

Supply Teachers Bulletin Autumn 2023

Desperate Government seeks again to repeal regulations that prohibit agency workers breaking strikes

Despite the recent successful legal action by **NASUWT – The Teachers' Union** against the Government over its unlawful decision to allow the use of agency workers to cover for striking workers, ministers have announced they will consult again on the repeal of Regulation 7 of the Conduct Regulations.

Back in June, the Union, along with UNISON and a number of other TUC-affiliated unions, was successful in defeating the Government after it had decided to repeal Regulation 7 by rushing in new laws that permitted agencies to provide agency workers, such as supply teachers, to fill in for those taking industrial action.

The High Court noted that the approach of ministers was 'unfair, unlawful and irrational' and reinstated the ban on agency workers being used to break strikes.

The Union was able to demonstrate that the Government had abused its powers by failing to consult with relevant stakeholders, including trade unions such as NASUWT, when it repealed Regulation 7, particularly given that many important changes that had arisen since 2015, such as the impact of Brexit and the Covid-19 pandemic.

Irrespective, ministers will try again to overturn the ban on the use of agency workers, such as supply teachers, as the Government **launches another consultation** on the issue of the repeal of Regulation 7.

It should be noted that there is strong opposition to the repeal of Regulation 7 not just from trade unions, but also from employers.

For example, the Recruitment and Employment Confederation (REC), which represents the recruitment sector, including supply agencies, has **called the announcement** a 'disappointment, given the scale of opposition from employers and workers to the previous proposal.'

Furthermore, the Government's own **impact assessment** says the law change will poison industrial relations and prolong strikes.

Proposed changes to the calculation of holiday pay for those with irregular hours and part-year workers

In **Harpur Trust vs Brazel**, the Supreme Court ruled that the method of calculating holiday pay for a peripatetic music teacher working irregular hours during term time at a school was incorrect.

The Supreme Court held that every worker is entitled to 5.6 weeks' annual leave under the Working Time Regulations (WTR), without any element of pro-rating for those that do not work all round or full

time. Holiday pay should therefore be based on 5.6 weeks of annual leave, regardless of the number of hours, days or weeks actually worked (the 'calendar week' method).

As a result of the judgment in *Harpur Trust vs Brazel*, all workers in the UK now receive the same minimum level of paid annual holiday leave, including part-year and irregular-hours workers.

Although the *Harpur Trust vs Brazel* case concerned a term-time-only worker, the principles in it also mean that in some cases a 12.07% approach will not be enough to satisfy the holiday entitlements for casual workers with irregular working patterns, especially if they have a number of weeks during the year in which they do not work or are not on leave, such as supply teachers who are only able to work for 39 weeks of the year.

Following this, the Government **consulted on EU retained-law**, including looking at changes which could have detrimental impacts on supply teachers as agency workers.

For example, the consultation sought views on whether to reverse the judgment in the *Harper Trust vs Brazel* case so that holiday pay is accrued at 12.07% for workers with irregular hours.

The Government has recently published its **response** to the consultation which confirms the intention to implement an accrual method for calculating holiday entitlement for irregular-hours and part-year workers (which is likely to apply to supply teachers as agency workers).

Entitlement will be calculated as 12.07%, with workers accruing holiday entitlement at the rate of 12.07% of the hours worked in a pay period. For irregular-hours workers and part-year workers, this reflects the procedure many employers had adopted prior to the *Harper Trust vs Brazel* judgment.

Rolled-up holiday pay

In addition, the Government has stated that it intends to legislate to introduce 'rolled-up holiday pay' for irregular-hours and part-year workers only. This is where the employer pays an additional amount on top of a supply teacher's normal rate of pay when undertaking an assignment in order to account for the holiday entitlement that they would otherwise receive when taking annual leave.

Whilst some supply teachers may already receive 'rolled-up holiday pay', draft legislation will remedy the situation where this practice had previously been considered unlawful due to the risk that it could deter workers from taking leave.

The Government has released a draft **statutory instrument** setting out the proposed legislation which is due to come into force on 1 January 2024.

Supply teachers' pay 2023/24

Following the outcomes from the pay review bodies in both England and Wales, as well as the publication of the School Teachers' Pay and Conditions Document (STPCD) and the School Teachers' Pay and Conditions (Wales) Document (STPC(W)D), the Union has produced revised advice and guidance in respect of the daily rates of pay for supply teachers.

For supply teachers working in England, these can be found at:
www.nasuwt.org.uk/SupplyTeachersPayEngland.

For supply teachers working in Wales, these can be found at:

www.nasuwt.org.uk/SupplyTeachersPayWales.

Whilst acknowledging that the pay rates referenced in the Union's revised advice and guidance only apply if you are employed by a local authority or a local authority maintained school, or by a school that has adopted a formal collective agreement to apply national terms and conditions of service, NASUWT expects that agencies who employ supply teachers will recognise the need to ensure that the national pay awards are also applied to supply teachers.

As such, supply teachers working through agencies should be cognisant of the revised advice and guidance when discussing and agreeing rates of pay with supply agencies and/or umbrella companies.

It should be noted that, for teachers working through supply agencies in Wales, the National Framework developed by the National Procurement Service (NPS) means the agencies on the framework have agreed to pay all supply teachers a minimum rate of pay equivalent to M1.¹



E-mail: advice@mail.nasuwt.org.uk

Website: www.nasuwt.org.uk

¹ Following the publication of the STPC(W)D for the academic year 2023/24, the minimum rate of pay that all supply teachers working for an agency on the NPS can expect to receive is equivalent to M2.