



## CORONAVIRUS UPDATE – SUPPLYING TO PUBLIC SECTOR

This guidance looks at the recent announcements made by the Cabinet Office on public bodies continuing to pay *their* suppliers during the coronavirus outbreak, which are set out in:

- [Procurement Policy Note 01/20 – Responding to COVID-19](#)
- [Procurement Policy Note 02/20 – Supplier relief due to COVID-19](#)

### SUMMARY

For agency workers who are being supplied in 'long term' assignments (where agency workers are or were due to be currently out on assignment) to the public sector, they should be paid 80% of their salary (to a maximum of £2,500 per month) for the remainder of their assignment. All statutory payments and margins remain payable. This is a separate arrangement to the Job Retention Scheme.

#### Which public sector bodies does this apply to?

This guidance applies to all central government departments (including Executive Agencies and Non-Departmental Bodies). For example, this will apply to contractors working directly for the Ministry of Justice or the Department for Transport.

For the rest of the public sector that is not included in the above (including schools) they are strongly encouraged by government to take the approach outlined but central government cannot legally mandate them to do so.

#### Which agency workers does this apply to?

- It applies to all that are/were supplied under their current assignment, no matter how long they have been in post. It does not apply to agency workers who are being let go because their contract was due to finish and was not going to be extended regardless of COVID-19.
- It does not apply to agency workers who were not on a live assignment and simply on the agency's payroll.
- If agency workers are unable to work due to childcare responsibilities now that schools have closed, they should continue to be paid on the same basis as above (80% up to a maximum of £2,500 per month), for up to seven working days while they make alternative arrangements.

#### What about agency workers who were not on assignment?

For those agency workers that were not an assignment this doesn't apply to them. Furlough is an option but it is the decision of the employment business whether to furlough these workers or not. More information on the Job Retention Scheme can be found [online here](#).



### What does this mean for agencies' fees?

When public sector bodies are following this approach, all statutory and agency margin payments remain payable. When agencies have a fixed fee, this will need to be reduced to be 80% of the total usual fee.

### Why have the Cabinet Office produced this guidance?

This scheme is designed to help employment businesses, at a difficult time, as well as the agency workers they provide to the public sector. It is very important that employment businesses do not try to take advantage of this scheme – it has been designed to help our industry and we do not want to damage our reputation.

### How would this work in practice?

Agencies should make arrangements for payment to the agency workers in scope that meet the criteria at 80% of pay, to a maximum of £2,500 per month, in the same way that they usually would. It is the responsibility of the agency to identify how much is due to be paid. They would then invoice this to the customer. All suppliers must keep a record of all payments made to agency workers on the basis outlined and this must be conducted on an open book basis and may be subject to audit.

The £2,500 per month cap relates to gross pay, excluding statutory costs such as NI, holiday pay, apprenticeship levy and pension, and supplier margin. These costs should continue to be applied where applicable as normal in addition to gross pay rate to the Contingent Worker.

When conducting calculations to determine monthly and weekly pay for agency workers who have ad hoc working patterns; agencies should conduct a retrospective view of the previous 12 weeks (or as many weeks as the agency worker has been on assignment) to determine the average days or hours worked. This average should be used to underpin the calculation of 80% of gross pay to the £2,500 cap as outlined in above.

To reiterate, this scheme is separate to the Job Retention Scheme. As such, agencies cannot claim back via HMRC any payments that are made.

### Does this approach apply to only those on the Frameworks?

No. All public sector bodies are strongly encouraged by central government to adopt this approach.

### Which categories of workers will this apply to?

This approach should be applied to all categories of agency workers including:

- PAYE
- Umbrella
- Personal Services Company

### How long can it be claimed?

This should be backdated to 1 March 2020 if necessary and will be available initially for at least three months.



Agency workers would be entitled to this benefit, but only up to the point at which their assignment is due to expire. There is no obligation to extend them if the intention was that their assignment would naturally end.

### What about the school holidays?

If the agency worker was due to continue to work on the same assignment after the Easter Holiday, the agreement you made on holiday pay will continue to apply. For instance, if they were not due to receive payment over this holiday period and receive rolled up holiday pay, then that remains the case.

The worker should always contact their Supplier in the first instance. They should state the situation highlighting how their inability to work is related to COVID-19. The Supplier should then speak with the manager to whom the worker reports, to determine if provision can be made to work from home. If they can work from home, such arrangements should be made by the manager and payment to the worker will continue as normal. If they cannot work from home, the Supplier will make the relevant adjustments to pay and fees.

Suppliers will be required to maintain an open book which may be subject to audit.

### What about agency workers that were let go prior to this guidance?

If government bodies terminated assignments before they were due to end because of coronavirus then they are encouraged to continue to pay that worker 80% of their salary. Agencies need to open dialogue with government bodies in this scenario and point to guidance issued by the Cabinet Office. While they are not mandated to take this approach, they are strongly encouraged to.

If you have difficulties coming to an agreement with a government body, please inform REC directly using [policy@rec.uk.com](mailto:policy@rec.uk.com)

### What if workers have already been paid Statutory Sick Pay?

If the workers have already claimed Statutory Sick Pay (SSP) due to COVID-19, after following the required procedure, the agency should make the payments less the value of SSP claimed, in order to bring the total payment to 80% of gross pay up to a maximum of £2,500 per month.



## Annex A – Examples of calculating

### Hourly pay example:

- If an agency worker's usual hours are 37.5 per week, that is equivalent to 7.5 hours per day. Therefore, a timesheet should be submitted for six hours per day for the absent days due to COVID-19 ( $7.5 \text{ hours} \times 80\% = 6 \text{ hours}$ ).
- If working part-time, the hours should be amended accordingly. For example, if the normal hours worked each day are five hours per day, a timesheet should be submitted for four hours if absent due to COVID-19 ( $5 \text{ hours} \times 80\% = 4 \text{ hours}$ ).
- In the event that a Contingent Worker usually works different hours on different days this can be accommodated in the simplest manner possible for the case in question such that the total hours submitted for the week are an accurate reflection of 80% of the normal hours submitted in a normal working week.

### Daily pay example:

- If usual days are five per week, 80% is equivalent to four days per week. Therefore, a timesheet should be submitted for four days for the absent days due to COVID-19 ( $5 \text{ days} \times 80\% = 4 \text{ days}$ ).
- If working part time and the usual days are three days per week, that is equivalent to 2.4 days per week ( $3 \text{ days} \times 80\% = 2.4 \text{ days rounded up to } 2.5$ ). Therefore, a timesheet should be submitted for 2.5 days for the absent days due to COVID-19