

# SUPPLY TEACHERS: GUARANTEED WORK CONTRACTS

## NEU Guidance for members in England & Wales

*As an agency supply teacher, your rights under the Agency Worker Regulations (AWR) can be affected by entering into a “guaranteed work” contract. This guidance explains what’s involved, and what to watch out for...*

### **What we say**

When you read through this document you may have questions about what happens in your particular school or workplace and there may be collective issues that affect other members. In most circumstances, you should initially discuss the matter with your workplace rep, as they will know whether similar concerns have been raised by other members. If you do not have a rep at the moment, it would be a good idea to get members together to elect one. Further advice on this is available at:

<https://neu.org.uk/becoming-a-rep>

Although you may sometimes feel that you are the only person affected by or concerned about a particular issue, in reality this is seldom the case. Any difficulties you may experience are likely to be linked to wider conditions at your workplace and as a member of the NEU you have the advantage of being able to act collectively with your colleagues. This should give you the confidence of knowing that you have the weight of the Union behind you.

### **What do “guaranteed work” contracts mean?**

The *Agency Worker Regulations 2010* (AWR) give agency workers rights to equal pay with the hirer's directly employed staff after 12 weeks in one assignment.

However, one way that supply agencies can avoid the equal pay provisions of the AWR is to employ supply teachers on a particular form of contract, known by several names including: “guaranteed work” contracts, “permanent” contracts, “pay between assignments” contracts or “Swedish Derogation” contracts.

The key feature of these contracts is that the employee will receive a specified minimum payment during periods when no suitable work is available. When you sign such a contract, the result is that you are no longer entitled to the right to equal pay under the AWR, although it does not affect your other rights under the AWR.

### **What provisions do these contracts contain?**

In order for the AWR provisions on equal pay not to apply, the contract must be a permanent contract; it must contain a term which expressly states that the effect of entering into the contract is that Regulation 5 of the AWR is disapplied; and it must provide that you will receive a minimum payment during periods when no suitable work is available.

In addition to the above, the contract must also include the following:

- the minimum rate of pay and the method of calculating that rate of pay;
- the location or locations where you may be expected to work;
- the expected hours of work during any assignment;
- the maximum number of hours of work you may be required to work during each week of any assignment;
- the minimum number of hours' work per week that may be offered to you provided that it is a minimum of one or more hours; (N.B. - the agency cannot ask you to come into its office for an hour to avoid paying you between jobs); and
- the nature of the work you may be expected to be offered including any relevant requirements relating to qualifications or experience.

The contract must include provision for the rate of pay you will receive when you are working under the contract.

### **What is the impact of signing such a contract?**

As noted above, the key point is that you are no longer entitled to the right to equal pay under the AWR, in return for the contractual entitlement to be paid between assignments.

The contract does not deprive you of other entitlements under the AWR, including the "Day One" rights to equal access to facilities and information on job vacancies, and the rights to equal treatment in relation to working time, breaks and (unpaid) annual leave after 12-weeks (see the self-help guidance on the Agency Worker Regulations).

Also, since the contract must be a permanent contract of employment between you and the agency, then after 2 years qualifying service you acquire employment rights such as the right not to be unfairly dismissed and the right to a redundancy payment, just like any other employee.

### **What are the agency's obligations when there is no work for me?**

The AWR provide that during any period under the contract in which the agency worker is not working but is available to do so, the agency must "take reasonable steps to seek suitable work" for the worker, offer the worker any suitable work which is available, and pay the worker the minimum pay rate provided in the contract when they are not working.

The 'minimum' amount of pay must not be less than 50 per cent of the highest (eg weekly) earnings in the previous 12 weeks of the assignment or, where the previous assignment lasted for less than 12 weeks, 50 per cent of the highest pay during that assignment. This 12 week period can include school closures and periods where no supply cover was required. Where the minimum payment is lower than the minimum wage for the number of hours worked, the minimum wage must be paid.

Be aware that there is no requirement for the agency to pay you between assignments indefinitely, as the AWR allow an agency to terminate the contract after an aggregate of 4 complete weeks without work (provided that it has taken steps to find you work). These 4 weeks do not have to be consecutive – they can accrue at any time during the period of the contract.

## What other terms should I look out for?

Government guidance states that the agency and worker 'will need to discuss, agree and note in a written contract what the agency worker is willing to accept on any particular assignment'.

Refusing a 'suitable assignment' may mean that you are deemed to have made yourself unavailable for work, so would not receive any pay between assignments. You should therefore ensure that you have agreed what types of assignment (in terms of age group, subject, location etc) are and are not acceptable to you.

Some agencies have offered contracts which do not meet the above requirements or have other 'suspicious' and possibly unlawful terms such as:

- an assertion that school teachers are outside the scope of the AWR entirely, because they are 'professionals', and so do not qualify for any rights under the AWR; or
- no provision for minimum pay during periods where no work can be found, or provisions which do not meet the requirements specified above.

Where there is a potentially unlawful term within the contract, we may be able to challenge the legality of the contract.

## How does the pay compare to the usual supply teaching pay rates?

This will of course depend on the pay rate under the contract compared to your usual pay rate for supply teaching, the amount of work you would get compared to otherwise, and the extent to which you might benefit from pay between assignments.

On the basis that agencies are more likely to offer these contracts to teachers they expect to be able to place regularly or on a long term basis, it's worth comparing the pay received for long term placements. The pay rates under guaranteed work contracts are typically lower than the agency's usual daily rate - £110 per day is commonly quoted by teachers. This would imply total pay of £21,450 for a full year's placement, working 195 school days. This compares to around £30,000 for a similar placement with 12 weeks paid at £110 a day and the rest of the year paid at the Main Scale maximum. It also compares to over £24,000 for 195 days paid at a flat rate of £125 per day.

## What if I come under pressure to sign?

Some agencies may tell supply teachers that if they do not sign such a contract then they will not be offered any further work. Unfortunately, employment agencies are entitled to offer work on such terms as they see fit to agency workers. Provided that the above requirements are met, then these contracts are legal and are a valid and lawful tool for agencies to use and so there is little we can do to legally challenge them.

Any early termination of an ongoing assignment on the basis of refusal to sign such a contract is likely to amount to a detriment under *Regulation 17 AWR*. Agency workers are protected from detrimental treatment for refusing to forego their rights under the AWR which would include refusing to forego their rights to equal pay after 12 weeks. However, this could be difficult to prove if, for example, the school says that the reason for early termination was because of financial issues rather than because an agency supply teacher tried to assert their rights. If your assignment is terminated early as a result of your refusal to sign a "guaranteed work" contract, we would consider whether this was victimisation leading to detrimental treatment.

Refusing to offer an agency supply teacher any further work after the end of the current assignment may also amount to a detriment under *Regulation 17* but it could be difficult to prove why an agency refused to offer any further work to an agency supply teacher, particularly during any periods of time when teaching jobs are scarce. If you are refused further work as a result of you refusing to sign a “guaranteed work” contract we would consider whether this was victimisation leading to detrimental treatment.

### **What happens if I sign such a contract part way through an assignment?**

The *AWR* says that for the *AWR* equal pay rights not to apply, such a contract should start ‘before the beginning of the first assignment under that contract’. Where an agency tries to introduce this type of contract part-way through an existing assignment, the Union’s view is that this will not deprive you of your existing rights to equal pay under the *AWR* after 12 weeks in that assignment. The exclusion from the right to equal pay will not apply until the beginning of your next assignment.

### **How do I make up my mind whether to sign up to a guaranteed work contract?**

Whether or not to sign such a contract is a decision only you can make. On one hand, the contract gives you employee status and a defined minimum payment when no suitable work is available but with no right to equal pay. On the other hand, if you refuse the contract offered, you retain the right to equal pay after 12 weeks but risk the agency not giving you any further work. Whatever you decide to do, consider things carefully.

### **Where should I go for further advice and support?**

NEU supply members with concerns or problems relating to their employment conditions should in the first instance contact the NEU AdviceLine, or the NEU Wales or N.I. offices instead. Their details may be found at <https://neu.org.uk/contact-us>.

### **Further Information**

Further information and guidance for supply teachers can be found on the NEU website, <https://neu.org.uk>.

Not an NEU member? You can join the NEU on-line at <https://neu.org.uk/join> or on 0345 811 8111 (local rate) or you can complete an application form and return it to National Education Union, Hamilton House, Mabledon Place, London WC1H 9BD.

We want supply members to work together to take forward our work for supply teachers. Contact the NEU locally to find out about participating in your local association and join with other members in your area to tackle common problems. Contact details are on your membership credential and on the NEU website at <https://neu.org.uk/contact-us>.

**National Education Union  
June 2018**