

## **Guidance on the Operation of Temporary Contracts (covering fixed term, casual, PTHP and agency workers)**

### **1. Introduction**

- 1.1. This guidance provides details of the legal framework covering terms and conditions of employment governing the use of temporary contracts within the University. These guidelines are designed to:
- Ensure that temporary contracts are only used for genuine temporary reasons
  - Link the type of contract issued to the principal reason for the temporary work
  - Decrease the risk of successful litigation
  - Ensure that appropriate monitoring of renewals and non-renewals of contracts takes place
  - Ensure equitable treatment of temporary staff
  - Ensure fair process is followed regarding renewals and non-renewals including individual and collective consultation.

### **2. Types of Contract**

#### **2.1. Fixed Term Contracts**

- 2.1.1. Fixed term contracts are issued where the nature of the temporary work is such that the contract will end at a specified date or is anticipated to end at a specified date. These contracts should be used in the following circumstances:
- Regular patterns of temporary work or cover – buying in teaching staff to cover a pattern of regular teaching throughout an academic year
  - Covering vacancies
  - Covering maternity leave
  - Covering long term sickness absence
  - Covering time limited projects (where it is not anticipated that the project funding will be renewed)
  - Covering secondment of permanent staff
  - Covering long term leave of absence

In all circumstances the reason for the contract should be **temporary** and not expected to extend beyond the end date of the contract.

- 2.1.2. Assessment of salary and all other terms and conditions of employment will be as applicable to permanent staff (pro rata for part time staff). Natural termination of contract will occur at the expected end date of the contract. One month's notice will apply in other circumstances.
- 2.1.3. Staff employed on fixed term contracts perform the full duties of the post. Academic staff employed on fixed term contracts are expected to fulfil all requirements of a lecturer/senior lecturer and should undertake administrative duties, support team activities e.g. recruitment open days/events, and undertake scholarship.

#### **2.2. Temporary Casual Employment (including PTHP)**

- 2.2.1. Hourly paid contracts, including part time hourly paid lecturer contracts, should only be issued where the nature of employment is casual or uncertain over a short time period. Casual, hourly paid contracts should be used in the following circumstances:
- an individual performs a set task in a short time scale – a short series of guest lectures;

- to provide specialist input over a short period of time (less than 3 months/less than a term)
- employment patterns are irregular – a member of staff is called at short notice to cover;
- the time period for cover is uncertain and it is unclear how quickly the employment relationship will need to be terminated e.g. sickness absence cover.

2.2.2. Temporary casual employment will be paid at an hourly rate of pay on production of retrospective claim forms. The employment relationship is daily. There is no requirement on the part of the University to offer the individual further work in the future. Equally there is no obligation on the part of the individual to accept any work that might be offered.

### **2.3. Agency Workers**

2.3.1. Agency workers are not employed by the University but by the Agency who lease the services of that person to the University. Hours, terms and conditions of employment, matters of performance etc... are matters determined between the agency and the worker. The contract is a service (not employment) contract which exists between the University and the Agency. Agency placements should be considered in the following cases:

- Extremely short term cover, where it would be impossible to recruit from the market
- Cover for specialist posts where there is a labour market shortage.

2.3.2. Individuals are paid directly by the Agency. The University pays an agreed fee to the Agency in return for the services of its worker. Agency workers have no rights to any University terms and conditions of employment. Terms and conditions of employment are set by the Agency. Individual agency workers will have rights to equal status for pay and main terms and conditions once they have completed 12 weeks assignment at the University (not necessarily 12 weeks in the same position).

2.3.3. Whilst Agency workers are employed by the Agency their status as determined by case law has changed from time to time. For this reason Agency workers should not be employed on a long term basis and when covering specialist vacancies strenuous efforts should be made to recruit a permanent employee to the University as soon as practicable.

### **2.4. Indefinite Contracts**

2.4.1. Indefinite contracts should be used where there is no objective justification for the issue or renewal of a fixed term contract. They are most suited for posts where future funding may be insecure or where permanent funding has been not been secured but individuals are confident that future funding will be found to maintain the employment.

2.4.2. Assessment of salary and all other terms and conditions of employment will be as applicable to permanent staff (pro rata for part time staff). Where there is certainty that no further funding will become available to maintain employment standard redundancy and redeployment procedures apply.

2.4.3. Indefinite contracts will automatically apply where a fixed term contract is requested and there is no objective justification.

## **3. Establishing a temporary contract**

3.1. Employment of PTHP up to 250 hours and casual employment of support staff for up to three months' duration (either through direct recruitment or via an agency) may be made directly without monitoring. Monitoring is required for all long term use of temporary

contracts. Long term is any support contract in excess of three months or continuation of contract over three months or continued employment of the same person undertaking work in the same area in excess of three months. Long term PTHP is scheduled engagement above 250 hours.

- 3.2. All fixed term posts, or longer term use of temporary or agency contracts must secure approval. In monitoring for temporary positions the justification of the temporary reason for employment must be provided. This will be one or more of the following factors:
1. To cover staff absence (e.g. sickness, maternity, sabbatical etc...)
  2. The contract provides a secondment or career development opportunity
  3. The post requires specialist expertise or recent experience not already available within the institution in the short term
  4. Input from specialist practitioners e.g. specialist or visiting lecturers
  5. Where student or other business demand can be clearly demonstrated as particularly uncertain
  6. Where there is no reasonably foreseeable prospect of short term funding being renewed or other external or internal funding being available or becoming available.
- 3.3. In all circumstances no work should be undertaken until the necessary asylum and immigration check has been carried out<sup>1</sup> or Disclosure clearance is given where exemption from the Rehabilitation of Offenders Act applies.

#### **4. Non-Renewal of Temporary Contracts**

- 4.1. All temporary contracts will be subject to the termination date either identified in the statement of particulars issued to individual employees for fixed term contracts or identified as an end date at the start of the temporary contract.
- 4.2. In the event of a termination of a fixed term contract by reason of redundancy (i.e. the work has ceased or diminished) the University will make a redundancy payment in accordance with the statutory redundancy scheme<sup>2</sup> to staff who have two or more years' continuous service at the University. This may include the length of one contract or short term temporary renewals. It should be noted that where staff are members of the West Yorkshire Pension Scheme or the Universities' Superannuation Scheme and are over 55 years of age they will also be entitled to early release of pension (without actuarial reduction). These costs will need to be met by the relevant School or Service.
- 4.3. Most temporary contracts will end for some other substantial reason. In most cases this will be because the purpose of the contract has ended the vacancy is filled through recruitment, the person on maternity leave returns etc...
- 4.4. Before the end of the temporary contract Schools and Services will need to consider whether the contract can be renewed or whether alternative work is available. Where this is not possible the relevant manager should discuss this with the individual and they will be notified by Human Resources and invited to a meeting to discuss the proposed termination of their employment. Where a termination of the contract proceeds the employee has a right of appeal against the decision to dismiss.
- 4.5. All temporary staff have access to the University's internal vacancies via the internet and are eligible to apply for any posts so advertised. Where individuals have continuous

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<sup>1</sup> For support staff temporary posts these will be carried out by Human Resources. For Agency Staff these are carried out by the Agency (who has liability for any failed check). For PTHP these must be carried out by the School. Before someone commences work a check must be made (and a copy kept on file) that someone has the right to work in the UK. If you are in doubt regarding a potential employee's status check with personnel. Checks must be made from all employees, regardless of their ethnicity, birthplace, etc...

<sup>2</sup> These costs are funded by the School/Service, including pension costs for staff who are over 55 and members of the WYPF or USS.

service of one or more years, redeployment procedures apply where suitable alternative work is available.

- 4.6. Where relevant and appropriate the University will formally consult with recognised trade unions regarding the non-renewal of temporary contracts in accordance with redundancy consultation regulations.

## **5. Renewal of Temporary Contracts**

- 5.1. Before the renewal of any temporary contract the contractual status will be reviewed to consider whether different contractual arrangements should apply. All renewal applications will be subject to approval and must be based on an objective justification.

- 5.2. A renewal or extension of a fixed term contract will become permanent automatically where the individual has at least four years' continuous service unless it can be justified for good business reasons. These are:

1. To cover staff absence (e.g. sickness, maternity, sabbatical etc...)
2. The contract provides a secondment or career development opportunity
3. The post requires specialist expertise or recent experience not already available within the institution in the short term
4. Input from specialist practitioners e.g. specialist or visiting lecturers
5. Where student or other business demand can be clearly demonstrated as particularly uncertain
6. Where there is no reasonably foreseeable prospect of short term funding being renewed or other external or internal funding being available or becoming available.  
*Where short term funding has already been renewed, continuing use of the fixed term contract would need to be justified by another objective reason.*

- 5.3. Where there is no objective justification and an individual is required to continue work which is underpinned by uncertainty of funding or workflow a contract of indefinite length is issued. This contract is permanent and identifies the specific project, funding or tasks that the individual's employment is linked to. The individual's terms and conditions of employment and their statutory rights are the same as any other employee.

## **6. Continuous Service**

- 6.1. All continuous service on temporary contracts with the University will apply for consideration of salary progression and access to local terms and conditions of employment. Continuous service includes all continuous employment at the University, including any periods of temporary or PTHP employment.

## **7. Access to Staff Development**

- 7.1. All temporary staff have access to training and development programmes whilst in employment at the University.
- 7.2. All temporary staff will be required to complete appropriate induction arrangements including relevant appraisal and performance review procedures.