



# CODE OF PRACTICE FOR TEMPORARY WORKERS

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| <b>Title</b>                       | Code of Practice for Temporary Workers |
| <b>Who should use this</b>         | All Staff                              |
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## Review History

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## **1. INTRODUCTION**

- 1.1 The Board is an equal opportunities employer and recognises the need to attract and retain suitably qualified employees delivering excellent services to the public, while at the same time complying with employment law.

## **2. SCOPE**

- 2.1 This agreement sets out the definitions and procedures for the use of temporary workers and aims to:

- (a) Establish good practice on the use of temporary contracts within Ayrshire Valuation Joint Board
- (b) Assist the Board in managing employee arrangements in a co-ordinated and structured way which allows for a flexible response to changing service needs
- (c) Ensure all posts offered on a temporary basis will be filled via the normal recruitment, selection and screening procedures
- (d) Ensure conditions of service for temporary employees are no more or no less favourable than those enjoyed by permanent employees
- (e) Establish a transfer mechanism for those who have accrued rights as a long term temporary employee within the Board
- (f) Establish appropriate record keeping and reporting processes

## **3. DEFINITIONS OF TEMPORARY EMPLOYMENT AND RELEVANT LEGISLATION**

- 3.1 This section defines the different terminology which currently exists for employees who are not on permanent contracts. This is followed by a brief summary of legislation which Managers should make themselves aware of in relation to this agreement:

- 3.2. Definitions for Temporary Working - There are a variety of non-permanent working arrangements currently in operation all of which now fall under the scope of this agreement. These definitions appear to be interpreted in different ways by managers but broadly these are:

- (a) Temporary – usually on a fixed term contract for a defined piece of work or covering long term for an absent employee
- (b) Casual – employed infrequently on an ad hoc basis to cover an occasional day sick leave or some other one off short term reason. There is no commitment on the side of employee to accept work or employer to offer.
- (c) Sessional – identified per fixed blocks of time, normally each year, to enhance staffing levels at peak times.

- 3.3 For purpose of this document all categories above will be referred to as “Temporary”.

3.4 It is good practice to continually review how we enter into contractual arrangements with employees. There is a great deal of case law surrounding the use (or misuse) of temporary contracts therefore Managers should familiarise themselves with relevant employment legislation and should seek advice from the Board's Personnel Representatives when taking decisions on appropriate contractual arrangements. This legislation includes but is not limited to:

- (a) Working Time Directive
- (b) Part Time Workers (Prevention of Less Favourable Treatment)
- (c) Fixed Term Employees (Prevention of Less Favourable Treatment)
- (d) Equal Pay Legislation
- (e) EU's Agency Workers Directive

#### **4. ENTITLEMENTS AND REMUNERATION**

- 4.1 Temporary employees will be paid the evaluated rate for the job where they carry out the same duties as a permanent employee.
- 4.2 Due to the nature of some of the work currently undertaken on a temporary basis it may, where market forces dictate, be necessary to offer a market supplement agreed with the Nominated Senior Officer in order to be able to recruit some specialist posts. Such a supplement must be temporary in nature and must be objectively justified in terms of the Equality Act 2010. Approval from the Assessor is required before any such arrangement is entered into.
- 4.3 Temporary employees will be entitled to all employee benefits comparable to those offered to permanent employees provided they meet any relevant qualifying periods.
- 4.4 Temporary employees will be entitled to annual leave and public holidays on a pro-rata basis. Further advice on individual cases can be sought from the Board's Personnel Representatives.
- 4.5 Other than when the contract is terminated by completion, the minimum period of notice to terminate employment will be 1 week for each completed year of service.

#### **5. APPROPRIATE USE OF TEMPORARY APPOINTMENTS**

It should be normal practice to fill any vacant posts on a permanent basis. It is however appropriate to use temporary contracts in the following circumstances:

- 5.1 Where additional budget exists for temporary cover to fill an established post when the employment relates to:

Maternity / Adoption leave

Sickness Absence

Special leave

Secondment

Career Break

Vocational Student Placement (in agreed areas only)

- 5.2 Where short term additional funding (normally less than 2 years duration) has been identified and approved by the Board, this is to cover:

Government funded initiative/project

Identified Ayrshire Valuation Joint Board priority project

Increased workload requirements within a team where budget exists to temporarily enhance level of team

- 5.3 During a period of restructuring where trade unions have been advised that changes will be taking place within a defined period of time, existing posts may be filled on a temporary basis.

## **6. USE OF CASUAL EMPLOYEES**

- 6.1 In line with other temporary and permanent employees, individuals on the casual list should be recruited on to the list following the Board's agreed recruitment, selection and screening processes. Inequality claims could arise if a Line Manager employs someone outwith this process, therefore advice should always be sought from the Board's Personnel Representatives.

## **7. EMPLOYEES ON SUCCESSIVE FIXED TERM CONTRACTS**

- 7.1 Historically a number of temporary employees have gained employment rights as they have moved from one temporary contract to another with no breaks in service. These temporary contracts can be in one location but often rights are accrued across a number of different locations and posts.
- 7.2 Managers should follow fair and equitable recruitment procedures when offering temporary employment and should not simply offer work to someone simply because they are known to them. Arrangements should be agreed to determine the most equitable method for offering temporary or casual employment.
- 7.3 Employees who have already accrued employment rights under a series of successive contracts shall be identified and dealt with under Section 9 below.

## **8. PERMANENT EMPLOYEES UNDERTAKING ADDITIONAL TEMPORARY HOURS**

- 8.1 A number of permanent part time and a few permanent full time employees also work additional temporary hours where Managers have a budget to provide cover. This arrangement can be sensible in short term circumstances where the employees concerned have the skills and knowledge to undertake emergency cover however should not be the norm for longer term work requirements and managers should consider alternatives.
- 8.2 Circumstances have arisen where full time permanent employees wish to be offered second posts or additional temporary hours to cover for absent employees. Such arrangements clearly take them beyond the Board's normal contractual hours. Where this work requirement is at management request in their own post at their own work location, normal overtime rules apply. Where this work is of a different nature to their normal employment or same nature but carried out in a different establishment this will be deemed to be a second post with payment made at the normal evaluated rate for the job. In this circumstance although the person will be working in excess of normal contractual hours, it will be made clear to them that overtime rates will not apply as they have voluntarily applied for and accepted a second post with full understanding of the terms and conditions attached.

- 8.3 Managers should recognise the impact of such employment arrangements on the Board's overtime records as regardless of contractual arrangement entered into, any additional hours offered to an employee on a permanent contract will be logged on payroll against a HED code which indicates that this is overtime working. This recording as overtime gives a false impression of how much genuine overtime is worked and may mask outdated employee ratios/working arrangements.

## **9. PROCESS FOR MOVING FROM TEMPORARY TO PERMANENT STATUS**

- 9.1 The Nominated Senior Officer should identify temporary employees with continuity of service and determine an appropriate course of action to reduce the reliance on temporary contractual arrangements. It should be noted that continuity of employment is not considered to be broken during periods of paid annual leave.
- 9.2 The definition of continuity for this purpose is that the employee has been in paid employment for at least one hour per week every week. If more than 7 days pass without any employment being offered or with employee refusing an offer of employment then this will be considered as a break in service. In this case continuous service begins to be reckoned the day work commences following the break.
- 9.3 Employment rights vary depending on length of continuous service therefore shown below are the varying circumstances which exist and recommendations for dealing with these:
- 9.3.1 Employees who have over 4 years continuous service have a legal right under the Fixed Term Employees Regulations 2002 to be made permanent unless the Board can objectively justify not doing so.
- (a) The Nominated Senior Officer should analyse which posts the individual has held during this continual four year period of employment in order to determine the amount of permanent hours to be offered.
  - (b) In the circumstance where continuity has been established in a single post and the work requirement remains for that post which they have carried out for the entire 4 year period then employees should be considered as permanent within the post.
  - (c) In the circumstance where the employee has accrued four years service in a variety of posts across the four year period or the long term certainty of current post is unknown, it is reasonable to offer permanent employment within a suitable permanent peripatetic employment pool. Where individual situations are complex the Nominated Senior Officer will discuss the matter with the employee and their trade union representative in order to determine best outcome.
- 9.3.2 Employees who have breaks in service but have a regular and consistent pattern of work over a four year period, where breaks exist simply because work requirement does not exist at particular times of year.
- (a) Although in the strictest sense there are breaks in employment, in this circumstance it could be argued that continuity does exist as the employee has made themselves available for a period of 4 years and accepted a recognised pattern of work across these four years. Wherever possible these employees should be offered similar rights to those outlined in 9.3.1 above under revised permanent contractual arrangements.

- 9.3.3 Employees who have accrued over two years continuous service have by this time accrued a right to a redundancy payment if the work requirement ceases and are able to bring a claim for unfair dismissal. He/she will be considered for redeployment under the Board's Managing Change Policy in an effort to avoid compulsory redundancy.
- (a) The Nominated Senior Officer should identify the reason why an employee has accrued over 2 year's continuous service with a view to looking at whether permanent employees ratios are appropriate. If it is established that additional permanent posts require to be created within a particular team then the post would be created and advertised in the normal way. As soon as the end date for the temporary work requirement is known, employees must be advised of this and encouraged to apply for any suitable posts which appear on the Recruitment Portal prior to the stated termination date.
- 9.3.4 With effect from 6 April 2012, employees with over 2 years continuous service have the right not to be unfairly dismissed. Employees already employed by the Board on that date will retain the current 1 year qualifying period.
- (a) It is likely that there will be employees who have fixed term contracts which expire before the end of a two year period. Such employees should be encouraged to apply for jobs during their working period and given appropriate training and encouragement to help them be successful in their attempts.
- 9.3.5 Employees with less than two year's service have limited employment rights; however as a good employer the Board should actively encourage these temporary employees to apply for suitable permanent posts as they arise. Employees should be given appropriate notice of the intended end date of their temporary appointment and be advised that there is no commitment on either side for continued employment beyond that date.
- 9.4 Permanent employees who undertake additional temporary hours will have the same broad principles applied as outlined in 9.3 however individual circumstances will vary and the Board's Personnel Representatives will advise on the most appropriate course of action in each case.
- 9.5 Where an employee meets the qualifying period for unfair dismissal (i.e. two years continuous service), he/she will have the right to receive a written statement of reasons for dismissal, on request.

## **10. RECORD KEEPING AND REPORTING PROCEDURES**

- 10.1 The Board's Personnel Representatives will establish a system to track continuity of service for temporary employees and employees undertaking additional temporary hours.
- 10.2 Reports analysing the number of temporary employees, including length of service and reason for employment will be compiled and considered by the Management Team to ensure that appropriate employment arrangements are in place.