

# Working for WCC where hours are not guaranteed

Overview of variable hours workers



## Introduction

At Westminster City Council we believe that the organisation and our service users benefit from a flexible workforce. As part of this there are times where we will need to engage people either for one-off work or work which continues but where the worker/Council cannot guarantee any hours. Please note this guidance applies only to workers who WCC engage directly, it does not apply to agency workers who are engaged by their agency.

## Types of Engagement

There are two main types of engagement under this model:

- Casual workers who are engaged for one-off work and have limited rights
- Claims based employees who have employee status, rights and entitlement but no guaranteed hours

We engage Casual workers for one-off work/projects or at irregular intervals. There is a one-off contract which ends once the assignment is complete, in some cases there are a series of such one-off contracts for different types of work/different services. These workers have limited rights.

For Claims based employees whilst hours are not guaranteed the work is the same/similar and is ongoing. In general, WCC uses these types of contracts where it is not possible to forecast how many hours will be needed over any given period. Examples of this may include registrars where the number of weddings or similar may vary over a year, in adult learning where the demand/funding for certain courses fluctuates. In other services such as care it may be desirable to have a bank of Claims based employees.

### **What's the difference between Claims based employees and Casual workers?**

The main difference between a Claims based employee and Casual worker is employment status. An individual working on a Claims basis will usually be viewed as an employee. This is because the contract is viewed as continuing between assignments even where there is no work available. Therefore, an overriding umbrella contract will exist during periods the individual is not working. A Casual worker will not be classed as an employee and will have more limited rights.

It is essential to establish an individual's status from the outset to ensure that there is clarity about their employment rights.

For further advice and guidance contact your HR Business Partner.

## **How are Claims based employees/Casual workers recruited?**

The employee/worker should be recruited in line with Council policy and recruitment procedures. They should be paid at the same grade/hourly wage as an equivalent permanent employee would be and should be subject to the same pre-employment clearances e.g. references, DBS checks etc. Both Claims based employees and Casual workers will generally enter the hours they've worked via the IBC portal in order to be paid.

# What is a Claims based employee?

A Claims based employee works in a position where:

- The hours vary over any given period depending on the needs of the service
- The working hours and patterns when required are usually set and regular
- There is no obligation on the Council to provide a set number of hours in any period, nor to provide work in every week. Nor is the employee obliged to accept work where it is offered.
- There is deemed to be a continuing contractual relationship even during periods of time where they are not working. This covers work which is not required on a permanent and ongoing basis, such as seasonal work or providing leisure and education courses e.g. school holiday play sessions where both parties expect that the employee is likely to resume on a certain date.
- A contract can be issued for long-term as well as short-term periods which will terminate on the end date in line with the policy on Fixed Term contracts.
- It will cover both planned seasonal work arranged in advance, such as Play or Sports schemes during school holidays, as well as regular and frequent work.

## What rights do Claims based employees have?

- The employee will have access to most of the same benefits as other employees, as appropriate, exceptions being benefits such as season ticket loan, where there is no guaranteed monthly salary to deduct loan payments from etc.
- Employees will not take annual leave but will instead be paid an additional amount on top of their salary in respect of this.
- Continuity of employment will begin from their initial start date. This means they can claim unfair dismissal and redundancy pay after two years.
- A statutory right to notice with pay in line with their contract.
- They will also be entitled to Statutory Sick Pay and maternity leave and pay etc where qualifying conditions are met.

## Ending a Claims based employees contract

- Termination of contracts must be undertaken in line with existing HR Policies, and processed via making them a leaver on the IBC portal. Continuity of service will continue until the contract is formally terminated.
- Where there is no longer any work for the employee to do and they have been employed for over 2 years, a redundancy situation will apply and the Redundancy Policy must be followed. You should discuss this with your HR Business Partner.
- Where there is any problem with the standard of work or the conduct of an employee the relevant policies must be followed.

## What is a Casual Worker?

- Casual workers are engaged for one-off pieces or periods of work, for a short period of time, with variable hours, or for a very irregular or unpredictable period of time, with no mutuality of obligation.
- The Council is not legally obliged to provide work to such workers, and the individual is free to accept or reject any work offered, without penalty.
- There is no employment in respect of this role with the council between the assignments offered and undertaken.
- There are no provisions governing when, how or with what frequency work would be offered.
- There is therefore no continuing employment relationship between engagements. Therefore, most casual workers do not gain continuity of employment.

## What rights do Casual workers have?

Casual workers have a narrower range of protection than employees, but are entitled to:

- Statutory minimum holiday pay and rest breaks
- The national minimum wage
- Discrimination and whistleblowing protection
- Statutory sick pay (if qualifying conditions are met)

Casual workers will not take annual leave but will instead be paid an additional amount on top of their salary in respect to this.

They are not entitled to maternity leave, paid notice of termination, redundancy pay, right to claim unfair dismissal, or auto-pension enrolment amongst others.

## Monitoring Casual workers

Managers must monitor and regularly review their use of Casual workers as mutuality of obligation (and therefore employment status) can by default be established. This can occur when a Casual worker is initially engaged to provide ad-hoc irregular, non-committal cover and then starts to be used on a regular basis for an extended period of time with the emergence of a regular pattern, with the Council relying on the worker to be available at set times and the individual expecting the work to continue as per the regular pattern that has evolved. In this event the Casual worker should be offered a Claims based contract to recognise the change in circumstances.

# Claims based employees and Casual workers at a glance

It is not always easy to determine whether someone is a Claims based employee or a Casual worker, below are some key features of each engagement to assist with this. However, where there is uncertainty you are advised to speak to People Services as the distinction is an important one.

## Summary of Key Entitlements

Summary Employment Rights and Obligation to Zero Hours Employees and Casual Workers.

Employment Rights	Claims based employee	Casual Worker
National minimum wage	Yes	Yes
Statutory sick pay (subject to SSP rules)	Yes*	Yes*
Paid annual leave, a maximum 48-hour working week and rest breaks under the Working Time Regulations	Yes	Yes
Ordinary and Additional Maternity, adoption, parental leave (subject to other qualifying conditions)	Yes	No
Pensions auto-enrolment	Yes	No
Paid time off for dependents leave, special leave etc	Yes	No
Paid notice of termination	Yes	No
Unfair dismissal after qualifying period	Yes	No
Redundancy pay after 2 years service	Yes	No

Not to be discriminated against, e.g. on the grounds of sex, race, disability, sexual orientation, religion or belief, or age	Yes	Yes
Not to be treated less favourably if they work part-time	Yes	Yes

\*To get SSP an employee must have Average Weekly Earnings (AWE) of at least £120 for the financial year 2021-22 (subject to change in each financial year) in the eight weeks period before the first day they are off work sick.

## Frequently Asked Questions

**Q1. Can you have more than one employment relationship with the council, for example a permanent part-time contract for 10 hours in one area, and a Casual contract in another?**

A1. Yes.

**Q2. The person I am using already has an employment contract with the council, I only need them for a couple of hours a week, can they not just claim these hours without more contracts?**

A2. Unless the additional hours you are asking them to do are additional hours in the same role covered by their existing contract – no, we do need to cover each assignment separately as the council needs to be clear regarding the obligations it has to employees in respect of each assignment.

Each role with the council can have different requirements therefore managers must confirm arrangements in writing to avoid confusion and disputes arising.

**Q3. I have a Claims based employee and when I contracted them they explained that they no longer wish to work for the council. What needs to happen next?**

A3. Like any other employee the person will need to submit a resignation letter to the council. As a manager you will then need to make a leaver on the IBC portal.

# In This Topic

Introduction

Types of Engagement

Managing People