## *Delete these notes from the terms given to the Agency Worker*

Terms of Engagement for PAYE Agency Workers (contract for services)

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| Updated April 2024  This contract replaces the August 2022 version.    Introductory notes p1 to 4  Contract with the agency worker p5 to 21  Annex 1 – template Key Information Document (and Notes 1 to 17) p22 to 30  Annex 2 – template Assignment Details Form p 31 to 39  Notes to terms (Notes 18 to 59) p40 to 63 |

When to use this contract

Use this contract when supplying temporary workers who are agency workers within the scope of the Agency Workers Regulations 2010 (AWR). Under this contract, the employment business deducts PAYE tax and National Insurance contributions and manages all worker rights such as holiday and sick pay.

Do not use this contract when supplying genuinely self-employed persons who are outside the scope of the AWR or individuals working through intermediaries such as an umbrella company or their own personal services company. You can find contracts for those circumstances in the [REC’s template document library](https://www.rec.uk.com/legal-resources/model-document-library).

Use this contract with the following documents

|  |  |
| --- | --- |
| **Contract:3A** | Terms of Business with the Hirer for the supply of Temporary Workers |
| **Additional documents:** | Key Information document – PAYE workers  Key Information document (worked example)-PAYE workers  Document A – Assignment Details Form  Document E – Working Time Regulations – 48 hour opt out notice  Document G – Information Request Form |

## Changes to the Employment Rights Act 1996

From 6 April 2020, section 1 of the Employment Rights Act 1996 (the ERA) is amended as follows:

1. the right to a written statement is extended to all workers, who must receive it no later than day one of their employment or engagement. Note that you do not have to give a written statement of particulars to temporary workers working through intermediaries such as umbrella companies or personal service companies;
2. the written statement must include additional information including, sick pay, any other maternity/paternity leave and pay, training requirements, probation, pension schemes, collective agreements and disciplinary and grievance procedures (some of these are not relevant to agency workers so you can simply mark them as not applicable when completing the Assignment details & Written Statement form).

Under the ERA the written statement sets out the terms the worker will be engaged under by the employment business. The written statement must be in a single document and must include the information required under the ERA. The obligation to provide a written statement under the ERA is separate from the employment business’s obligations under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations).

The Conduct Regulations require you to agree terms with the worker before providing work finding services and then to provide the worker with specific information when offering them an assignment.

There is some overlap with the information required in the Conduct Regulations and the ERA.

To reduce the number of documents you need to give the worker, we have amended the assignment details form (Additional Document A) as follows:

1. Part A includes the information required under the Conduct Regulations; and
2. Part B includes the additional requirements under the ERA.

We now call this an Assignment Details and Written Statement Form (though in the contract we still use the defined term “Assignment Details” for ease). If you do the following you can comply with both the Conduct Regulations and the ERA at the same time:

* Give the worker contract 4 (PAYE terms of engagement) before providing work finding services. This includes all of the written statement requirements and meets the “day one” obligation under the ERA
* When you find an assignment for the worker, give them the completed Assignment Details and Written Statement Form. By this time you should have all the details to complete both sections of the forms.

If any of the information on the Assignment Details and Written Statement Form change, you must update the form and give it to the worker as soon as possible. You must make sure that the updated information in the Written Statement section Part B is given no later than one month from when you give the worker contract 4 because under the ERA any amendments to the initial written statement (which is contract 4) must be given to the worker no later than one month after any changes have been made.

## Changes to the Conduct Regulations

Employment businesses must give a Key Information Document (KID) to temporary workers who register with them on or after 6 April 2020 (Regulation 13A of the Conduct Regulations). They do not have to give a KID to candidates looking for permanent or fixed term contract work directly with a client. They must give the KID before agreeing terms of engagement with the temporary worker.

The purpose of the KID is to improve transparency, particularly in relation to pay and so the KID should not include all the terms of the contract between the temporary worker and the employment business - these will be set out in a separate document. The Department for Business, Energy and Industrial Strategy (BEIS) have produced [written guidance and three templates](https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses) – one each for use when engaging the temporary worker on direct PAYE, through a personal service company or through an intermediary such as an umbrella (REC has adapted these templates by including notes to help you to complete them).

The employment business does not have to give multiple KIDs to show the different payment methods but it would be best practice. Importantly, the temporary worker must receive a KID relevant to how they will ultimately be engaged. The employment business does not have to issue a new KID for each assignment but must issue a new KID when the information changes, e.g. a new deduction.

For more information, see the [Key Information Document](https://www.rec.uk.com/legal-resources/legal-guide/conduct-regulations/regulation-13a-and-the-key-information-document) section of the REC Legal Guide.

## Northern Ireland

Employment issues are devolved in Northern Ireland. At the time of writing, the legal changes relating to the written statements, updates to the Working Time Regulations 1998 which come into effect on 1st January 2024 and the Key Information Document apply only in Great Britain (England, Scotland and Wales). So, if supplying temporary workers in Northern Ireland, you do not need to provide either a written statement of particulars or a Key Information Document. We will keep members updated if this changes.

## Timing – when to give which documents

We have also prepared a timeline document that sets out the chronology of the documents that must be issued and when. All of these documents mentioned here are available in the [REC’s template document library](https://www.rec.uk.com/legal-resources/model-document-library).

## How to use this contract

**Highlighting**: In order to assist you in using this template for your own business’ needs we have highlighted the places where you will need to insert information specific to your business and also where there are optional clauses or notes of explanation at the end of the template contract. The notes and insertions are highlighted in grey while the optional clauses are highlighted in blue and yellow. To remove highlighting from your Word document do the following: select the highlighted text, or press CTRL+A to select all of the text in the document; then on the Formatting toolbar, click the arrow next to Highlight tab and then select None and the highlighting will be removed.

**Notes:** All notes are at the back of the contract. We suggest you print the notes separately so that you can read them side by side with the contract.

**Automatic numbering:** All contracts have automatic numbering. You do not need to amend the numbering in any of the clauses.

**Options in clauses:** Some clauses require you to choose from Option A or Option B. We have highlighted those options in colour. When you have chosen the appropriate option for your business, simply delete the other option (remember also to remove the letter ‘A’ or ‘B’ from the chosen option).

**Heading and copyright notice:** These should be deleted from your document. To do this click on ‘View’, ‘Header & Footer’, a separate toolbar opens allowing you to switch between the header and footer. Select wording in the header or footer and press ‘Delete’. Then click ‘Close’ in the toolbar.

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| REC template documents have been prepared exclusively for REC Corporate Members. You must not distribute these template documents to third parties except where you require them to complete the document. |

## Terms of engagement with an agency worker

### [insert your company logo here]

### DEFINITIONS AND INTERPRETATION

* 1. In these Terms the following definitions apply:

**“Actual Rate of Pay”** means, unless and until the Agency Worker has completed the Qualifying Period, the rate of pay which will be paid for all time worked during an Assignment for each hour worked, as set out in the relevant Assignment Details Form;

**“Actual QP Rate of Pay”** means the rate of pay which will be paid to the Agency Worker if and when he/she completes the Qualifying Period, as set out in any variation to the relevant Assignment Details Form;

**“Agency Worker”** means [name and address of Agency Worker] supplied by the Employment Business to provide services to the Hirer*;*

**“Agreed Deductions”**  means any deductions the Agency Worker has agreed can be made from their pay; [*see Note 18*]

**“Assignment”** means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer;

**“Assignment Details Form”**  means written confirmation of the assignment details to be given to the Agency Worker upon acceptance of the Assignment;

**“AWR”** means the Agency Workers Regulations 2010 [and/ or the Agency Workers (Northern Ireland) Regulations 2011]; [*see Note 19*]

**“Calendar Week”** means any period of 7 days starting with the same day as the first day of the First Assignment;

**“Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 [and/ or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005]; [*see Note 20*]

**“Confidential Information”** means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

**“Control”** means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;

**“Data Protection Laws”** means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data; [*see Note 21*]

**“Deductions”** means any deductions which the Employment Business may be required by law to make and, in particular, in respect of PAYE pursuant to Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions;

**“Emoluments”** means any pay in addition to the Actual QP Rate of Pay;

**“Employment Business”** [*insert your business* *name*] Limited (registered company no. [*insert registered company no.*]) [trading as *insert trading name if different*] of [*insert* *company registered office or trading address};* [s*ee Notes 22 and 23*]

**“Engagement”** means the engagement (including the Agency Worker’s acceptance of the Hirer’s offer), employment or use of the Agency Worker by the Hirer or any third party to whom the Agency Worker has been introduced by the Hirer, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, an agency, license, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

**“First Assignment”** means:

1. the relevant Assignment; or
2. if, prior to the relevant Assignment:
3. the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
4. the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

**“Hirer”** means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is supplied or introduced; *[See Note 24]*

**“Hirer's Group”** means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; [*See Note 24*]

**“Hourly Rate”** means £[x per hour/per day] being the minimum gross rate of pay that the Employment Business reasonably expects to achieve, for all hours worked by the Agency Worker*; [See Note 25]*

**“Irregular Hours Worker”** means a worker whose paid hours of work in relation to a leave year in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable as defined under Regulation 15F (1)a WTR 1998

**“Leave Year”** means the period during which the Agency Worker accrues and may take statutory leave commencing [A: on the date that the Agency Worker starts an Assignment or a series of Assignments] OR [B: on [….]] and runs until the anniversary of that date; [*See Note 26*]

**“Part Year Worker”** means a worker **who** in relation to a leave year, under the terms of their contract, is required to work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid as defined under Regulation 15F (1) b WTR 1998

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**“Period of Extended Hire”** means any additional period that the Hirer wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of assignments as an alternative to paying a Transfer Fee;

**“Qualifying Period”** means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevantHirer in the same role, and as further defined in the Schedule to these Terms;

**“Relevant Period”** means the later of (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment; [*See Note 27* ]

**“Rolled Up Holiday Pay”** Pay due to a worker in respect of leave to which the worker is entitled which must be paid at the same time as a worker’s remuneration for work in accordance with Regulations 16A,16(1) and 15B of WTR 1998.

**“Temporary Work Agency”** means as defined in the Schedule to these Terms;

**“Terms”** means these terms of engagement (including the attached schedule) together with any applicable Assignment Details Form;

**“Transfer Fee”** means the fee payable by the Hirer to the Employment Business in accordance with clause 3.7, as permitted by Regulation 10 of the Conduct Regulations;

**“Type of Work”** means [insert the type of work you expect to supply the Agency Worker into]*;* [*See Note 28*] and

**“WTR”** means the Working Time Regulations 1998 [and/ or the Working Time Regulations (Northern Ireland) 1998 [*See Note 29*]

* 1. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
  2. The headings contained in these Terms are for convenience only and do not affect their interpretation.
  3. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

### THE CONTRACT

* 1. These Terms constitute the entire agreement between the Employment Business and the Agency Worker for the supply of services to the Hirer and they shall govern all Assignments undertaken by the Agency Worker. The contract between the parties starts on the first day of the First Assignment under these Terms however, no contract shall exist between the Employment Business and the Agency Worker between Assignments. These Terms shall prevail over any other terms put forward by the Agency Worker.
  2. During an Assignment the Employment Business will engage the Agency Worker on a contract for services on these Terms. [*See Note 30*] For the avoidance of doubt, the Agency Worker is not an employee of the Employment Business although the Employment Business is required to make the Deductions from the Agency Worker’s pay. These Terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker, or the Agency Worker and the Hirer. The Agency Worker is supplied as a worker, and is entitled to certain statutory rights as such, but nothing in these Terms shall be construed as giving the Agency Worker rights in addition to those provided by statute except where expressly stated.
  3. [*See Note 31*] No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Agency Worker and set out in writing and a copy of the varied terms is given to the Agency Worker no later than 5 business days following the day on which the variation was made stating the date on or after which such varied terms shall apply.
  4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 [or in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981]) (as amended) when introducing or supplying the Agency Worker for Assignments with its Hirers. [*See Note 32*]

### ASSIGNMENTS AND INFORMATION TO BE PROVIDED

* 1. The Employment Business will endeavour to obtain suitable Assignments for the Agency Worker to perform the agreed Type of Work. The Agency Worker shall not be obliged to accept any Assignment offered by the Employment Business.
  2. The Agency Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available, and whilst on an assignment the Agency Worker’s hours of work under this contract will at all times be wholly or mostly variable in accordance with the definition of an Irregular Hours worker under the WTR and agrees that:
     1. the suitability of the work to be offered shall be determined solely by the Employment Business; and
     2. the Employment Business shall incur no liability to the Agency Worker should it fail to offer Assignments of the Type of Work or any other work to the Agency Worker.
  3. At the same time as an Assignment is offered to the Agency Worker the Employment Business shall provide the Agency Worker with an Assignment Details Form setting out the following: [*See Note 33*]

For the purposes of the Conduct Regulations:

* + 1. the identity of the Hirer, and if applicable the nature of their business;
    2. the date the Assignment is to commence and the duration or likely duration of Assignment;
    3. the Type of Work, location and details of hours during which the Agency Worker would be required to work;
    4. the Actual Rate of Pay that will be paid, intervals and any expenses payable by or to the Agency Worker;
    5. any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks;
    6. what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment; and

For the purposes of Section 1 of the Employment Rights Act:

* + 1. any other paid leave such as maternity, paternity or adoption leave;
    2. the details of pension entitlements and pensions schemes; and

* + 1. any other benefits
  1. Where the Employment Business does not give such information in paper form or by electronic means, it shall confirm the information by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following except where:
     1. the Agency Worker is being offered an Assignment in the same position as one in which the Agency Worker has previously been supplied within the previous 5 business days and such information has already been given to the Agency Worker and remains unchanged; or
     2. subject to clause 3.5, the Assignment is intended to last for 5 consecutive business days or less and such information has previously been given to the Agency Worker before and remains unchanged, the Employment Business needs only to provide written confirmation of the identity of the Hirer and the likely duration of the Assignment.
  2. Where the provisions of clause 3.4 are met but the Assignment extends beyond the intended 5 consecutive business day period, the Employment Business shall provide such information set out in clause 3.3 to the Agency Worker in paper or electronic form within 8 days of the start of the Assignment.
  3. For the purpose of calculating the average number of weekly hours worked by the Agency Worker on an Assignment for the purposes of the WTR, the start date for the relevant averaging period shall be the date on which the Agency Worker commences the First Assignment.
  4. [*See Note 34*]If, before or during an Assignment or during the Relevant Period, the Hirer wishes to Engage the Agency Worker directly or through another employment business, the Agency Worker acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer Fee or to agree a Period of Extended Hire with the Hirer at the end of which the Agency Worker may be Engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition, the Employment Business will be entitled to charge a Transfer Fee to the Hirer if the Hirer introduces the Agency Worker to a third party (other than another employment business) who subsequently Engages the Agency Worker, directly or indirectly, before or during an Assignment or within the Relevant Period.
  5. [*See Note 35*]If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks under the AWR which are different and preferential to rights and entitlements relating to the same under the WTR, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate).

### AGENCY WORKER’S OBLIGATIONS

* 1. The Agency Worker is not obliged to accept any Assignment offered by the Employment Business but if the Agency Worker does accept an Assignment, then during every Assignment and afterwards where appropriate, he/she will:
     1. co-operate with the Hirer’s reasonable instructions and accept the direction, supervision and control of any responsible person in the Hirer’s organisation;
     2. observe any relevant rules and regulations of the Hirer’s establishment (including normal hours of work) to which attention has been drawn or which the Agency Worker might reasonably be expected to ascertain;
     3. take all reasonable steps to safeguard his or her own health and safety and that of any other person who may be present or be affected by his or her actions on the Assignment and comply with the Health and Safety policies and procedures of the Hirer;
     4. not engage in any conduct detrimental to the interests of the Employment Business and/ or Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;
     5. not commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business's or the Hirer's staff;
     6. not at any time tell or give to any person, nor use for his or her own or any other person’s benefit, any Confidential Information relating to the Hirer’s or the Employment Business’s employees, business affairs, transactions or finances;
     7. on completion of the Assignment or at any time when requested by the Hirer or the Employment Business, return to the Hirer or where appropriate, to the Employment Business, any Hirer property or items provided to the Agency Worker in connection with or for the purpose of the Assignment, including, but not limited to any equipment, materials, documents, swipe cards or ID cards, uniforms, personal protective equipment or clothing.
  2. [*See Note 36*] if the Agency Worker accepts any Assignment offered by the Employment Business, as soon as possible prior to the commencement of each such Assignment and during each Assignment (as appropriate) and at any time at the Employment Business’s request, the Agency Worker undertakes to:
     1. inform the Employment Business of any Calendar Weeks prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Agency Worker believes count or may count toward the Qualifying Period;
     2. provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken, and any other details requested by the Employment Business; and
     3. inform the Employment Business if he/she has prior to the commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because he/she has:
        1. completed two or more assignments with the Hirer;
        2. completed at least one assignment with the Hirer and one or more earlier

assignments with any member of the Hirer's Group; and/or

* + - 1. worked in more than two roles during an assignment with the Hirer and on at

least two occasions worked in a role that was not the same role as the

previous role.

* 1. If the Agency Worker is unable for any reason to attend work during the course of an Assignment he/she should inform the Employment Business within 1 hour of the commencement of the Assignment or shift. In the event that it is not possible to inform the Employment Business within these timescales, the Agency Worker should alternatively inform the Hirer and then the Employment Business as soon as possible.
  2. If, either before or during the course of an Assignment, the Agency Worker becomes aware of any reason why he/she may not be suitable for an Assignment, he/she shall notify the Employment Business without delay.
  3. The Agency Worker warrants that in relation to these Terms, he/she shall comply strictly with all provisions applicable to him/her under the Data Protection Laws and shall not do or permit to be done anything which might cause the Employment Business or the Hirer to breach any Data Protection Laws.
  4. The Agency Worker acknowledges that any breach of his/her obligations set out in these Terms may cause the Employment Business to suffer loss and that the Employment Business reserves the right to recover such losses from the Agency Worker. [*See Note 37*]

### TIMESHEETS

* 1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less or is completed before the end of a week) the Agency Worker shall deliver to the Employment Business a timesheet duly completed to indicate the number of hours worked during the preceding week (or such lesser period) and signed by an authorised representative of the Hirer.
  2. Subject to clause 5.3, the Employment Business shall pay the Agency Worker for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours. [*See Note 38*]
  3. Where the Agency Worker does not submit a properly authenticated timesheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Agency Worker and the reasons that the Hirer has refused to sign a timesheet in respect of those hours. **This may delay any payment due to the Agency Worker.** [*See Note 39*] The Employment Business will not pay the Agency Worker for hours not worked.
  4. For the avoidance of doubt and for the purposes of the WTR, the Agency Worker’s working time shall only consist of those periods during which he/she is carrying out activities or duties for the Hirer as part of the Assignment. Time spent travelling to the Hirer’s premises (apart from time spent travelling between two or more premises of the Hirer), lunch breaks and other rest breaks shall not count as part of the Agency Worker’s working time for these purposes. This clause 5.4 is subject to any variation set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form which the Employment Business may make for the purpose of compliance with the AWR.

### PAY AND DEDUCTIONS

* 1. For each Assignment the Employment Business shall pay to the Agency Worker the Hourly Rate. The Actual Rate of Pay will be notified on a per Assignment basis and set out in the relevant Assignment Details Form.
  2. If the Agency Worker has completed the Qualifying Period on the start of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, the Employment Business shall pay to the Agency Worker the Actual QP Rate of Pay which will be notified on a per Assignment basis and set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form.
  3. The Hourly Rate, Actual Rate of Pay or Actual QP Rate of Pay, as applicable, will be paid [weekly/monthly] in arrears, subject to any Deductions and or Agreed Deductions, together with any agreed Emoluments.
  4. Subject to any statutory entitlement under the relevant legislation referred to in clauses 7 (Annual leave) and 8 (Sickness absence) below and any other statutory entitlement, the Agency Worker is not entitled to receive payment from the Employment Business or the Hirer for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.
  5. Subject to compliance with Regulation 12 of the Conduct Regulations, the Employment Business reserves the right in its absolute discretion to deduct from the Agency Worker’s pay any sums which he/she may owe the Employment Business including, without limitation, any overpayments or loans made to the Agency Worker by the Employment Business or any losses suffered by the Employment Business as a result of his/her negligence or breach of either the Employment Business’s or the Hirer’s rules. [*See Note 40*]

*Optional clauses*

* 1. If the Employment Business provides any equipment or clothing to the Agency Worker to be used in the course of an Assignment with the Hirer, the Agency Worker must take reasonable care of the equipment or clothing. Furthermore, the Agency Worker must return any equipment or clothing to the Employment Business upon termination of the Terms or within [3] days of a request from the Employment Business. If the Agency Worker does not comply with the obligations set out in this clause, the Employment Business reserves the right to deduct the cost of replacement equipment or clothing from any sums owed to the Agency Worker. The question of whether the Agency Worker has taken reasonable care of the equipment or clothing will be solely assessed by the Employment Business’s reasonable judgement. [*See Note 41*]
  2. Where the Agency Worker holds a valid A1, E101 or E102 Certificate confirming coverage by a social security scheme in a Member State other than the UK, the Agency Worker must declare this to the Employment Business and produce the Certificate. In such cases the Employment Business shall not deduct Class 1 National Insurance Contributions from the Actual Rate of Pay or the Actual QP Rate of Pay (where applicable) but it shall be the responsibility of the Agency Worker to pay such social fee contributions as may be applicable in the Member State concerned. In the event that the Agency Worker fails to pay such contributions and the Employment Business is required to pay contributions either in the UK or the Member State concerned, the Agency Worker undertakes to indemnify the Employment Business and the Employment Business shall be entitled to deduct the amount paid in contributions from any sums owed to the Agency Worker*.* [*See Note 42*]

### ANNUAL LEAVE

**Compulsory Reading: Please note that option B under clause 7.2 of this agreement can only be applied to Irregular Hours Workers and Part Year Workers whose leave years start on or after 1st April 2024 where an Employment Business has elected to apply option B. The legal guidance on the accrual of holiday leave and calculation of holiday pay in respect of the calculation of holiday pay for temporary agency workers on a contract for services before 1st April 2024 and for agencies who choose not to apply option B after 1st April 2024 is at it was following the Supreme Court judgment in Harpur Trust v Brazel *[See Note 45]***

* 1. Subject to clause 7.3, the Agency Worker is entitled to paid annual leave according to the statutory minimum as provided by the WTR from time to time. The current statutory entitlement to paid annual leave under the WTR is 5.6 weeks.
  2. **Choose from Option A or B and delete the option not used[***See Note 43***]** **A:**The Agency Worker’s entitlement to payment for annual leave under clause 7.1 accrues in proportion to the amount of time worked by him / her on Assignment during the Leave Year. The Agency Worker does not accrue annual leave when he/she is not on an assignment and on the termination of each assignment, the Agency Worker will be paid his/her accrued entitlement to leave during the assignment with his/her final pay from each assignment. Payment of accrued entitlement to annual leave will be reflected on the Agency Worker’s final payslip on the termination of each assignment. [*See Note 45]*

**B:** The Agency Worker’s entitlement to payment for annual leave under clause 7.1 accrues in

proportion to the amount of time worked by them on Assignment during the pay period at

the rate of 12.07% [ Specify an alternative accrual rate if the agency worker receives more

than the statutory minimum entitlement to leave]. [S*ee Note 44*]

* 1. Under the AWR, on completion of the Qualifying Period the Agency Worker may be entitled to paid and/or unpaid annual leave in addition to the Agency Worker's entitlement to paid annual leave under the WTR and in accordance with clauses 7.1 and 7.2. If this is the case, any such entitlement(s), the date from which any such entitlement(s) will commence and how payment for such entitlement(s) accrues will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form. [*See Note 46]*
  2. The Agency Worker must take all annual leave during the Leave Year in which it accrues and, except as may be set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form, the Agency Worker may not carry any annual leave forward to the next year. The Agency Worker is responsible for ensuring that they request and take all paid annual leave within the Leave Year.
  3. If the Agency Worker wishes to take paid annual leave during an Assignment he/she should notify the Employment Business of the dates of his/her intended absence giving notice of at least twice the length of the period of annual leave that he/she wishes to take. In certain circumstances the Employment Business may require the Agency Worker to take paid annual leave at specific times or notify the Agency Worker of periods when paid annual leave cannot be taken. Where the Agency Worker has given notice of a request to take paid annual leave in accordance with this clause, the Employment Business may give counter-notice to the Agency Worker to postpone or reduce the amount of leave that the Agency Worker wishes to take. In such circumstances the Employment Business will inform the Agency Worker in writing giving at least the same length of notice as the period of leave that it wishes to postpone or reduce it by.
  4. Choose either Option A or B [See Note 48] Subject to clause 7.3, the amount of payment which the Agency Worker will receive in respect of periods of Option A:annual leave taken Option B: annual leave accrued during an Assignment will be calculated in accordance with and paid in proportion to the amount of annual leave they have accrued whilst on the assignment. This will be based on the number of hours which the Agency Worker has worked on Assignment. [ *See Note 48]*
  5. Subject to clause 7.3, during any Assignment during the first Leave Year, the Agency Worker is entitled to request leave at the rate of one-twelfth of the Agency Worker’s total holiday entitlement in each month of the leave year, provided the Employment Business has not opted to pay rolled up holiday pay.
  6. Choose either Option A or B [*See Note 49]* Except where this clause is amended by the Assignment Details Form, where a bank holiday or other public holiday falls during an Assignment and the Agency Worker does not work on that day, then subject to the Agency Worker having accrued entitlement to payment for leave in accordance with clause 7.2 or clause 7.3 (if applicable), Option A: that day shall count as part of the Agency Worker’s paid annual leave entitlement. Option B: the Agency Worker may, upon giving the notice in clause 7.5, take a bank holiday or other public holiday as part of his/her paid annual leave entitlement.

* 1. [Delete if option B has been selected at clause 7.2] Where these Terms are terminated by either party, the Agency Worker shall repay to the Employment Business an amount in respect of any holiday periods taken in excess of the holiday entitlement for that year and the Agency Worker hereby authorises the Employment Business to take repayment of such monies by way of deduction from any final payment owed to the Agency Worker. [If, following such deduction the Agency Worker owes further monies in respect of pay received for annual leave taken but not accrued at the time of Termination, the Agency Worker will repay such monies within [x] days of termination of these Terms.] [*See Note 50]*

### SICKNESS ABSENCE

* 1. The Agency Worker may be eligible for statutory sick pay (SSP) provided that he/she meets the relevant statutory criteria.
  2. The Agency Worker must give the Employment Business evidence of incapacity to work, which may be by way of a self-certificate for the first 7 days of incapacity and a doctor’s certificate thereafter.
  3. For the purposes of SSP there is one qualifying day per week during the course of an Assignment and that qualifying day shall be the Wednesday in every week. [*See Note 51*]
  4. If the Agency Worker submits a statement of fitness for work (“the Statement”) or similar medical evidence, which indicates that the Agency Worker may, subject to certain conditions, be fit to work/return to work, the Employment Business will in its absolute discretion determine whether the Agency Worker will be (a) placed in a new Assignment or (b) permitted to continue in an ongoing Assignment. In making such determination the Employment Business may consult with the Hirer and the Agency Worker as appropriate to assess whether the conditions identified in the Statement or similar documentation can be satisfied for the duration of the Assignment. [*See Note 52*]
  5. Where clause 8.4 applies, the Agency Worker’s placement in a new Assignment or continuation in an ongoing Assignment may be subject to the Agency Worker agreeing to a variation of the Terms or the assignment details set out in the Assignment Details Form to accommodate any conditions identified in the Statement or other similar medical evidence as is appropriate. [*See Note 53*]

### TERMINATION

* 1. Any of the Employment Business, the Agency Worker or the Hirer may terminate the Agency Worker’s Assignment at any time without prior notice or liability.
  2. The Agency Worker acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Hirer. If the contract between the Employment Business and the Hirer is terminated for any reason, the Assignment shall cease with immediate effect without liability to the Agency Worker (except for payment for hours worked by the Agency Worker up to the date of termination of the Assignment).
  3. If the Agency Worker does not tell the Hirer or the Employment Business that they are unable to attend work during the course of an Assignment (as required in clause 4.3) this will be treated as termination of the Assignment by the Agency Worker in accordance with clause 9.1, unless the Agency Worker can show that exceptional circumstances prevented him or her from complying with clause 4.3. [*See Note 54*]
  4. If the Agency Worker is absent during an Assignment and the Assignment has not been otherwise terminated under clauses 9.1 or 9.3 above, the Employment Business will be entitled to terminate the Assignment in accordance with clause 9.1 if the work to which the Agency Worker was assigned is no longer available.
  5. If the Agency Worker does not report to the Employment Business to notify his/her availability for work for a period of [3] weeks, this contract for services will automatically terminate and the Employment Business will forward his/her P45 to his/her last known address. [*See Note 55*]
  6. [Optional Clause for Agencies who have elected to not pay rolled up holiday pay for leave years starting on or after 1st April 2024] [ *see Note 45*] On the termination of the Agency Worker’s Assignment, the Employment Business will pay the Agency Worker all holiday accrued but not taken during the Assignment in accordance with WTR.

### INTELLECTUAL PROPERTY RIGHTS

The Agency Worker acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from services carried out by him/her for the Hirer during the Assignment shall belong to the Hirer. Accordingly, the Agency Worker shall execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

### CONFIDENTIALITY

* 1. In order to protect the confidentiality and trade secrets of any Hirer and the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Agency Worker agrees as follows:
     1. not at any time, whether during or after an Assignment (unless expressly so authorised by the Hirer or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Hirer or the Employment Business with the exception of information already in the public domain;
     2. to deliver up to the Hirer or the Employment Business (as directed) at the end of each Assignment all documents and other materials belonging to the Hirer (and all copies) which are in its possession including documents and other materials created by him/her during the course of the Assignment; and
     3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Hirer except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Hirer or the Employment Business as appropriate.

### DATA PROTECTION [*See Note 56*]

The Agency Worker acknowledges that the Employment Business must process personal data about him/her in order to properly fulfil its obligations under these Terms and as otherwise required by law in relation to his/ her engagement in accordance with the Data Protection Laws. Such processing will principally be for personnel, administrative and payroll purposes.

### SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

### NOTICES

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, including by email. Any such notice shall be deemed to have been served: if by hand when delivered; if by first class post 48 hours following posting; and if by email, when that email is sent.

### RIGHTS OF THIRD PARTIES

None of the provisions of these Terms are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 [Contracts Rights of Third Parties) Act (Scotland) 2017)]is excluded.

### GOVERNING LAW AND JURISDICTION

These Terms are governed by the law of [England & Wales/Scotland/ Northern Ireland] and are subject to the exclusive jurisdiction of the Courts of [England & Wales/Scotland/ Northern Ireland]. [*See Note 57*]

Signed by the Agency Worker

[print name here]

Date [*See Note 58*]

## SCHEDULE: “QUALIFYING PERIOD” AND “TEMPORARY WORK AGENCY” [*See Note 58*]

For the purpose of the definition of "Qualifying Period" in clause 1.1 of these Terms, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

1. the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working;
2. the break is:
3. for any reason and not more than six Calendar Weeks;
4. wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required;
5. related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work;
6. wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
7. ordinary, compulsory or additional maternity leave;
8. ordinary or additional adoption leave;
9. ordinary or additional paternity leave;
10. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
11. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
12. wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
13. wholly due to a temporary cessation in the Hirer's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer;
14. wholly due to a strike, lock-out or other industrial action at the Hirer's establishment; or
15. wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
16. the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii., or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 [or 5 December 2011] does not count for the purposes of the definition of "Qualifying Period".

"Temporary Work Agency" means as defined in Regulation 4 of the AWR being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

1. supplying individuals to work temporarily for and under the supervision and direction of hirers; or
2. paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a "hirer" means 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.

## Delete all pages from here before giving the document to an agency worker

Annex 1 - template Key Information Document (PAYE)

**NOTE:** This document is also available from the [REC’s template document library](https://www.rec.uk.com/legal-resources/model-document-library). It does not form part of this contract but is included here as a reminder only that you must give a completed Key Information Document to the agency worker before you agree terms with them.

**---------------------------------------------------------**

Key Information Document ‒ PAYE

This document sets out key information about your relationship as a work-seeker with us, as an employment business, including details about pay, holiday entitlement and other benefits. You can find more information at [insert link to employment business’s website].

The Employment Agency Standards (EAS) Inspectorate is the government authority responsible for the enforcement of certain agency worker rights. You can raise a concern with them directly on 020 7215 5000 or through the ACAS helpline on 0300 123 1100, Monday to Friday, 8am to 6pm.

## General Information

|  |  |  |
| --- | --- | --- |
| **Your name:** |  | See Note 1 |
| **Name of employment business:** |  | See Note 2 |
| **Your employer (if different from the employment business):** |  | See Note 3 |
| **Type of contract you will be engaged under:** |  | See Note 4 |
| **Who will be responsible for paying you (if different from your employer):** |  | See Note 5 |
| **How often you will be paid:** |  | See Note 6 |
| **Expected or minimum rate of pay:** |  | See Note 7 |
| **Deductions from your pay required by law:** |  | See Note 8 |
| **Any other deductions or costs from your pay (to include amounts or how they are calculated):** |  | See Note 9 |
| **Any fees for goods or services:** |  | See Note 10 |
| **Holiday entitlement and pay:** |  | See Note 11 |
| **Additional benefits:** |  | See Note 12 |

## Representative example of your pay

|  |  |  |
| --- | --- | --- |
| **Example rate pay:** |  | See Note 13 |
| **Deductions from your wage required by law:** |  | See Note 14 |
| **Any other deductions or costs from your wage:** |  | See Note 15 |
| **Any fees for goods or services:** |  | See Note 16 |
| **Example net take home pay:** |  | See Note 17 |

Key Information Document ‒ PAYE

SAMPLE

This document sets out key information about your relationship as a work-seeker with us, as an employment business, including details about pay, holiday entitlement and other benefits. [You can find more information at [insert link to employment business’s website]]

The Employment Agency Standards (EAS) Inspectorate is the government authority responsible for the enforcement of certain agency worker rights. You can raise a concern with them directly on 020 7215 5000 or through the ACAS helpline on 0300 123 1100, Monday to Friday, 8am to 6pm.

General Information

|  |  |
| --- | --- |
| **Your name:** | Agency Worker Name |
| **Name of employment business:** | Employment Business Name |
| **Your employer (if different from the employment business):** | N/A |
| **Type of contract you will be engaged under:** | Contract for Services |
| **Who will be responsible for paying you (if different from your employer):** | N/A |
| **How often you will be paid:** | Weekly in arrears |
| **Expected or minimum rate of pay:** | At least the prevailing or current National Living Wage or National Minimum Wage, as appropriate |
| **Deductions from your pay required by law:** | PAYE tax  Employee National Insurance Contributions  Employee pension contributions - 5% of gross pay (if no opt out)  Student Loan |
| **Any other deductions or costs from your pay (to include amounts or how they are calculated):** | None |
| **Any fees for goods or services:** | DBS Certificate one off payment - £40[[1]](#footnote-1) |
| **Holiday entitlement and pay:** | Statutory holiday entitlement of 5.6 weeks, pro rated for part time work.  Holiday pay is accrued and paid when time off is taken.  OR Holiday pay is rolled up and paid together with basic rate of pay. The Agency Worker acknowledges that no further payment will be made when time off is taken. |
| **Additional benefits:** | Access to collective facilities provided by a client on day one of an assignment under the Agency Workers Regulations 2010 though these will vary from client to client |

Representative example of your pay

SAMPLE

|  |  |
| --- | --- |
| **Example rate pay:** | £107.08/day x 5 = £535.40  plus £64.62 holiday pay  Total = £600.02/week |
| **Deductions from your wage required by law[[2]](#footnote-2):** | National Insurance Contributions - £55.33  PAYE Tax - £38.86  Pension - £30.00  Student Loan - £12.50 |
| **Any other deductions or costs from your wage:** | None |
| **Any fees for goods or services:** | DBS Certificate - £40 - one off payment |
| **Example net take home pay:** | £463.33 (£423.33 after DBS deduction) |

***NOTES***

***This document has been created to provide a worked up example of how the KID should be completed. The figures used are for illustrative purposes only and you will need to amend to reflect your own arrangements.***

***Blue highlighted text should be reviewed and amended/deleted as appropriate. If the DBS is paid separately, directly to the DBS provider this should be removed from the KID.***

***Green Text - use where holiday pay is rolled up. Note holiday pay must be set out separately from basic rate of pay within the example - delete yellow text***

SAMPLE

***Yellow Text - use where holiday pay is accrued - delete green text***

***Expected or minimum rate of pay: It is advised to state: ‘At least the prevailing or current National Living Wage or National Minimum Wage as appropriate’ rather than an actual amount as by stating a figure you will be required to reissue the KID if the amount paid was to change.***

**Holiday pay: *Current guidance on holiday pay for workers on contracts of employment***

***Further to the Supreme Court's decision in Harpur Trust v Brazel [2022] UKSC 21, workers on contracts of employment are entitled to receive the full 5.6 weeks holiday leave, despite working only part of the year. Holiday entitlement should be calculated in accordance with Sections 221-224 of the Employment Rights Act 1996. The accrual method of the 12.07% calculation, is not stipulated in the Working Time Regulations 1998 or EU law and should not be applied to workers employed on contracts of employment.***

**Current** **guidance on holiday pay for workers using contracts for services: U*se of the 12.07% accrual method for calculating the holiday entitlement of workers on a contract for services poses a risk. Members should therefore*** [***use the government holiday pay calculator***](https://www.gov.uk/calculate-your-holiday-entitlement) ***to calculate a workers’ entitlement to holiday leave .When calculating holiday pay an employer should use the current 52-week reference period for holiday pay in accordance with S224 Employment Rights Act 1996 (ERA). This involves looking back at the last 52 weeks (or less if they have not been engaged for 52 weeks), taking out any weeks where they have not earned any pay or they have received statutory payments such as SSP (adding in additional weeks up to a maximum of 104 to give you the full 52 weeks where applicable). You add this together and divide by the number of weeks you are using to get the average weekly pay.***

**Guidance on holiday pay for irregular hours workers and part year workers on either contracts for services or contracts of employment from workers using contracts for services from 1st January 2024. *On 1st January 2024, the amendments to WTR 1998 will be enacted. The amendments introduce legal right for employers to allow part year workers and Irregular Hours workers whose leave years start on or after 1st April 2024 to accrue holiday leave at the rate of 12.07% and to be paid rolled up holiday pay at the end of each pay period. Holiday entitlement will be accrued at the rate of 12.07% of the hours worked by a worker in each pay period and holiday pay will be paid at a rate of 12.07% of the remuneration received in each pay period.*** ***The 12.07% figure is based on the statutory minimum holiday entitlement (5.6 weeks). An irregular hour or part-year worker who is entitled to more than 5.6 weeks will need to have their accrual rate adjusted. We have created a table to assist members with thi calculation and this can be found*** [***here***](https://www.rec.uk.com/recruiters/legal/legal-resources/other-rec-guides-and-briefings/rec-holiday-accrual-percentage-rates-table)***. Payslips must indicate the amount of holiday pay that has been paid for the period to which the payslip relates.*** [***The government has also issued guidance***](https://www.gov.uk/government/publications/simplifying-holiday-entitlement-and-holiday-pay-calculations/holiday-pay-and-entitlement-reforms-from-1-january-2024) ***on the calculation of holiday pay for irregular hour workers and part year workers.***

SAMPLE

Notes ‒ to be deleted from this document before giving it to the temporary worker

|  |
| --- |
| February 2020 |

Employment businesses must give a Key Information Document (KID) to temporary workers who register with them on or after 6 April 2020 (Regulation 13A of the Conduct of Employment Agencies and Employment Businesses Regulations 2003). They do not have to give a KID to candidates looking for permanent or fixed term contract work directly with a client. They must give the KID before agreeing terms of engagement with the temporary worker.

The purpose of the KID is to improve transparency, particularly in relation to pay and so the KID should not include all the terms of the contract between the temporary worker and the employment business – these will be set out in a separate document. The Department for Business, Energy and Industrial Strategy (BEIS) have produced [written guidance and three templates](https://www.gov.uk/government/publications/providing-a-key-information-document-for-agency-workers-guidance-for-employment-businesses) – one each for use when engaging the temporary worker on direct PAYE, through a personal service company or through an intermediary such as an umbrella.

The employment business does not have to give multiple KIDs to show the different payment methods, but it would be best practice. Importantly, the temporary worker must receive a KID relevant to how they will ultimately be engaged. The employment business does not have to issue a new KID for each assignment but must issue a new KID when the information changes, e.g. a new deduction.

REC has adapted the BEIS templates by adding the notes below. After you have completed this template please delete the notes column from the document before giving it to the worker. These notes pages do not form part of **the Key Information Document** which **must not be more than 2 sides of A4 paper**.

For more information see the [Key Information Document](https://www.rec.uk.com/legal-resources/legal-guide/conduct-regulations/regulation-13a-and-the-key-information-document) section of the REC Legal Guide.

For the ‘**General Information section**' of this document you do not need to insert figures and can instead provide a description of the amounts. For the ‘**Representative Example of your Pay section**’ real figures must be used.

### General Information

|  |  |
| --- | --- |
| Note 1 | The worker’s name is not required under Regulation 13A. It is optional. You may wish to insert the worker’s name for the purposes of confirming who the document was issued to. |
| Note 2 | Insert the name of the employment business engaging the worker. |
| Note 3 | This is not a requirement under Regulation 13A however this may be relevant if another entity will be engaging and paying the worker, i.e. a separate payroll company. |
| Note 4 | Insert the type of contract, e.g. contract for services, contract of employment, apprenticeship contract or other type of contract. |
| Note 5 | Insert details of the employment business, i.e. your company. |
| Note 6 | Insert intervals of payment, i.e. daily/weekly/monthly. |
| Note 7 | Insert ‘no less than national minimum wage’ or the minimum amount a worker in the specific sector and role may typically expect to earn. |
| Note 8 | Insert deductions required by law; e.g. PAYE tax, employee NI contributions, employee pension contributions (i.e. auto enrolment) and student loan (if known). |
| Note 9 | Insert any contractual deductions such as private healthcare or enhanced pension scheme (though it is unusual for temporary workers to receive such benefits). |
| Note 10 | Insert details of any goods or services that the employment business charges for (these should not fall within the scope of ‘providing work finding services’ which employment businesses cannot charge for). Relevant goods or services might include DBS fees, CV writing fees, interview preparation fees and training fees. You can state where these are one-off deductions. |
| Note 11 | Insert the statutory minimum annual leave entitlement of 5.6 weeks/28 days for full time employees or for part time workers insert that it will be pro-rated accordingly. |
| Note 12 | Insert any non-monetary benefits that will be provided. These could include access to collective facilities provided by a hirer on day one of an assignment under the Agency Workers Regulations 2010 though we recognise these will vary from client to client. |

Representative statement

These figures can be estimated and do not need to exactly reflect the specific rate of pay the temporary worker will eventually receive. However, they should show in a realistic way the deductions made to a proposed rate of pay and how those deductions will affect the worker’s pay. This should reflect a single prospective period based on the intervals shown under ‘General Information’.

|  |  |
| --- | --- |
| Note 13 | Insert an example weekly rate of pay; e.g. £348.80 per week which is NLW x 40 hours. |
| Note 14 | Insert figures for statutory deductions which include, income tax, national insurance and employee pension contributions. This will include the relevant tax-free allowance and basic tax rate. Where other statutory deductions are known, such as a student loan, then these should be inserted here also. |
| Note 15 | Insert figures for other non-statutory deductions from pay; e.g. private healthcare or enhanced pension employee contributions. |
| Note 16 | Insert figures for deductions; e.g. DBS checks, training etc. |
| Note 17 | Insert the figure for example net take home pay after all the deductions above have been made. |

*Delete this page from the form given to the Agency Worker or Hirer*

**Additional Document A – Combined 'assignment details form' and 'written statement' for agency workers**

|  |
| --- |
| Updated August 2021 |

Why we have updated this document

We’ve updated this form to combine in shorter form the information that employment businesses must give to agency workers as part of their obligations under:

1. **The Conduct of Employment Agencies and Employment Businesses Regulations 2003** (the Conduct Regulations) - assignment details form; and
2. **The Employment Rights Act 1996** (the ERA) - written statement of particulars.

Employment businesses are also obliged (under the Conduct Regulations) to give certain information to hirers. Pages 2-4 list the information you must give to the agency worker. Page 5 lists the information you must give to the hirer.

When to use this document

We have drafted this document for use with [REC Contract 4 Terms of Engagement with an Agency Worker](https://www.rec.uk.com/recruiters/legal/template-documents/contracts/contract-4-terms-engagement-agency-workers-contract-services), which should be agreed before you provide any work finding services. This document should be given when you have found an assignment for the worker and no later than one month from when you agree terms with the worker. If you have not used REC Contract 4 then **you must take extra care in relation to the pre-populated answers in this form to ensure that they align with the contract that you have agreed with your agency worker** (particularly in relation to sick pay and notice).

**It is very important not to remove or delete any sections from this form**, even if they do not apply to your workers. Where a section is not relevant you can simply state that.

Northern Ireland

The Conduct of Employment Agencies and Employment Businesses (Northern Ireland) Regulations 2005 apply in Northern Ireland, not the 2003 Conduct Regulations. At the time of writing, the legal changes relating to the written statements apply only in Great Britain (England, Scotland and Wales). So, if using this form in Northern Ireland, you do not need to include the section 'Additional Particulars for Workers' below.

How to use this form

* Complete the information required in the right columns. Where relevant, you can adopt the wording in the grey highlighted square brackets and/or amend accordingly.

Assignment Details and Written Statement of Particulars

|  |  |
| --- | --- |
| Details of the Agency Worker and Hirer: | |
| Name and address of the agency worker: |  |
| **Hirer’s Details:** | |
| Name of the hirer: |  |
| Nature of the hirer’s business: |  |
| Name of hirer’s contact to report to on arrival: |  |
| **Assignment Details:** | |
| Start date of the assignment: |  |
| Likely duration of the assignment: |  |
| Job title: |  |
| Description of duties: |  |
| Location of work: |  |
| Days and hours of work: | [Set out clearly the days which the worker will work **and** the hours of work to be undertaken. Also, if and how they are variable i.e., rota or shift patterns] |
| The experience, training, qualifications and any authorisation necessary or required by law or a professional body: |  |
| Any known health and safety risks and the steps the hirer has taken to reduce the risks: |  |
| **Pay:** | |
| Any expenses payable: |  |
| Actual rate of pay: |  |
| Intervals of payment: |  |
| Number of [paid/unpaid] annual leave days | [As a temporary worker you will be entitled to holiday leave according to the statutory minimum which is set out in the Working Time Regulations 1998. The current annual statutory entitlement is 5.6 weeks per year for full time workers and pro rata for part time workers.  Holiday pay is accrued and paid when time off is taken. When your engagement terminates you will be entitled to a pro-rata payment in lieu of any unused holiday entitlement up to the statutory limit of paid annual leave.  OR Holiday pay is rolled up and paid together with basic rate of pay. The Agency Worker acknowledges that no further payment will be made when time off is taken.  [You will not be entitled to any other paid leave.] |
| **Period of Extended Hire:** | |
| Notice period required where the hirer wishes to engage the agency worker for a period of extended hire: | [Insert period agreed with hirer.] |
| Period of extended hire if the hirer wishes to engage the agency worker and avoid paying a transfer fee: | [Insert the period of extended hire, as set out in Schedule 2 of REC Contract 3 (Terms of Business with the Hirer).] |
| Agency worker's recruitment consultant’s contact details: |  |
| **Additional Particulars for Worker** | |
| Name of employment business: |  |
| Length of notice the agency worker must give and should receive to terminate the contract or assignment | [Any of the employment business, the agency worker or the hirer may terminate the agency worker's assignment at any time without prior notice or liability.] |
| Any other remuneration (apart from pay) |  |
| Entitlement to sick leave and pay  (See clause 8 in your contract) | [You may be eligible for statutory sick pay (SSP) if you meet the relevant statutory criteria.  For the purposes of SSP there is one qualifying day per week during the course of an assignment and that qualifying day shall be the Wednesday in every week.] |
| Maternity/paternity leave and other paid leave | [You may be eligible for statutory Maternity/Paternity Leave provided you meet the relevant statutory criteria.  You are not entitled to any other paid leave.] |
| Any other benefits |  |
| Any training:   * entitlements provided by employment business * requirements for the role * requirements at worker’s own cost. |  |
| Any probation period including conditions and duration: |  |
| Pensions and pensions schemes such as automatic enrolment or contractual pensions schemes: | [If you are eligible, you will be enrolled automatically into the occupational pension scheme in accordance with our obligations under the Pensions Act 2008.  Details of the scheme will be provided when you join the scheme.] |
| Any collective agreements that apply to the agency worker: |  |
| Any information on disciplinary rules and grievance procedures: |  |
| If the agency worker works outside the U.K for more than a month confirm:   * duration, * currency of pay, * any additional remuneration, * benefits, and * terms and conditions to return to the UK. |  |

This page is for the Hirer

|  |  |
| --- | --- |
| Details of Hirer and Agency Worker: | |
| Name of the hirer: |  |
| Name of hirer’s contact to report to on arrival: |  |
| Name of agency worker: |  |
| The agency worker is engaged under a contract for services with [name of Employment Business] | |
| **Assignment details:** | |
| Start date of assignment: |  |
| Likely duration of the assignment: |  |
| The type of work: |  |
| Location of work: |  |
| Hours of work: |  |
| The experience, training, qualifications and any authorisation necessary or required by law or a professional body: |  |
| Any known health and safety risks and the steps the Hirer has taken to reduce the risks: |  |
| **Charges:** | |
| Any expenses payable to the Agency Worker: |  |
| Charge rate: | [You can breakdown the charges into different elements if you wish] |
| Intervals of invoice: |  |
| **Period of Extended Hire:** | |
| Notice period required where Hirer wishes to engage the Agency Worker for the Period of Extended Hire in accordance with clause 8.2 of Contract 3: | [Insert notice period] |
| Period of Extended Hire if the Hirer wishes to engage the Agency Worker and avoid paying a Transfer Fee: | [This should be the period set out in Schedule 1 of Contract 3] |
| [Name of the employment business] confirms that [name of the Agency Worker] is willing to work in the assignment offered. | |

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| --- | --- |
| Particulars for worker | |
| Name of employment business: |  |
| Start date of employment/assignment: |  |
| Day and hours of work confirm:   * Whether or not the Agency Worker has normal working hours * whether they are variable i.e. shift or rota patterns * how they vary. |  |
| Duration of the contract: |  |
| Length of notice the Agency Worker must give and should receive to terminate the contract or assignment | insert clause 9.1 in contract 4 |
| Any other remuneration (apart from pay) |  |
| Entitlement to sick leave and pay  (see clause 8 in your contract) | insert clause 8.1 & 8.3 in PAYE terms with agency worker |
| Maternity/paternity leave and other paid leave |  |
| Any other benefits |  |
| Any other paid leave |  |
| Any training:   * entitlements provided by employment business * requirements for the role * requirements at worker’s own cost. |  |
| Any probation period including conditions and duration: |  |
| Pensions and pensions schemes such as automatic enrolment or contractual pensions schemes: | insert automatic enrolment pension statement:  " *If you are eligible, you will be enrolled automatically into the occupational****pension****scheme in accordance with the****Pensions****Act 2008. Details of the scheme will be provided when you join the scheme."* |
| Any collective agreements that apply to the Agency Worker: |  |
| Any information on disciplinary rules and grievance procedures: |  |
| If the Agency Worker works outside the U.K for more than a month confirm:   * duration, * currency of pay, * any additional remuneration, * benefits, and * terms and conditions to return to the UK. |  |

## *These pages are for the Hirer*

|  |  |
| --- | --- |
| Details of Hirer and Agency Worker: | |
| Name of the Hirer: |  |
| Name of Hirer’s contact to report to on arrival: |  |
| Name of Agency Worker: |  |
| The Agency Worker is engaged under a contract for services with [insert name of Employment Business] | |
| **Assignment details:** | |
| Start date of assignment: |  |
| Likely duration of the assignment: |  |
| The type of work: |  |
| Location of work: |  |
| Hours of work: |  |
| The experience, training, qualifications and any authorisation necessary or required by law or a professional body: |  |
| Any known health and safety risks and the steps the Hirer has taken to reduce the risks: |  |
| **Charges:** | |
| Any expenses payable to the Agency Worker: |  |
| Charge rate: | [You can breakdown the Charges into different elements if you wish] |
| Intervals of invoice: |  |
| **Period of Extended Hire:** | |
| * Notice period required where Hirer wishes to engage the Agency Worker for the Period of Extended Hire in accordance with clause 8.2 of Contract 3: | [Insert notice period] |
| * Period of Extended Hire if the Hirer wishes to engage the Agency Worker and avoid paying a Transfer Fee: | [This should be the period set out in Schedule 1 of Contract 3] |
| **[Insert name of the employment business] confirms that [insert name of the Agency Worker] is willing to work in the assignment offered.** [Note: this is a requirement of Conduct Regulation 19] | |
| **Hirer's recruitment consultant’s contact details:** |  |

All references in these notes to the Guidance are to the guidance on the AWR published by the Department for Business, Innovation and Skills on 27 May 2011 and available [here](https://www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters) or the guidance on the Agency Workers (Northern Ireland) Regulations 2011 published by the Department of Employment and Learning Northern Ireland on 13 October 2011 available [here](https://www.delni.gov.uk/publications/agency-workers-regulations-ni-guidance). REC has also produced a series of [AWR Factsheets](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Transparency-in-Supply-Chains-Reporting-Requirement-Nov-2015.pdf) each looking at different AWR issues.

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| Note no. | Clause no. | Explanation |
|  | 1 (Definitions)  “Agreed Deductions” | The Employment Rights Act 1996 (in England, Scotland and Wales) and the Employment Rights (Northern Ireland) Order 1996 provide that employers may not withhold pay or make a deduction from wages unless it is permitted by statute e.g. tax and NICs, or the worker has given their written consent in advance of the deduction being made.  For example, the Agency Worker has asked you to deduct trade union subscriptions, pension contributions, child maintenance or other court ordered deductions. Alternatively, you may ask the Agency Worker to agree to deductions for repayment of loans, training costs and other services provided to the Agency Worker (see below). However, you cannot deduct for personal protective equipment or for losses incurred as a result of the poor performance of the work. If appropriate you would need to bring a claim for damages against a temporary worker to recover such losses.  **Training** – you cannot require the Agency Worker to take additional services, including training, from you as a condition of finding work though you. You can charge for training if the Agency Worker has been given the option of obtaining and paying for that training elsewhere.  **Transport** – if supplying into the GLAA regulated sector you cannot deduct transport costs from an Agency Worker’s pay. You can however deduct the repayment of any loan you may have made for the cost of the transport. Alternatively, you can obtain payment via direct debit. Please always check the current GLAA Licensing Standards regarding transport deductions. |
|  | 1 (Definitions)  “AWR” | The Agency Workers Regulations 2010 apply in England, Scotland and Wales. They came into force on 1 October 2011. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Agency Workers (Northern Ireland) Regulations 2011 apply in Northern Ireland. They came into force on 5 December 2011. If supplying in Northern Ireland only delete the reference to the Agency Workers Regulations 2010.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 1(Definitions)  “Conduct Regulations” | The Conduct of Employment Agencies and Employment Businesses Regulations 2003 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 apply in Northern Ireland. If supplying in Northern Ireland only delete the reference to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and remove “[and/ or]”.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 1 (Definitions)  “Data Protection Laws” | We have updated this to refer to the General Data Protection Regulation which came into effect on 25 May 2018 and the new Data Protection Act 2018.  For more detail see the [GDPR section](https://www.rec.uk.com/legal-resources/legal-guide/data-protection) of the REC Legal Guide.  For more information, see the [ICO Guide to the GDPR](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf),  [the ICO guidance on legitimate interests](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests-1-0.pdf) and [the ICO interactive legal basis guidance tool.](https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources/lawful-basis-interactive-guidance-tool/) |
|  | 1 (Definitions)  “Employment Business” | Limited companies must have a registered office to which all post can be directed (and where it will be considered received by the company). Companies may also have a trading address which is different to the registered office address. You can state either the registered office or the trading address but if either address changes, you must notify the Agency Worker. |
|  | 1 (Definitions)  “Employment Business” | If the Employment Business is a Limited Liability Partnership insert the following on page 1.  [Insert your business name] Limited Liability Partnership (registered LLP no. [insert registered company or LLP no.]) [trading as [insert trading name if different]] of [address – see Note 5]. |
|  | 1(Definitions)  “Hirer” and “Hirer’s Group” | It is important to understand which Hirers may belong to the Hirer’s Group so that the Employment Business understands when an Agency Worker has/ has not completed the Qualifying Period because he/she has worked for more than one Hirer.  It should be relatively straightforward in the private sector to know what companies belong to a group.  However it can be less clear in the public sector.  **Health sector** ‒ a NHS Trust which comprises different hospitals will be one Hirer for the purposes of AWR.  So, time spent in different hospitals within the same trust (i.e. Hirer’s Group) will all count towards the same qualifying clock.  **Education** ‒ the Hirer/ Hirer’s Group will be determined by the type of school the agency worker is supplied to.  For example, time spent in more than one school within the same local authority will count towards the same qualifying clock. The same applies for academy trusts. For more details on the application of the AWR within education please see [DFE’s AWR 2010: supply teachers guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300838/Agency_Workers_Regulations_-_21_March_RS.pdf). “  See also Clause 3.8. |
|  | 1 (Definitions)  “Hourly Rate” | It is a requirement of the Conduct Regulations that you set out the minimum rate of remuneration that the Employment Business reasonably expects to achieve, for all hours worked by the Agency Worker. |
|  | 1 (Definitions)  “Leave Year” | The leave year can either start on a date of your choice i.e. to coincide with your business’s leave year, or the date on which the Agency Worker commences an Assignment or series of Assignments. |
|  | 1 (Definitions)  “Relevant Period” | The Relevant Period is set by Regulation 10 of the Conduct Regulations (and thus cannot be changed by employment businesses). |
|  | 1 (Definitions)  “Type of Work” | Regulation 14 of the Conduct Regulations requires that you agree with the worker the type of work which the worker is seeking. |
|  | 1 (Definitions)  “WTR” | The Working Time Regulations 1998 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Working Time (Northern Ireland) Regulations 1998 apply in Northern Ireland. If supplying in Northern Ireland only delete the reference to the Working Time Regulations 1998.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 2.2  (The Contract) | This statement is required to comply with Regulation 15 of the Conduct Regulations. These terms are a contract for services and not a contract of employment. If you choose to employ your temps on contracts of employment you will need to use different terms of business, but before doing so you should seek your own legal advice. REC has model contracts of employment and terms of business are available to download from [www.rec.uk.com](http://www.rec.uk.com). |
|  | 2.3  (Variations) | Under the AWR, if the Agency Worker has completed the Qualifying Period and is entitled to equal treatment in respect of pay and working conditions, if the Hirer varies the relevant terms and conditions of a direct hire, the Employment Business must ensure that the Agency Worker receives equal treatment in this respect, best achieved by varying the equivalent provision(s) in the Agency Worker's contract (Regulation 5(2) AWR). |
|  | 2.4  (The Contract) | The Conduct Regulations require that you state you are acting as an employment business i.e. you are supplying temporary staff.  Throughout the contract:   * Use the reference to the Employment Agencies Act 1973 if supplying in England, Wales or Scotland. * Use the reference to the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 if supplying in Northern Ireland. |
|  | 3.3  (Assignments details and Written Statement information to be provided) | The Conduct Regulations and ERA require information to be provided to the worker and the clause sets out some of the information in the form. |
|  | 3.7  (Assignments and information to be provided) | To ensure that the Agency Worker is aware of any agreement with a Hirer for a fee or extended period of hire in relation to a direct engagement the REC recommends that this clause is inserted into the Agency Worker’s terms of engagement. It is essential under the REC Code of Professional Practice that this information is given in writing to each Agency Worker before he/she is sent on Assignment. |
|  | 3.8  (Entitlements under the AWR) | Rights subject to completion of the Qualifying Period:  Under the AWR, on completion of the 12-week qualifying period (see the definition of "Qualifying Period" in clause 1 and the Schedule), an agency worker is entitled to equal treatment in respect of pay and working conditions. Working conditions include (amongst other things) terms and conditions relating to the duration of working time, night work, rest periods and rest breaks (Regulation 6(1) of the AWR). The Agency Worker will be entitled to different terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks (other than the rights and entitlements relating to the same under the WTR) as if he/she had been directly hired by the Hirer.  Subject to breaks taken the earliest date an agency worker could qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland.  **Day One rights:**  From day one of the assignment, the Agency Worker has the following rights:   1. to be treated no less favourably than a comparable employee or worker of the Hirer in relation the collective facilities and amenities (e.g. canteen, childcare facilities and transport services) provided by the Hirer (unless the Hirer can justify less favourable treatment on objective grounds); and 2. the right to be informed by the Hirer of any relevant vacant posts with the Hirer, to give the Agency Worker the same opportunity as a comparable employee or worker of the Hirer to find permanent employment with the Hirer. However, this does not mean that an agency worker has a right to be employed by the client, nor does it mean that an agency worker has a further right to have a preference over existing direct employees of the client. (*Coles v Ministry of Defence* (UKEAT/0403/14/RN)).   The Hirer will be liable for any failure to provide these Day One rights.  Form G sets out the information from the Hirer of the terms and conditions they would have given to the agency worker if they had recruited the worker directly.  See REC AWR Factsheet 4 for further information on equal treatment. |
|  | 4.2  (Agency Worker’s Obligations) | **Qualifying Period:**  An agency worker will be entitled to equal treatment in respect of pay and working conditions if he/she has completed the 12 week qualifying period (see the definition of "Qualifying Period" in clause 1 and the Schedule) by working in the same role with the same hirer for 12 Calendar Weeks (see the definition of "Calendar Week" in clause 1), during one or more assignments (Regulation 7 of the AWR).  Certain breaks will only suspend the 12-week qualifying clock whilst others (related to pregnancy, maternity, adoption and paternity leave) will not stop it at all. These are set out in the Schedule.Any weeks worked prior to 1 October 2011 (or 5 December 2011 in Northern Ireland) do not count towards the 12-week qualifying period.  **12 continuous calendar weeks**  The AWR provide that the agency worker achieves the qualifying period by working ‘in the same role for the same hirer for 12 continuous calendar weeks during one or more assignments.’  The AWR say that ‘any week during the whole or part of which an agency worker works is counted as a calendar week.’  The AWR do not define ‘week’ nor do they specify that for example, a week commences on a Monday or Sunday etc. We have taken the view, based on the available guidance that the week is a seven-day period which begins with the start day of the agency worker’s assignment.  However, it is clear that the qualifying period for the agency worker is tied to the time that the agency worker is supplied to the particular hirer rather than to the particular employment business that the agency worker works through. On balance it could be argued to be inconsistent with the AWR if the start day of the agency worker’s qualifying weeks changed each time he or she moved employment business (while being supplied in to the same role with the same hirer).  In the absence of any clear advice/guidance to the contrary we have taken the view that if the agency worker starts an assignment with a hirer on a Tuesday for example, a qualifying week will be achieved if the agency worker works in that assignments on any day in a seven day period starting from the Tuesday, regardless of whether he or she moves to a different employment business.  **Same role:**  An agency worker works "in the same role" unless: (a) the agency worker has started a new role with the same hirer, whether supplied by the same or a different temporary work agency; (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and (c) **the temporary work agency has informed the agency worker in writing of the type of work the agency worker will be required to do in the new role** (Regulation 7(3) of the AWR). The temporary work agency can do this by giving the agency worker a new assignment details form.  The agency worker only has to work in the same role for the same hirer for 12 weeks in order to complete the Qualifying Period, but this could be via one or more temporary work agencies. The Employment Business therefore needs to be informed by the Agency Worker whether he/she has worked in the same role with the relevant Hirer via any third party so that the Employment Business can assess whether the Agency Worker has already acquired qualifying weeks or has already completed the 12-week qualifying period (clause 4.2.1).  Please see REC AWR Factsheet 3 and the Guidance for more information.  Subject to breaks taken the earliest date an agency worker could qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland.  **Anti-avoidance measures:**  The AWR contain anti-avoidance measures (Regulation 9) to prevent temporary work agencies or their clients/hirers structuring assignments in such a way as to prevent an agency worker from acquiring the 12-week qualifying period for equal pay and working conditions.  The Employment Business therefore needs to be informed of the matters set out in clause 4.2.3 so that the Employment Business can assess whether previous assignments with the Hirer have been structured in such a way as to attempt to avoid the application of the AWR and so the Agency Worker will be deemed to have completed the 12-week qualifying period.  Please see REC AWR Factsheet 5 and the Guidance for more information. |
|  | 4.6  (Agency Worker’s Obligations) | If you suffer any loss as a result of the Agency Worker’s acts or omissions you may not recover these from the Agency Worker by way of deductions from pay owed to them but must make a separate claim for damages, if necessary in a court of law. |
|  | 5.2  (Timesheets) | The Conduct Regulations require you to give an undertaking to pay the Agency Worker for hours actually worked whether or not payment has been received from the Hirer. If the Agency Worker is unable to produce a signed timesheet but there is no dispute that the agency worker actually worked the hours that he/she is claiming for, you must pay him/her but you may delay payment in order to make enquiries to confirm that he/she did in fact work those hours. |
|  | 5.3  (Timesheets) | Regulation 12 of the Conduct Regulations provides that the Employment Business may not withhold payment from the Agency Worker for hours that the Agency Worker has actually worked. You need to be aware that if a Hirer does refuse to sign a timesheet, payment will nevertheless be due to the Agency Worker unless your proper and reasonable investigations provide clear evidence that the Agency Worker did not work those hours. Make sure you keep any evidence in the form of documents or a statement from the Hirer in case you receive a claim for deductions from wages from the Agency Worker.  In addition please note that under Regulation 12(c) you may not reduce the Agency Worker’s hourly rate or otherwise refuse to pay him for all or any part of the hours actually worked in circumstances where the Agency Worker has failed to complete a whole Assignment, has been late for an Assignment or for any other reason. The Agency Worker must always be paid for hours actually worked regardless of any extraneous circumstances. |
|  | 6.5  (Remuneration) | Regulation 12 of the Conduct Regulations prohibits employment businesses from withholding monies from work-seekers in respect of any work done by the work-seeker on any of the following grounds:   * non-receipt of payment from the client i.e. you cannot have a pay when paid clause; * work-seeker’s failure to produce documentary evidence; * the work-seeker not having worked during any period other than that to which the payment relates; or * any matter within the control of the employment business.   However, this clause will allow you to deduct monies owed by the work-seeker (agency worker) to the employment business (employer). |
|  | 6.6  (Pay and deductions – right to deduct) | Clause 6.6 is an optional clause which should be incorporated into the Terms where the Employment Business provides any clothing or equipment to the Agency Worker to be used in the course of their Assignment. This clause will be particularly important for any Employment Businesses who provide personal protective equipment to their Agency Workers, for example where supplying Agency Workers into the construction sector.  Clause 6.6 creates a contractual obligation on the Agency Worker to take reasonable care of any clothing and/or equipment provided to them by the Employment Business. The clause also creates an obligation on the Agency Worker to return the equipment or clothing to the Employment Business upon termination of these Terms or when requested to do so by the Employment Business  If the Agency Worker fails to comply with his/ her obligations in this clause the Employment Business can make deductions to their wages to recover any replacement costs. As the Agency Worker will have breached a contractual obligation, the Employment Business will be able to make deductions to their wages to below the national minimum wage.  However, the Employment Business will need to take into account any everyday wear and tear before making any deductions to the wages. If you deduct the full replacement cost in circumstances where it is simply a case of everyday wear and tear, this risks the clause being unreasonable and therefore unenforceable. It should also be noted that (where the clothing or equipment has been returned) the clause only allows deductions where the Agency Worker has not taken reasonable care of the clothing or equipment. |
|  | 6.7  (Pay and Deductions) | *This is an optional clause.*  Under the Income Tax (Earnings and Pensions) Act 2003 the employment business is required to deduct PAYE tax from a worker’s pay where he/she works under supervision, direction or control of any persons. Similar provisions apply to the deduction of national insurance contributions.  These provisions do not apply where the individual is genuinely self-employed or is an EU national \*, working temporarily outside of their home state. In the latter case, the individual must provide the required certificate to the employment business and is required to continue to pay national insurance contributions (or their national equivalent) in their home state. This wording need only be included if the agency worker is a national of another EU state \* and resident temporarily in the UK. If in doubt seek advice from HMRC.  \*This rule still applies post Brexit and further details can be found under the [Government’s note for Domicile and the Remittance basis RDR1](https://www.gov.uk/government/publications/residence-domicile-and-remittance-basis-rules-uk-tax-liability/guidance-note-for-residence-domicile-and-the-remittance-basis-rdr1#national-insurance-contributions-when-leaving-or-arriving-in-the-uk). |
|  | 7.2  (Annual Leave accrual method) | On 8th November 2023 amendments to WTR 1998 which apply to Great Britain come into law on 1st January 2024, were announced. However certain provisions take effect later in 2024 for those whose leave years start on or after 1st April 2024. (This includes workers on a contract for services who start new assignments on or after 1st April 2024. Allowing employers to elect for holiday entitlement to be accrued at the rate of 12.07% of the hours worked by a worker in each pay period and for holiday pay to be paid at a rate of 12.07% of the remuneration received in each pay period for workers entitled to the statutory minimum of 5.6 weeks of leave for Irregular Hours Workers and Part Year Workers as defined by WTR.  Employment businesses can either opt to apply this method or to continue to allow workers to take their entitlement to leave and to be paid holiday pay when they are on leave. |
|  | 7.2  (Annual Leave accrual percentage) | The 12.07% figure is based on the statutory minimum holiday entitlement (5.6 weeks). An Irregular Hours or Part-Year Worker may be entitled to more than the minimum, if this is specified in their contract or if they have acquired the right to equal treatment under AWR and the hirer’s workers are entitled to more than the statutory minimum.  To find the relevant percentage for these workers, you would need to do the following calculation: (total holiday entitlement ÷ remaining working weeks in the year) x 100.  For example, if a Part-Year Worker is entitled to 6 weeks of leave as per their contract, then:  6 ÷ 46 = 0.1304  0.1304 x 100 = 13.04  Therefore, this worker’s holiday entitlement would be calculated as 13.04% of actual hours worked in a pay period. Members are encouraged to amend the percentage they use if there is contractual entitlement on top of statutory entitlement. [The REC has collated a table outlining the accrual rate for workers who are entitled to more holiday leave than the statutory minimum of 5.6 weeks](https://www.rec.uk.com/recruiters/legal/legal-resources/other-rec-guides-and-briefings/rec-holiday-accrual-percentage-rates-table). |
|  | 7.2  (Statutory paid annual leave under the WTR) | Under the WTR, workers are entitled to request as much paid annual leave at any one time, up to the statutory minimum, except during their first leave year when they are restricted to requesting one-twelfth per month. To prevent paying workers for more annual leave than they have accrued this clause limits the amount of leave they will be paid for to the amount that the worker will have accrued by the time they take their leave, regardless of the amount of leave they request. For guidance on how to calculate accrued holiday pay please see the REC’s online Legal Guide.  **Update January 2019:** Please note that following the Court of Justice for the European Union ruling in *Max Planck Gesellschaft v Shimizu* there is now an obligation for employers (including employment businesses) to inform workers of their right to take annual leave, and when this expires. The CJEU found that the Working Time Directive requires that the right to any paid leave not taken by an employee within the leave year should not automatically be lost unless the employer has taken steps to bring the potential that this leave will be lost to the worker’s attention.  Employers have no legal obligation to force employees to take leave but must ‘*be able to show that it has exercised all due diligence in enabling the worker actually to take the paid annual leave to which he is entitled under EU law’*. Where the worker has ‘*refrained from taking his paid annual leave deliberately and in full knowledge of the ensuing consequences*’ then the employer will not have to carry over the leave or pay an allowance in lieu for this. This will only apply where the annual leave was left untaken for reasons not relating to absences due to maternity or sickness.  Employment businesses are already required to comply with the Conduct Regulations by providing ‘*details of any entitlement to annual holidays and to payment in respect of such holidays*’ in the written agreement provided before commencing work-finding services. In addition, for employed agency workers on contracts of service employment businesses must also comply with the Employment Rights Act 1996 in providing a written statement of particulars including terms about ‘*entitlement to holidays, including public holidays, and holiday pay*’. As well as these regulatory requirements, it is also good practice to inform workers of:   * When the leave year starts; and * The procedure required for them to book annual leave.   We also recommend that employment businesses remind the worker part way through the leave year to take any remaining leave before the leave year comes to an end. This would need to be done in good time to adhere to the CJEU ruling.  Following the ruling from the Supreme Court decision in the case of *Harpur Trust v Brazel*, all part-year employees with Irregular Hours and engaged on a permanent contract of employment will be entitled to the full 5.6 weeks holiday .Calculating a part-year worker’s entitlement to holiday pay is no longer on a pro rata basis, where one would deduct 5.6 weeks from the 52-week year, leaving 46.4 weeks during which to accrue the holiday (also expressed in percentage terms as 12.07%). For employment businesses that use a contract for services like this contract, it is arguable that the decision could be debated in future cases and there is scope for the argument to be made to extend the case to contract for services workers.  *Use of the 12.07% accrual method for calculating the holiday entitlement of workers on a contract for services poses a risk. Members should therefore* [use the government holiday pay calculator](https://www.gov.uk/calculate-your-holiday-entitlement) *to calculate a workers’ entitlement to holiday leave .When calculating holiday pay an employer should use the current 52-week reference period for holiday pay in accordance with S224 Employment Rights Act 1996 (ERA). This involves looking back at the last 52 weeks (or less if they have not been engaged on an assignment for 52 weeks), taking out any weeks where they have not earned any pay or they have received statutory payments such as SSP (adding in additional weeks up to a maximum of 104 to give you the full 52 weeks where applicable). You add this together and divide by the number of weeks you are using to get the average weekly pay.*  You must take the necessary practical steps to ensure that your workers are engaged only when on an assignment and there is no suggestion of an ongoing contractual relationship between assignments. It is therefore important to ensure that Agency Workers are paid for annual leave accrued and not taken during an Assignment on the termination of each Assignment. These payments should be clearly highlighted on the final pay slip from each Assignment. Additionally, where Agency workers have taken more than their accrued entitlement to leave, and the Employment Business has not been able to recover payment for this from their final pay from an Assignment, they should be pursued for the outstanding payment in writing. This is to ensure that it is clear that the worker is no longer engaged and there is no expectation that the payment will be recovered through future work. Failure to do so might indicate the existence of a contract between assignments. For more details on the case of *Harpur Trust v Brazel,* please see [here](https://www.rec.uk.com/our-view/insights/legal-news-and-views/harpur-trust-v-brazel). |
|  | 7.3  (Statutory annual leave entitlements under the AWR) | Under the AWR, after completing the 12-week qualifying period (see the definition of “Qualifying Period” in clause 1 and the Schedule), an agency worker is entitled to equal treatment in respect of pay and working conditions. Pay includes holiday pay and working conditions include terms and conditions relating to annual leave (Regulations 6(1) and (2)). An agency worker will be entitled to the same payment for annual leave (including over and above the minimum entitlement under the WTR) as if he/she had been directly recruited by the Hirer.  This includes the same terms and conditions relating to annual leave as a direct recruit of the Hirer, including the ability to take any leave entitlement over and above the minimum entitlement under the WTR. BIS have confirmed in the Guidance that the Employment Business can pay the Agency Worker in lieu of taking any such additional leave and that this can be rolled up as part of the hourly/daily rate (if you do this, we strongly recommend that it is itemised separately on the payslip)or given as a one off payment at the end of the assignment.  **However, under the AWR the agency worker is entitled to take any such paid additional leave, and so there is a risk in rolling up the payment as part of the hourly/daily rate or giving it as a one off payment at the end of the assignment. A risk-free approach would be to allow the agency worker to take the leave and pay the agency worker at that time.**  Please see REC AWR Factsheet 4 for more information and REC’s Legal Guide. |
|  | 7.5  (Statutory paid annual leave) | For leave requests made before the implementation of the amendments to WTR 1998introducing the option of legally implementing Rolled-Up Holiday Pay and for leave years starting on or after 1st April 2024 and where an employer has elected **not** to roll up holiday pay, by insisting that they work when they want to take leave you may be altering the nature of the contract to a contract of employment (though a single factor such as this is unlikely to be conclusive). So, any refusal or postponement of leave from the time they request may only be in the form of a request that they take paid leave at a time that suits you or the Hirer. |
|  | 7.6  (Statutory paid annual leave) | **No fixed hours:** For the purpose of calculating statutory holiday pay under the Working Time Regulations 1998, where a worker **does not** have fixed hours under the contract (as is typically the case for agency workers), holiday pay should be calculated as an average of both standard and overtime rates for the hours actually worked over the reference period.  **No fixed hours after 1st January 2024:** For Irregular Hours Workers and Part Year Workers whose leave years start on or after 1st April 2024 holiday pay can be rolled up. Holiday leave and pay can be calculated as 12.07% of the hours of work and pay a worker is entitled to during a pay period. This is due to amendments to WTR 1998 which come into law on 1st January 2024 but are taking effect with respect to leave years starting on or after 1st April 2024.  **Reference period:** On 6 April 2020 the holiday pay reference period for calculating holiday pay was extended from 12 to 52 weeks. If need be, the employment business can go back a maximum of 104 weeks to reach the 52-week reference period. Alternatively, if a worker has not yet worked for 52 weeks, the reference period is the total number of weeks for which the worker has worked. BEIS have updated their [holiday pay guidance for workers without fixed hours or pay](https://www.gov.uk/government/publications/calculating-holiday-pay-for-workers-without-fixed-hours-or-pay/calculating-holiday-pay-for-workers-without-fixed-hours-or-pay--2). For Irregular Hours Workers and Part Year Workers whose leave years start on or after 1st April 2024 holiday pay can be rolled up. Holiday leave and pay can be calculated as 12.07% of the hours of work and pay a worker is entitled to during a pay period, making the reference period the pay period.  **Fixed hours:** In contrast where a worker **does** have fixed hours under the contract (and pay does not vary depending on the time that work is done or on the amount of work done), holiday pay is calculated on a week’s pay under the contract. Historically this would take into account basic pay only and not overtime payments. This would often be applicable to the employees of the hirer for who would more commonly have fixed in their contracts, although some agency workers have fixed hours in the contract.  However, in November 2014, the Employment Appeal Tribunal ruled in the case of *Bear Scotland v Fulton* that in relation to workers with **fixed hours** in the contract, payment for non-guaranteed overtime (i.e. that which the employer is not required to offer but which the worker is required to accept) should be included when calculating holiday pay. As a result, many employers have since reviewed their holiday pay provisions as it is no longer safe to exclude overtime payments in these circumstances. Note that it was already a requirement to include payment for compulsory overtime (i.e. that which the employer is required to offer and the worker is required to do) in holiday pay. There has been no specific determination about voluntary overtime (i.e. that which the employer can choose to offer and the worker can choose to do), but continuing to exclude it when calculating holiday pay does carry some risk.  **April 2016** – In February 2016 the Employment Appeal Tribunal confirmed that commission earned should be included when calculating the rate of holiday pay (*Lock v British Gas*). This decision was later upheld by the Court of Appeal. British Gas sought permission to appeal to the Supreme Court but permission was not granted, meaning that the Court of Appeal decision stands (commission payments to be included in holiday pay calculations for Mr Lock).  See the [REC Legal Guide](https://www.rec.uk.com/legal-resources/legal-guide/Holiday-leave-and-pay-for-temps) for further information on holiday pay.  Please note that Following the ruling from the Supreme Court decision in the case of *Harpur Trust v Brazel*, **and prior to the amendments to WTR 1998 coming into law on 1st January 2024,** all part-year employees with Irregular Hours and engaged on a permanent contract of employment will be entitled to the full 5.6 weeks holiday . Calculating a part-year worker’s entitlement to holiday pay is no longer on a pro rata basis, where one would deduct 5.6 weeks from the 52-week year, leaving 46.4 weeks during which to accrue the holiday (also expressed in percentage terms as 12.07%). For employment businesses that use a contract for services like this contract, it is arguable that the decision could be debated in future cases and there is scope for the argument to be made to extend the case to contract for services workers. You must take the necessary practical steps to ensure that your workers are engaged only when on an assignment and there is no suggestion of an ongoing contractual relationship. For more details on the case please see [here](https://www.rec.uk.com/our-view/insights/legal-news-and-views/harpur-trust-v-brazel).  On 8th November 2023 amendments to WTR 1998 which apply to Great Britain and are due come into law on 1st January 2024, were announced. However certain provisions take effect later in 2024 for those whose leave years start on or after 1st April 2024. This includes workers on a contract for services who start new assignments on or after 1st April 2024. The amendments allow employers to elect to pay rolled up holiday pay and for holiday entitlement to be accrued at the rate of 12.07% of the hours worked by a worker in each pay period and for holiday pay to be paid at a rate of 12.07% of the remuneration received in each pay period for Irregular Hours Workers and Part Year Workers as defined by WTR.  Employment businesses can either opt to apply this method or to continue to allow workers to take their entitlement to leave and to be paid holiday pay when they are on leave. Further details on the amendments to WTR 1998 can be found [here](https://www.rec.uk.com/our-view/insights/legal-news-and-views/frequently-asked-questions-amendments-working-time-regulations-1998) |
|  | 7.8  (Statutory paid annual leave) | Under the WTR, the minimum entitlement to paid annual leave is not in addition to bank or public holidays. Agency Workers are not automatically entitled to take bank or public holidays as annual leave and so may be asked to work on those days. Alternatively, if they choose to take leave on those days they may be paid as part of their minimum entitlement under the WTR. The first option indicates that leave taken on a bank or public holiday will automatically count as part of their entitlement under the WTR. The second option gives the Agency Worker the right to choose whether to count those days as part of their entitlement under the WTR.  See Note 24 above. If the Agency Worker has already completed the 12-week qualifying period (see the definition of “Qualifying Period” in clause 1 and the Schedule) at the start date of the Assignment, select the option for this clause which matches what the Agency Worker would have been given if recruited directly by the Hirer. If the Agency Worker completes the Qualifying Period during the Assignment, you will need to change this clause by variation to the Assignment Details Form if the option you have chosen does not match what the Agency Worker would have been given if recruited directly by the Hirer. |
|  | 7.9 (Annual leave) | We have added the following optional wording to require the Agency Worker to repay any holiday pay owed in excess of final pay:  *[If, following such deduction the Agency Worker owes further monies in respect of pay received for annual leave taken but not accrued at the time of Termination, the Agency Worker will repay such monies within [x] days of termination of these Terms.]*  Delete if not required. |
|  | 8.3  (Sickness absence) | A worker who claims SSP will only be eligible to receive payment if he/she is absent due to illness for 4 or more consecutive qualifying days and subject to satisfying all relevant criteria. A “qualifying day” is one on which the worker normally works. So if a worker normally works Monday to Friday those will be the qualifying days.  However, if a worker works on an intermittent basis with no regular pattern of work it is possible to rely on this clause to stipulate that a worker must be absent on 4 consecutive Wednesdays in order to qualify for SSP. This argument should only be used where there is genuinely no obvious pattern of work. SSP is payable from the fourth day of sickness. For more information on SSP see the REC’s online Legal Guide at: <http://www.rec.uk.com/legal_guide/>. |
|  | 8.4 and 8.5  (Statement of Fitness to Work) | The “Statement of Fitness to Work” was introduced on 6 April 2010 to replace the doctor’s certificate issued by doctors to sign an individual off sick as unfit to work. The Statement allows the doctor to confirm either that the individual is not fit to work, or that he or she MAY return to work if it is possible for particular adjustments to be made (e.g. reduced hours, amended duties).  It is still the employer’s choice as to whether the individual is permitted to return to work, but employers need to take care not to discriminate against workers who have a disability where there may be a specific legal requirement to make adjustments in any case to allow the worker to return to work. (Remember, for the purposes of SSP the “employer” is whoever pays the worker, in this instance the Employment Business).  Where an employer cannot accommodate any changes recommended under the Statement it is taken as the worker being not fit for work. The period covered will be that as stated by the doctor. The worker is not required to obtain a further Statement as a result of the employer not being able to accommodate any changes and the worker will continue to receive SSP.  If an employer cannot facilitate the changes suggested by the doctor in the Statement and the worker disagrees with the employer’s decision, this should be resolved by the employer’s complaints procedure.    If the worker disagrees with the employer’s interpretation of the doctor’s suggestions, or the employer is able to offer changes to support the return to work but the worker refuses, the employer should seek legal advice. In the event of a dispute concerning adjustments, the employer should not generally cease paying SSP until such dispute is resolved and/or the Statement expires.  An employer should not force changes to the worker’s work without their agreement. A proper [medical report](http://www.bllaw.co.uk/services_for_businesses/employment/vigil_service/vigil_topics/sickness_absence/medical_reports.aspx) or consulting an occupational health specialist might be required depending on the circumstances. If the employer can offer the options suggested by the doctor the employer is potentially in a stronger position to initiate a dismissal process if the worker is unwilling to accept them.  If the worker returns to work, even with changes or reduced hours, he/she will not normally be entitled to SSP, but an employer should seek legal advice as each case will depend on the nature of the return to work. Where a worker returns on reduced hours, it will be up to the employer to decide whether or not the worker is only paid for those hours, or whether the pay is made up to the level of SSP (if higher), company sick pay or full pay. |
|  | 9.3  (Termination) | Essentially a contract for services can be terminated at any time and for any reason without notice or liability. If an Agency Worker does not turn up for work and fails to notify the Hirer or you of their absence, for whatever reason, the assignment will have been terminated at the end of the Agency Worker’s last day of work/shift.  However, you need to exercise caution where a temporary worker does not turn up for work due to illness or pregnancy. If the Agency Worker notifies you of their absence due to illness or pregnancy the Assignment does not terminate automatically. You cannot terminate an Assignment to avoid paying SSP or SMP so you must first ascertain the reason for the worker’s absence and then find out if the Hirer is willing to keep the assignment open for the worker.  If either the Agency Worker indicates that they will not be returning to work in that Assignment or the Hirer indicates they no longer wish to keep the Assignment open for that Agency Worker then you may terminate the Assignment. Otherwise you must continue to pay SSP or SMP until the Agency Worker returns to the Assignment or until the Assignment would have come to an end.  For further information please refer to the REC Legal Guide. |
|  | 9.5  (Term and termination) | Complete the period in clause 9.5.  The period chosen should be reasonable in the circumstances, taking into account any time limit imposed for completion of the services and the urgency of the works. The time period should be consistent with the Client terms. |
|  | 12  (Data Protection) | You cannot require the Agency Worker to consent to the processing of their personal data as a condition of providing work finding services and so we have deleted the previous consent provision which appeared here. However, we have included an acknowledgement from the Agency Worker that you must process their personal data.  See also clause 4.5. |
|  | 16 (Governing Law) | Delete as appropriate to your main jurisdiction. |
|  | Signature clause | The Conduct Regulations require that you agree your Terms with the Agency Worker before you provide them with work-finding services. This does not mean that these Terms have to be signed by them but a signature is evidence of the fact that the Agency Worker has received and agreed them. The REC recommends obtaining the Agency Worker’s signature at registration. |
|  | Schedule  (Qualifying Period) | Regulation 8 of the AWR provides that an Agency Worker who completes the Qualifying Period will be entitled to equal treatment in respect of pay and working conditions. Regulation 7 provides that an Agency Worker will complete the Qualifying Period when he/she completes 12 Calendar Weeks (see the definition of “Calendar Week” in clause 1) on assignment in the same role with the same hirer.  Regulation 7 also provides for the Agency Worker to take some breaks during an Assignment. The general rule is that breaks of 6 weeks or less will only pause the qualifying clock. In certain specified circumstances, breaks of more than 6 weeks will pause but not stop the clock.  There are also certain provisions regarding a break in an assignment during the Protected Period for a pregnant agency worker whose clock continues to run even though not working during the assignment.  All these provisions are set out in the Schedule.  Subject to breaks taken the earliest date an agency worker could qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland. |
|  | Rights for pregnant agency workers | This note does not refer to any specific provision but is included for the sake of completeness.  Please refer to REC AWR Factsheet 6 and the Guidance for information on the rights under the AWR of pregnant agency workers and those who are new mothers or who are breastfeeding after they have completed the 12-week qualifying period. These rights include paid time off to attend ante-natal medical appointments and ante-natal classes; **the right to be offered suitable alternative work (paid at the same rate as the original assignment) by you** if the hirer cannot make reasonable adjustments and the agency worker cannot complete the original assignment for health and safety reasons; and **the right to be paid by you for the remaining duration of the original assignment if you cannot find suitable alternative work**.  Note the potential financial impact on your business if such an agency worker cannot complete an assignment for health and safety reasons and you cannot find suitable alternative work for the agency worker. The REC considered including a clause in Contract 3 between you and the hirer under which the hirer has to pay you for the remaining duration of the original assignment in these circumstances (so that you can pay the agency worker), but concluded that hirers are unlikely to agree to such a clause. However, the REC recommends that you consider trying to negotiate this kind of clause into the contract between you and the hirer.  **Please be aware of, and do not accept, any potentially discriminatory instructions from hirers re the supply of female workers or pregnant agency workers. Such instructions could leave you open to sex discrimination claims under existing anti-discrimination legislation.** |

## List of Amendments

We list here the main amendments rather than every word. We recommend that members adopt the amended terms in their entirety rather than amend individual provisions.

|  |  |  |
| --- | --- | --- |
| Clause | Related Note | Description |
| **Amendments made December 2023 (to August 2022 version)** | | |
| Definitions and interpretations Clause 1 |  | We have updated the definitions and interpretations clause to include the definitions of Irregular Hours Worker and Part Year Worker in accordance with Regulation 15F(1) WTR 1998 following updates to WTR 1998 which come into effect on 1st January 2024. |
| Definitions and interpretations Clause 1 |  | We have updated this clause to include the definition of Rolled Up Holiday Pay as provided for under the amendments Working Time Regulations which come into law on 1st January 2024 |
| Clause 3.2 |  | We have further elaborated on the nature of the hours of work under a contract for services in line with the definition of Irregular Hours Worker in accordance with under Regulation 15F WTR 1998 which comes into law on 1st January 2024. |
| Guidance Notes | 42 | We have amended Note 42 in relation to clause 6.7 to confirm the position regarding NI Contributions to EEA member states for workers temporarily based in the UK post-Brexit. |
| Clause 7.2 | 43,44&45 | We have updated the clause relating to annual leave to include the option to pay rolled up holiday pay and to apply the 12.07% accrual method /the relevant accrual method if the agency worker is entitled to more than the statutory minimum of 5.6 weeks’ of leave in accordance with the updates to WTR 1998 which come into law on 1st January 2024. |
| Clause 7.6 | 48 | We have updated the clause to reflect the additional option of making a payment of Rolled Up Holiday Pay (Option B) where an employment business has elected to pay this instead of allowing workers to take annual leave in line with amendments to WTR 1999 which come into force on 1st January 2024 providing for this . |
| Clause 7.7 |  | We have updated the clause to reflect the additional option of making a payment of Rolled Up Holiday Pay (Option B) ) where an employment business has elected to pay this instead of allowing workers to take annual leave in line with amendments to WTR 1999 which come into force on 1st January 2024 providing for this . |
| Clause 9.6 | 45 | We have updated the clause to reflect the long standing legal obligation on agencies to pay agency workers any accrued entitlement to leave they have not taken during an assignment on the termination of the assignment under WTR. |
| Key Information Document (PAYE) |  | We have added a sample Key Information Document (KID) for illustrative purposes to show the information that should be included in a KID. |
| Additional Documents |  | We have included a watermarked written example sample completed KID for PAYE workers to show the information that you would be expected to include in a KID. Please note that this is for illustrative purposes only. |
| **Amendments made August 2022 (to May 2018 version)** | | |
| Guidance notes | 43 & 46 | We have updated the guidance notes to explain the legal changes regarding the way in which holiday pay is accrued for part-year workers engaged under a contract of employment, following the Supreme Court decision from *Harpur Trust v Brazel*. |
| **Amendments made March 2020 (to May 2018 version)** | | |
| Guidance notes |  | We have updated the guidance notes to explain the legal changes regarding written statements of particulars and the key information document. Both of these changes are effective from 6 April 2020. |
| Clause 3.3.6-3.3.9 | 16 | We have added some of the additional requirements under the ERA 1996 |
| Various |  | We have also simplified the language in various provisions e.g. changing “In the event of …” to “If”, “Save” to “Except”. We have also replaced the passive tense with more active tenses e.g. “payment will be made” is replaced by “The Employment Business will pay …”. |
| Annexes 1 and 2 |  | We have also added a template Key Information Document and Assignment Details From as a reminder to issue these documents. |
| **Amendments made May 2018 (to April 2017 version)** | | |
| 1 – “Data Protection Laws” | 4 | We've updated this to refer to the General Data Protection Regulation which came into effect on 25 May 2018 and the new Data Protection Act 2018. |
| 4.5  (Agency Worker’s obligations) | - | This is a new provision. |
| 12  (Data protection) |  | We've deleted old clause 12.2 where the Agency Worker consented to the processing and overseas transfer of their personal data. Consent is just one of six legal bases for processing data and should only be used when (a) appropriate and (b) valid. If an organisation wants to rely on consent that consent must meet the GDPR requirements i.e. be valid, informed, specific, in clear language and given by affirmative action (i.e. no pre-ticked boxes and not implied from silence). Consent should not be hidden in terms and so we have deleted it.  However, we have created a new model Document DP6 - Consent Form if members still wish to obtain consent.  For more information, see the [ICO Guide to the GDPR](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf),  [the ICO guidance on legitimate interests](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests-1-0.pdf) and [the ICO interactive legal basis guidance tool.](https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources/lawful-basis-interactive-guidance-tool/) |
| **Amendments made April 2017 (to August 2016 version)** | | |
| Clause 6 |  | Has been amended to more clearly set out the minimum rate of pay (the Hourly Rate) that will be paid to the Agency Worker and to include the option of paying the Agency Worker on a weekly or monthly basis. |

1. Where an employment business provides additional services such as DBS , Under Regulation 13 of the Conduct Regulations, before providing or arranging for any additional services, the recruitment business must inform the candidate of.

   •the services they charge a fee for and provide the details of the fee, including the amount or method of calculation of the fee,

   •the identity of the person to whom the fee is or will be payable, a description of the services or goods to which the fee relates; and

   •the circumstances, if any, in which refunds or rebates are payable to the candidate, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement confirming this.

   Additionally, under Section 6(1)b of the Employment Agencies Act 1973 (EA 1973), it is unlawful for an employment business to receive a fee directly or indirectly for the provision of work finding services. [↑](#footnote-ref-1)
2. **PLEASE NOTE THESE ARE EXAMPLE FIGURES AND DO NOT REPRESENT THE ACTUAL DEDUCTIONS A WORKER RECEIVING PAY AT THIS RATE WOULD ATTRACT.** [↑](#footnote-ref-2)