



Supply Teachers

THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES REGULATIONS 2003

– AN INTRODUCTORY GUIDE FOR NASUWT REPRESENTATIVES

Supply teachers have a vital role in raising and maintaining high educational standards in schools. Campaigning to secure professional entitlements for supply teachers is a key priority of the NASUWT, together with securing decent pay and working conditions for all supply teachers.

The Conduct of Employment Agencies and Employment Businesses Regulations were introduced in April 2004 and were amended in 2010 and again in 2016. The Regulations provide a set of legal minimum standards that govern the conduct of employment businesses and protect supply teachers as agency workers.

Agency workers' rights

Under the Conduct of Employment Agencies and Employment Businesses Regulations, agencies cannot:

- ❖ charge a fee to a supply teacher to find them work. They can charge for non-work-finding services (e.g. CV writing), but details of these services, including the amounts charged and how this is calculated, must be provided in writing (*Regulation 13*);
- ❖ make a supply teacher use any additional services, for which they charge, as a condition of finding them work. This also includes requiring them to take training courses that they must pay for in order to access work (*Regulation 5*);
- ❖ prevent a supply teacher from working somewhere else (e.g. another agency) or ending their employment with the agency to work with someone else. Supply agencies cannot impose a 'detriment' (e.g. withhold or deduct pay for work completed) because a supply teacher informs them of their intention to do this, although the supply agency can ask for notice to be given, and they can also seek to recover any losses they have suffered as a consequence (*Regulation 6*);
- ❖ deploy a supply teacher in order to replace teachers at a school/college who are taking part in official industrial action (*Regulation 7*);
- ❖ withhold payments or wages from a supply teacher for work they have undertaken, even if the supply agency has not been paid by the school/college, or has not received an authorised timesheet. The Regulations are clear that a supply teacher must be paid for all the work they have done, even if the school/college is not satisfied with the teacher (*Regulation 12*);
- ❖ disclose information about a supply teacher, including to their current employer, without their prior consent (*Regulation 28*). The only exceptions to this include the following:
 - if the employment business is providing work-finding services for the agency worker;
 - if the information is required for the purposes of any legal proceedings (including arbitration); or
 - in the case of an agency worker, who is a member of a professional body, the provision of information to that professional body (e.g. DBS checks).

Under the Conduct of Employment Agencies and Employment Businesses Regulations, agencies must make sure that:

- ❖ supply teachers are paid for all the work they do, even if the agency has not yet received payment from the school/college where the supply teacher worked, or they have not yet received an authorised timesheet, or the supply teacher then leaves the employment of the agency (*Regulation 12*);
- ❖ the terms and conditions have been explained up front and agreed in writing with the supply teacher. These cannot be varied unless both parties agree. Where changes are agreed, these must be communicated in writing within five business days (*Regulation 14*);

- ◆ supply teachers are given written terms of employment which detail the following:
 - how they are employed;
 - the agreed rate of pay;
 - how they will be paid (i.e. weekly/monthly);
 - the amount of holiday pay they will receive; and
 - the length of any notice period which needs to be provided by the supply teacher and to the supply teacher (*Regulation 15*).
- ◆ they obtain and provide information about the school/college to the supply teacher (*Regulation 18*), including:
 - where and when the assignment is and the duration of the assignment;
 - exactly what work they are being asked to undertake and the hours of work;
 - the experience, training, qualifications and any authorisation considered necessary, or which a supply teacher needs to have by law (e.g. up-to-date DBS check);
 - any risks or health and safety issues which have been picked up following a thorough risk assessment; and
 - any expenses payable by or to a supply teacher once work commences, but also prior to work beginning (e.g. expenses incurred in attending interviews, DBS checks).

This should be provided in writing no later than the end of the third business day following the day on which the position is offered (*Regulation 21*).

Under the Conduct of Employment Agencies and Employment Businesses Regulations, agencies must also:

- ◆ carry out suitability checks prior to employment for all supply teachers. This includes information which enables the agency to confirm a supply teacher's identity and that they have the required qualifications and experience to undertake the work, including an up-to-date DBS check, such as that provided by the DBS update service (*Regulation 19*);
- ◆ be satisfied that both the supply teacher and the school are aware of their obligations in order to satisfy the requirements of the job; and
- ◆ keep sufficient records to show that they have complied with all the provisions of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (*Regulation 29*). This provides supply teachers with the ability to request all of the records which an agency holds on them for at least a year after the agency last provided them with work.

The Regulations do provide supply teachers who operate as limited companies with the ability to opt out (*Regulation 32*). However, supply teachers should be alert to supply agencies who request that they opt out of the Regulations. This requirement to opt out as a condition of work finding is not permitted.

Further legal context

Agency workers continue to have various additional rights under existing legislation, e.g. The Agency Workers Regulations 2010: guidance for recruiters; the Working Time Regulations; and discrimination law under the Equality Act 2010.

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