS will email a standard request template to the school to request this information where appropriate.

WwS will also need to know from a school whether the agency supply staff has been supplied to the school previously, even if this was by another agency. This is because all of the time that has been worked at the school in the same role is taken into account when working out when the 12-week qualifying period has been reached. WwS may also have asked the WwS agency supply staff for this information on booking this member of staff for the school.

*The Department for Education has produced detailed [AWR guidance for schools](#) regarding supply teachers.*

### What Is Equal Treatment?

Equal treatment is limited to certain employment terms and conditions that relate to:

- [Pay](#)
- [Annual leave](#)
- **Duration of working time**
- **Rest breaks**
- **Rest periods**
- **Night work**

So when providing this information to WwS, the school should ask itself the following question:

***“If we took on this supply worker as our own employee rather than through WwS and we were issuing an employment contract, what would the contract include in terms of [pay](#), annual leave and duration of working time, night work, rest breaks and rest periods”***

*More information is set out on some of these terms below*



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### Pay

WwS will negotiate rates of pay with the school, using and relying on the information given by that school. Equal treatment pay may vary from school to school, depending on arrangements in place for the school's own staff. If there is no member of staff employed directly by the school who can be used as a direct comparator to assess equal treatment pay, WwS and the school will look at general school pay scales and market rates and any other conditions which apply in the school. The equal treatment pay rate for AWR purposes is determined by type of work being done job, and the nature of the school not the qualifications held by the agency supply staff.

For some WwS agency supply staff (generally those working in school support roles such as teaching assistants, school administrators, MSAs or exam invigilators) there may not be any change in rates after 12 weeks because WwS may already be paying these staff a rate that is equal to or above the AWR compliant rate.

For WwS agency supply teachers, equal pay may be worked out using School Teachers Pay & Conditions Document (STPCD) rates, or academy/free school/independent school rates. However from September 2013, STPCD removed portability of salary and even where STPCD rates apply, a school does not have to pay a supply teacher the same STPCD rate they were on when last in a school post.

If the rate of pay increases for WwS agency supply staff after 12 weeks in line with AWR, WwS' charges to the school will change to reflect this – WwS will send full details to the school if this applies.

### Annual Leave

As many contracted school support staff are employed term time only, equal treatment under AWR may not increase leave entitlement for WwS agency supply support staff.

As for WwS agency supply teachers they are entitled to the same annual leave as permanent teachers the hiring school but under STPCD there is no specific provision for holidays or annual leave.

If there is no change in leave WwS agency staff will continue receive payment in accordance with existing statutory entitlement to annual leave in accordance with the Working Time Regulations 1998.

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However there is a equal treatment change in leave, WwS will make this adjustment on an individual basis for each WwS agency supply staff on our payroll system in line with the school's direct recruits.

*If you have a query about these or any of the other Equal Treatment Rights, please contact WwS by [email](#) or telephone.*

### **Calculating the 12 weeks**

If WwS agency supply staff have worked 12 calendar weeks in the same role with the same school, they will be entitled to equal treatment irrespective of whether they have worked full or part-time.

Any time worked during a week will be counted as 'one week' – even if they have only worked a few hours in a week.

If the WwS agency supply staff takes a break from an assignment and returns to the same role with the same school and the break lasts for 6 weeks or less, they will preserve any weeks that they have already worked in the assignment.

So, for example, if they have worked for five weeks in an assignment, were then not required for three weeks and then returned to the same role, instead of starting from zero weeks towards the twelve week qualifying period, they will pick up from week six. This is often referred to as 'pausing' the qualifying clock.

### **School Closures**

The clock may also be paused during a school closure (for example, summer holidays). If the WwS agency supply staff is working before and after such a closure and is, for example, 6 weeks into a qualifying period for equal treatment, the qualifying period would pause at the end of one term and start again at the beginning of the next so long as they return to the same job with the same school.

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### Other breaks that may affect the 12 weeks

- Certified sickness absence – this pauses the clock for up to 28 weeks.
- Jury service - pauses the clock up to 28 weeks.
- In the case of pregnancy / maternity related absence or paternity, maternity, adoption leave the clock carries ticking throughout the absence or statutory protected period as if the WwS agency supply staff was at work.

For other examples in which the qualifying clock is paused or re-sets to zero, please see the following detailed [guidance](#) from the Department for Business, Energy & Industrial Strategy.

As previously explained [above](#), the clock may also continue to run even if the WwS agency supply staff has been previously provided to the hiring school by another agency.

### Pregnancy

If WwS agency supply staff are pregnant they should let WwS know about this as soon as possible so that we can ask the school to carry out a workplace risk assessment with a view to minimising any risks to the supply staff/their unborn child. If after carrying out this assessment, the school considers that they are not able to reasonably reduce or remove such risks, WwS will endeavour to find the WwS agency supply staff suitable alternative work. However, WwS consider that the likelihood of this being other school work may be low.

In addition after 12 week qualifying period the WwS agency supply staff is entitled to paid time off for antenatal medical appointments and antenatal classes during the assignment. Evidence must be provided to confirm such appointments.

### Furlough and AWR

If a WwS agency supply worker has been furloughed, does that stop or suspend their qualifying clock for the purposes of the Agency Workers Regulations 2010 (AWR)?

The AWR provide for the qualifying clock to be paused in specific circumstances.

Below we distinguish between a WwS agency supply worker who is furloughed because there is no work for them and WwS agency supply worker who is furloughed because they are shielding.



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### **WwS agency supply staff who have been furloughed when there is no work:**

The AWR qualifying clock can be paused for breaks of up to six weeks. If a WwS agency worker is furloughed because they have no work for a period of 6 weeks or less then their AWR qualifying clock will pause.

### **WwS agency supply staff who have been furloughed because they are shielding:**

A business can furlough people who are shielding. A person can shield if they are defined as vulnerable under the relevant public health guidance and are therefore at high risk from coronavirus due to underlying health conditions.

A person who wants to shield will need to have been notified by a medical professional to shield for a specified period of time (usually 12 weeks).

Under the AWR, a qualifying clock is paused where there is break during or between assignments and this break is “wholly due to the fact that the agency worker is incapable of working in consequence of sickness or injury” (Regulation 7(8)(b)).

This is worded broadly enough to cover a scenario where someone is instructed to shield, and therefore unable to work, even if they aren’t actually sick themselves as it is still a consequence of sickness (i.e. related to an underlying health condition).

As the shielding period is likely to be under the 28-week max (subject to the government changing the shielding period). Likewise, as the shielding guidance requires a notice to be given for someone to shield, it should not be an issue for WwS agency supply staff to give evidence if required.

This means that the AWR qualifying clock will not reset if people shield in this manner



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### WwS agency supply staff queries about AWR entitlement

WwS will work to ensure compliance with the AWR and that Equal Treatment is provided to the WwS agency supply staff after completion of the 12 week qualifying period.

If any WwS agency supply staff believe they have completed the 12 week qualifying period and they are not receiving equal treatment, they should get in touch with WwS by [email](#) or phone and WwS will work to resolve these issues informally with the WwS staff member and the school at earliest opportunity to minimize stress and time involved for all parties.

If the issue is not resolved to the satisfaction of the WwS agency supply staff, provided they have completed the 12 week qualifying period :-

- They may make a written request to WwS for written statement about any aspect of equal treatment they do not believe they were receiving;
- WwS will provide details of the relevant information relating to basic working and employment conditions as set out in the information provided by the school. This may include any relevant information or factors that were considered when determining the basic working and employment conditions, e.g. pay scale and where Equal Treatment is based on a comparable employee, the information that describes the terms and conditions applicable to that employee, explaining any difference in treatment relating to levels of skill, experience and expertise. WwS will provide this information within 28 days of the receipt of the request by the WwS agency supply staff.