

PERSONNEL COMMITTEE – 4TH DECEMBER 2018

Report of the Head of Strategic Support

Part A

ITEM 7 GUIDANCE ON THE RECRUITMENT AND EMPLOYMENT OF CASUAL WORKERS

Purpose of Report

To obtain Personnel Committee approval on the amended Guidance for the Recruitment and Engagement of Casual Workers.

Recommendation

That the revised Guidance on the Recruitment and Employment of Casual Workers be agreed by Personnel Committee.

Reason

That the guidance document is updated in line with recommended best practice to ensure its effectiveness for employees of the Council.

Policy Justification and Previous Decisions

The guidance document was last updated by the Council and agreed at Personnel Committee on 14th June 2016. The proposed Guidance on the Recruitment and Employment of Casual Workers has been reviewed and revised to ensure its continued compliance with legislation and recommended best practice.

Implementation Timetable including Future Decisions

It is recommended that the Guidance on the Recruitment and Employment of Casual Workers be published on the intranet and the current policy be deleted, following approval by Personnel Committee.

Report Implications

The following implications have been identified for this report

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

Annex A: Guidance on the Recruitment and Employment of Casual Workers

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Part B

Background

1. The purpose of the Guidance on the Recruitment and Employment of Casual Workers is to provide recruiting officers and managers with advice and guidance on the use of casual workers within the Council and the circumstances when the contract for services should be used.
2. A further review has been undertaken by Human Resources and it is considered that the policy would be improved by making some minor amendments to the sections outlined within it.
3. The minor changes are recommended to the sections on:
 - Contract for services
Additional clarification is provided in this area including confirmation that casual workers should only be paid for the hours actually worked, and managers should regularly review casual worker arrangements to ensure a casual contract is the correct contract.
 - Additional factors for advertising
Additional factors should be identified in the job profile and advert, including DBS checks, where appropriate.
 - Recruitment process
An extra section has been included regarding safer recruitment requirements for casual roles.
 - Pre-engagement checks
This section has been updated to ensure that the policy is compliant for the criteria relating to safer recruitment checks.
 - Annual leave
A revision has been made to the policy in relation to casual workers requesting to take annual leave to confirm the legislative entitlement to permit leave if requested by the casual worker.
 - Pensions
Further information has been outlined relating to auto enrolment for casual workers.
 - Sickness
The process regarding sickness has been further outlined within the policy, to include confirming that casual workers should not claim for any hours worked during sickness and the absence should not be recorded as sickness absence.

Current HR Policies

4. The Council's current Guidance on the Recruitment and Employment of Casual Workers was revised and agreed by Personnel Committee on 14th June 2016.

Consultation

5. The amended policy was agreed at the SMT meeting on 3rd October 2018 and JMTUM on 18th October 2018.



Guidance on the Recruitment and Employment of Casual Workers

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Purpose

The purpose of this guidance is to provide recruiting officers and managers with advice and guidance on the use of casual workers within the Council and the circumstances when the contract for services should be used.

Casual Workers: Contract for Services

This type of contract is based on the understanding that:

- The Council is under no obligation to provide any work and is able to withdraw any work offered at any time and without notice.
- The Worker is under no obligation to accept any work offered and is able to withdraw from any work previously accepted at any time and without notice.
- “At any time and without notice” includes during an agreed assignment. The Council will be required to pay the casual worker only for the hours actually worked, regardless of who withdrew from the assignment or when it occurred.

Guidance on the Recruitment and Employment of Apprentices

Version: 2018 v1

Date Agreed:

Agreed at:

Managers must ensure that casual workers who exercise their right to refuse or withdraw from work are not subjected to detriment as a result of doing so. It is recommended that casual workers should only be used when there is a need to cover ad-hoc periods, or short term occasional absence, and where the work undertaken as part of their assignment is not critical to service delivery.

Managers should regularly review casual worker arrangements to check whether it would be more appropriate to seek approval to recruit an employee on either a permanent or fixed term basis.

Casual Workers should only be used when there is a need to cover ad hoc periods or a one-off absence/event up to a maximum of 10 weeks'. For example:

- To cover the first or second day of sickness absence of an existing employee for a period that initially is indeterminate. When it is known how long the sickness absence will be e.g. more than one month, a fixed term contract must then be used.
- To cover a short period of other absence e.g. less than 10 weeks'. Longer periods of absence, e.g. more than 10 weeks', must be covered by a fixed term contract.

Crucially with this type of contract both parties can withdraw from it at any time without notice.

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Advertising

Managers must obtain prior permission from their relevant Head of Service to appoint a casual worker using the [Recruitment Approval Request Form](#).

It is recommended that in circumstances where managers use casual workers on a regular basis that they periodically advertise and appoint casual workers they can call upon as and when required.

Where managers require a number of casual workers to carry out a specific piece of work, it is recommended for the post(s) to be advertised.

In circumstances where managers only require an occasional casual worker, it may not always be necessary to advertise. Managers may seek to arrange this locally or approach Job Centres to identify any suitable candidates.

Additional Factors

These will need to be identified in the role profile and advert, as appropriate. The manager should establish whether:

- The post is politically restricted.
- A Disclosure and Barring Service check will be required.
- The post will fall within the scope of the public sector English fluency duty.

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Recruitment

The general principles contained in the [Recruitment and Selection Guidance](#) must be followed when recruiting a casual worker. The manager must decide dependent on the length of time the casual worker is required (up to a maximum of 10 weeks'), the nature of the post and any other risk factors, to what degree the recruitment process is followed.

Managers are advised to interview the individual(s) to assess that they have necessary skills and experience and are competent to carry out the role. This should include checking whether there have been any gaps in their employment history. If any gaps are identified, the reasons for these should be established. It is also important to assess whether they have an understanding of the role being offered and that they are suitable for the role.

In order to comply with safer recruitment requirements, individuals appointed to be engaged in casual roles that are designated as a '[regulated activity](#)' and/or falling within the scope of the public sector English frequency duty must be interviewed prior to their appointment to ensure that they meet the essential requirements of, and are suitable to undertake the duties of, the role.

Managers should refer to the [Recruitment and Selection Guidance](#) for further information.

Managers must follow the steps below:

For new casual workers

Managers must consider whether it is appropriate to use a casual worker by referring to this guidance. If the work to be undertaken constitutes [casual work](#), the manager should complete the [Recruitment](#) Approval Request Form and submit this to their Head of Service for approval. If approval is granted, the manager should determine the recruitment process to be followed. When an appointment has been made, the manager should complete the new starter e-form and forward this to HR, who will then issue a contract for services to the casual worker.

For existing casual workers

Manager wishing to use an existing casual worker will need to ensure that a [casual contract](#) is the most appropriate in line with this guidance. If the work available does constitute a [casual contract](#) they will need to complete the [new](#) starter e-form as a contract for services needs to be issued to ensure that all existing casual workers have received the correct contract.

For new and existing casual workers

- 1) Casual workers (new and existing) will receive one contract for services for each role that they work on a casual basis. For example if an individual works as a Sports Coach and a Clerical Assistant on a casual basis, they should receive a separate contract for services for both of these roles.
- 2) When managers engage the casual worker again for the same role, they are required to complete another new starter e-form.
- 3) If the work undertaken is in a role designated as a '[regulated activity](#)' managers must ensure that if the worker has not been used within the last 3 months a new DBS check is carried out.
- 4) The manager is responsible for advising the worker of the hourly rate of the assignment that they will be undertaking prior to the start of the assignment.
- 5) Casual workers are required to complete the casual workers monthly claim form, which must be approved by their line manager before being submitted for payment. Hours worked must be correctly entered in the plain time column, the timesheet is fully completed with the payroll reference number and then submitted to Payroll by the payroll deadline calendar.

If after reading this guidance, it is felt that a temporary/fixed term or permanent contract would be more appropriate then managers must obtain permission from their Head of Service through the Recruitment Approval Request Form. If approval is granted, the manager should determine the recruitment process to be followed. When an appointment has been made, the manager should complete the new starter e-form and forward this to HR, who will then issue a contract to the employee.

Pre-Engagement Checks

The manager must ensure that all pre-engagement checks are completed for each casual worker assignment. Managers **MUST** ensure that the [New Appointment Checklist](#) is completed and all the required documentation (including the checklist) are collated before being sent to HR.

Casual workers must not be offered any work unless all pre-engagement checks have been satisfactorily completed. In particular, it is a criminal offence to employ or engage someone who does not have the right to work in the UK – if a casual worker cannot fully demonstrate they have this right, they must not be engaged.

The minimum pre-engagement checks for casual workers reflect those which apply to newly-appointed employees, specifically:

- Eligibility to Work in the UK ([Prevention of Illegal Working Guidance](#))
- Proof of Identity/Qualifications / Professional Registrations
- Two Satisfactory Written References (one from current or most recent employer)
- Disclosure and Barring Service Check (if applicable)
- Childcare Disqualification Declaration Form (if applicable).

Where a casual worker has not undertaken any assignments for the council for at least 3 months, and is to be engaged in a role which is designated as '[regulated activity](#)' a further Disclosure and Barring Service Check must be carried out before any further work can be offered to them. Depending upon the circumstances, it may also be necessary to carry out some of the pre-engagement checks again, e.g. if the casual worker has not completed any assignments for an extended period of time or has been employed or engaged by another organisation in the intervening period.

Resident Labour Market Test

Roles categorised as Tier 2 (General) by the [UK Visas and Immigration](#) (UKVI) Service may require a successful candidate to be issued with a Certificate of Sponsorship before they are able to start work. This includes opportunities for casual work. The Certificate of Sponsorship cannot be issued unless the [Resident Labour Market Test](#) has been met, and this includes a requirement for the role to be advertised with the JobCentre Plus and/or JobCentre Online for a minimum of 28 days.

Inactive Casual Workers

Where a casual worker undertakes no assignments during a 12 month period, they will be treated as a leaver. Their payroll record will be closed and they may be issued with a P45.

If the casual worker is subsequently re-engaged, they must be considered to be a new casual worker and a new contract for services will be issued once all of the pre-engagement checks have been completed again.

Annual Leave

Casual workers are entitled to the statutory amount of annual leave, which is pro-rated equivalent to a full time entitlement of 28 days per year. Due to the nature of the work, it is difficult for casual workers to take their leave, therefore, casual workers automatically receive payment for these, by i-trent enhancing the hours worked by 12.07%.

Casual workers' payslips identify the payment made for the hours worked and a separate amount showing holiday pay entitlement for those hours.

Managers must be aware that employment law allows casual workers the right to take leave during any period they have agreed to work. It is recognised that this is not always practical, but as it is a legal requirement it is necessary to permit this if requested by the casual worker. On the rare occasion that a casual worker does request to take annual leave, managers must ensure that the casual worker does not claim the hours they were not due to work.

Pay

The rate of pay for casual workers should be the same as the minimum of the scale for the job they are carrying out.

The worker will not be entitled to incremental progression but will receive increases to their hourly rate based upon any nationally agreed increases to the spinal column point.

Casual workers with the exception of Bank Holidays will receive plain time for all hours worked including Saturday and Sunday.

For hours worked on a bank holiday a casual worker will receive double time.

Pension

Casual workers may join the Local Government Pension Scheme, and will be automatically enrolled if their assignment continues for longer than three months, and the employee is under 75 years of age. Casual workers who do not wish to continue to be members of the Local Government Pension Scheme may opt out at any time by following the instructions on the Leicestershire County Council Pension Fund website.

However, a casual worker has the right to opt to join the Local Government Pension Scheme from the commencement of their contract and should notify payroll services if they wish to take this option.

Sickness

Casual workers are not entitled to occupational sick pay. However, where a casual worker falls ill on a day when they were due to work, this must not be recorded as sickness absence and the manager must ensure the casual worker does not claim for any hours not worked. However, in some cases, casual workers may not be entitled to Statutory Sick Pay if the qualifying conditions are met.

Continuous Service

Each offer of work by the Council shall be treated as an entirely separate and severable engagement (an assignment). There shall be no relationship between the parties after the end of one assignment and before the start of any subsequent assignment.

Undertaking more than one assignment should not be regarded as establishing an entitlement to regular work or confirming continuity of employment.

Record Retention

The manager is responsible for collating all of the appropriate documentation and sending to HR, together with the completed New Appointment Checklist.

The manager must also record the start and end dates of a casual worker assignment so that the length of time between assignments can be determined to identify whether any additional checks are required before a casual worker can be offered further assignments, of their payroll record should be closed.

For posts designated as a '[regulated activity](#)', the manager must retain evidence of the DBS Disclosure number and the date the certificate was issued, but must not retain the original certificate or make a copy of it. Managers should refer to the Guidance on the Retention of DBS Disclosure Certificate Information for more information.

To ensure that a contract is issued and payment is made to the employee a copy of the [New Appointment Checklist](#) must be sent to HR.

In circumstances where a casual worker undertakes no assignments during a 3 months' period the name of the casual worker will be removed from the payroll system. If after this period a previously used worker is re-engaged they will be treated as a new casual worker meaning that all of the [pre-employment checks](#) detailed above will be required.