

Guidance for Audited Applicants

The Audit requires that you demonstrate compliance with key industry legislation and best practice.

Before your on-site audit, we recommend that you review your documentation and procedures to check that they are in line with our requirements and that you are able to provide evidence in support of this.

The guidance below should help you to identify the key points from the REC's Code of Professional Practice (the REC Code), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations), other relevant legislation and what you can do to help the auditors verify that you are complying. (Please note that the auditor will focus their checks on the criteria that are specific to the type(s) of recruitment you carry out.)

It is important that all policy documentation is up to date, that agency staff are aware of the processes in place and are able to apply these consistently. The REC is seeking assurance that agency staff are aware of their statutory obligations, execute clients' requests correctly, observe best practice and adhere to procedures.

We will do this by:

- reviewing your contracts, policies, procedures and the forms that support this;
- discussions and interviews with key agency staff;
- file sampling (please note that we require explicit consent of the work-seeker for REC to view their file)

REC is keen to support and work with you throughout the process. We have a dedicated legal helpline providing advice and guidance to members, and the REC Legal Guide has a comprehensive range of model documents (both policies and contracts). The Compliance Team can offer advice on policies, procedures and what you need to do in order to be compliant.

File Sampling Consent

You must have the explicit written permission of the work-seeker for REC to view their file as part of the audit process. For clarity, where you use an umbrella company you must obtain written permission, to view a work seeker file, from the person to be supplied. If you do not have this permission then the file will need to be anonymised to enable REC to view it. An example of consent is as follows:

"I consent to the agency processing my personal data with third parties including the REC for the purposes of audits and investigations carried out on the agency to ensure that the agency is complying with all relevant laws and obligations"

Policy and Certification Requirements

It is necessary that all policy documentation and certification requirements are up to date, that staff are aware of the policies and they are able to apply these in practice.

You will need:

- an equality/diversity policy, which must cover all nine protected characteristics listed in the Equality Act;
- an up-to-date registration with the Information Commissioner's Office (ICO);
- a data protection policy, which must cover all seven principles of data protection as listed in General Data Protection Regulations (GDPR).
- a written complaints policy that sets out the stages a complainant can expect to go through when making a complaint – to comply with REC standards, this must cover: who to complain to; the timescales that an agency will work to; how to appeal a decision that is not satisfactory; an alternative process for dealing with a complaint in cases where a complainant does not wish to have a meeting with an agency; and a mechanism for dealing with any complaints informally in the first instance (that is, before resorting to a written procedure); if there have been any complaints against the agency, evidence that the complaints procedure has been operated effectively and the outcomes monitored;
- AWR – your internal policy for dealing with any written requests from an agency worker about any aspect of equal treatment that the agency worker believes they are not receiving, which should cover the timescale for your response and the information that must be included.

| Training and Development of Staff | |
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| <p>We seek assurance that there is a structured and substantial induction and training programme for staff.</p> | <p>Evidence required:</p> <ul style="list-style-type: none"> • written training and development policy; • evidence of staff training records, notes of internal training/updating sessions, and details of how you make training (both internal and external) available to staff; • induction processes for new staff to cover key agency policies and procedures, for example equality/diversity, data protection, compliance processes and recruitment industry information, for example induction checklist; • processes for keeping staff up-to-date in relation to new legislation and developments in the recruitment industry; • details of how you ensure that staff are aware of the REC Code of Professional Practice and how to implement it; • evidence that key staff refer to REC legal bulletins, weekly e-communications, sector updates and other REC communications; • if you have SLAs in place with clients, how you ensure that staff are trained in these and understand their obligations; • written guidelines/operating processes to make clear to staff the standards you expect them to work to, for example staff handbook, or a policies file or operating manual; • performance management/appraisal scheme for staff, for example standard forms. |
| Work-seeker Checks | |
| <p>We seek assurance that agency staff understand, follow and document their obligations in relation to work-seeker check and services.</p> | <p>Evidence required:</p> <ul style="list-style-type: none"> • evidence that permission is obtained from candidates each and every time to forward CVs and personal data to clients • if you are introducing/supplying work-seekers to work with children/vulnerable adults, you will need to show that you have additional procedures in place, such as offering to provide copies of references and qualifications to clients. You will also need to ensure that you comply with the REC's DBS/Update Service policy: when a work-seeker registers with you, they must be subscribed to the Update Service or you must take out a new DBS check. In addition, you must carry out an Update Service check at least every 12 months |

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| | <p>for all work-seekers (subject to any shorter period imposed by a client). If a work-seeker is not subscribed to the Update Service, you will need to carry out a new DBS check, that is, in place of an Update Service check;</p> <ul style="list-style-type: none"> • your policy regarding action that is taken if information regarding a work-seeker’s unsuitability comes to light after a placement has started; • evidence that you provide written assignment information to work-seekers in line with Regulation 21 of the Conduct Regulations: this must be provided to work-seekers in writing three business days after it has been provided verbally and must include: the identity of the client; the nature of the client’s business; start date; duration or expected duration of the assignment; type of work; location; the experience, training, qualifications and any authorisations the client requires the work-seeker to possess or that are required by law or a professional body; the hours during which the work must be undertaken; health and safety information; any expenses payable by or to the work-seeker; and the actual rate of pay for the assignment separated from any holiday pay entitlement (if this has not already been confirmed). For permanent candidates, all of the above information must be provided along with: the minimum rate of pay; any other benefits; intervals of payment; and the length of notice that the candidate would be required to give and entitled to receive. Where you engage workers via an umbrella company, for the purposes of the Conduct Regulations the umbrella company is considered to be the work seeker and therefore you must provide the umbrella company with full assignment details. In order to meet the requirements of the REC Code of Professional Practice you must also provide a copy of the assignment details to the individual. The umbrella company assignment details should state that the umbrella company will confirm to the individual the rate of pay and how holiday pay is paid; • example of a model payslip to show that holiday pay is correctly reported |
| <p>Holiday Pay</p> | |
| <p>We seek assurance that the way in which you pay holiday is set out fully and correctly in your documentation with your work seekers.</p> | <p>The method of paying holiday pay rolled up with the hourly rate has been ruled as unlawful and the REC strongly advises that you accrue holiday and pay it to the worker when you take time off.</p> <p>Where you choose to pay holiday rolled up your only line of defence, if there were to be a dispute, would be that you have been open and transparent how holiday pay is paid. Basic</p> |

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| | <p>pay and holiday pay should be set out as two clearly separate amounts with details of how holiday pay is calculated.</p> <p>This must be clearly set out in your Key Information Document, terms of engagement, assignment details form and written statement of particulars. It should be clearly stated that there will be no further payment when the worker takes time off.</p> <p>The worker's payslip should clearly show separate amounts for basic pay and holiday pay.</p> |
| <p>Overseas Recruitment</p> | |
| <p>If you recruit work-seekers from outside the UK to come and work in the UK, or place work-seekers who are in the UK in roles overseas, the correct recruitment procedures must be adhered to.</p> | <p>Evidence required</p> <ul style="list-style-type: none"> • a copy of the agreement with any overseas agent; • evidence that you apply the same processes to work-seekers who are recruited from overseas and/or recruited in the UK to work overseas; • evidence that qualifications are checked with UK ENIC (formerly NARIC) where necessary. |
| <p>Key Information Document (KID)</p> | |
| <p>From 6 April 2020 you are required to give work-seekers a KID, <u>before</u> terms are agreed. It must be a separate document to the terms and the information must be provided in a clear and succinct manner. It must be no more than two sides of A4 with 210mm by 297mm dimensions.</p> <p>The KID must contain two parts. The first is general information and this will differ depending on how the work-seeker will be engaged i.e. is it PAYE, Umbrella or PSC. The second must be a representative statement of pay.</p> <p>There should be no other information. The work-seeker must receive a KID relevant to how they will ultimately be engaged and you must retain a copy for your records. You do not need</p> | <p>Evidence required</p> <ul style="list-style-type: none"> • KID templates (depending on how an agency operates will be for PAYE, umbrella companies and PSC) must meet the requirements of Regulation 13A of the Conduct Regulations; • A process to ensure that the KID is issued correctly and reissued when necessary • Staff awareness |

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| <p>to issue a new KID for each new assignment but must issue a new KID when the information on the KID changes.</p> <p>A work-seeker/candidate cannot opt out of the requirement to issue a KID. If you work with umbrella companies, it is your obligation as the employment business to issue a KID to the work-seeker. To do this, you will need to obtain the relevant Information from the umbrella company to populate the KID.</p> | |
| <p>Contracts with Work-seekers</p> | |
| <p>We seek assurance that you agree contracts with work-seekers before you provide any work-finding services to them and that, where applicable, these comply with the Conduct Regulations and the Agency Workers Regulations.</p> <p>We require copies of your contracts prior to the audit taking place and we will send you an email requesting these.</p> | <p>Evidence required:</p> <ul style="list-style-type: none"> • evidence that you agree contracts with work-seekers before any work-finding services are provided, as required by the Conduct Regulations; • if applicable, written opt-out agreements with limited company contractors (LCCs); • if applicable, evidence of your processes to make it clear to individual work-seekers that they will be employed and paid by an umbrella company and that appropriate contractual agreements are in place; • copies of your agreement with permanent candidates, which must include: a statement as to how you are acting; that the candidate authorises you to seek work on their behalf; and the type of work you will seek to find for the work-seeker (while this is not a legal requirement, it is a requirement under the REC Code); • AWR – if applicable, evidence that Swedish Derogation/Pay Between Assignments contracts comply with both the Conduct Regulations and the requirements of the Agency Workers Regulations; Please note that Regulation 10 & 11 of AWR were Repealed from 6th April 2020 i.e. from that date agency workers can no longer waive their right to equal pay. And by no later than 30 April 2020 an agency worker who is still on a Swedish Derogation contract must receive a 'written statement' from their agency confirming that they are entitled to equal pay from 6 April onwards. • evidence that contracts with PAYE temporary work-seekers and LCCs who do not opt out of the Conduct Regulations comply with the Conduct Regulations, which must include: a statement that you will operate as an employment business; the type of work you will seek to find for the work-seeker; whether the work-seeker will be employed under a |

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| | <p>contract of service or apprenticeship or a contract for services; an undertaking that you will pay the work-seeker for work done whether or not you have received payment from a client; the length of notice that the work-seeker will be entitled to give and receive from you in order to terminate assignments with clients; either the actual rate of pay or the minimum rate of pay (this may be the National Living/Minimum Wage, as appropriate) payable to the work-seeker; details of payment intervals; and of any entitlement to annual holidays and to payment in respect of such holidays;</p> <ul style="list-style-type: none"> in addition, such contracts must not in any way include provisions that breach the Conduct Regulations, such as subjecting work-seekers to any detriment because they wish to take up employment with any other person. The REC has an easy-to-use factsheet covering the Conduct Regulations which you can find on the REC website here. |
| <p>Written Statement of Particulars</p> | |
| <p>Contracts with PAYE workers (not PSC) should meet the requirements of the Employment Rights Act (ERA) to provide a Written Statement of Particulars (WSOP).</p> <p>This is a separate requirement to the Conduct Regs to agree terms with work-seekers. The ERA requires more information than the Conduct Regulations and should be provided no later than the start of employment, which in the case of an agency worker is the start of assignment.</p> <p>A list of the documents required to be issued to PAYE agency workers along with details of when they should be issued can be found on the REC website here</p> | <p><u>If you use REC model contracts as advised by REC you will meet these requirements and these will be reviewed as part of the audit process. If you retain your own documents these too will be assessed for compliance</u></p> <p>A copy of the REC model terms of engagement for PAYE agency workers can be found on the REC website here. This document contains, as an annex, a copy of the REC combined Assignment Details and Written Statement Form. You can also download this document separately here.</p> |
| <p>Contracts with Clients</p> | |
| <p>We seek assurance that your contracts with clients are issued in writing prior to you providing any services to them and comply with REC standards and the Conduct Regulations.</p> | <p>Evidence required:</p> <ul style="list-style-type: none"> evidence that you agree contracts in writing with clients prior to providing any services to them; |

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| <p>We require copies of your contracts prior to the audit taking place and we will send you an email requesting these.</p> | <ul style="list-style-type: none"> • evidence that your contracts for the introduction of permanent candidates comply with REC standards, which are: that you include a statement specifying the type of services to be provided; that you include details about fees and how these will be calculated; and, if a refund/rebate is applicable, you lay out how this will be calculated and the conditions that will need to be met in order for the client to benefit from the refund/rebate; • evidence that your contracts for the supply of temporary work-seekers comply with REC standards, which are that you: include a statement specifying the type of services to be provided; state the procedure to be followed if a work-seeker proves to be unsatisfactory; include details about fees and how these will be calculated; and, if a refund/rebate is applicable, how this will be calculated and the conditions that will need to be met in order for the client to benefit from the refund/rebate. In addition, any clauses relating to charges will need to comply with Regulation 10 of the Conduct Regulations. A clear explanation of Regulation 10 can be found in the Conduct Regulations factsheet here; • if you supply umbrella company workers, you will need to make this clear in relevant client contracts. |
| <p>Client Contact</p> | |
| <p>We seek assurance that staff understand, follow and document their obligations relating to client services.</p> | <p>Evidence required:</p> <ul style="list-style-type: none"> • a policy or procedure detailing what information you provide to clients on initial contact; • details of your procedures for obtaining and documenting information about positions/assignments. This must be carried out in line with Regulation 18 of the Conduct Regulations, which states that certain information must be obtained from a client and documented – this information is laid out above under ‘Work-seeker checks’, that is, the information that must be given to work-seekers about their assignment; • AWR – details of your processes for obtaining and documenting ‘equal treatment’ information from a client in cases where an agency worker will complete a 12-week qualifying period; the REC has a model form, ‘Document G – Information Request Form’, that you can adopt for this purpose; • evidence that you provide written information to clients about work-seekers that you propose to them. In line with the Conduct Regulations, this information must include: confirmation of the identity of the work-seeker; confirmation that the work-seeker has the experience, training, qualifications and any authorisation that the client considers |

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| | necessary or that are required by law or by any professional body; and confirmation that the work-seeker is willing to work in the position. |
| Customer Service | |
| We seek assurance that customer service standards are in place. | <p>Evidence required:</p> <ul style="list-style-type: none"> • a copy of your customer service policy and evidence that this is communicated to staff; • evidence of mechanisms in place to measure your service to clients and candidates, which could include, for example, surveys, telephone calls, site visits; • details of how customer feedback has led to any improvements in your service to customers. |
| Health and Safety | |
| We seek assurance that staff understand, follow and document their obligations with regards to obtaining and transmitting health and safety information. | <p>Evidence required:</p> <ul style="list-style-type: none"> • that you obtain from a client and document health and safety information about assignments in line with the Conduct Regulations, which require that you must ask clients about any risks to health and safety known to the client and what steps the client has taken to prevent or control such risks; • that you pass this information on to work-seekers in writing within three working days of giving the information verbally, as required by the Conduct Regulations – typically this is given to work-seekers along with the other written assignment information laid out above under 'Work-seeker checks'. |
| Advertising | |
| We seek assurance that adverts comply with the Conduct Regulations. | <p>Evidence required:</p> <p>Examples of adverts that are compliant with the Conduct Regulations – adverts must: be clear as to whether they are for temporary or permanent work: include the full name of the employment agency or business; and, if a rate of pay is stated in the advert, the advert must also include the location and nature of the work, and the minimum experience, training and qualifications the work-seeker would need in order to receive that rate of pay</p> |

| File Sampling | |
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| <p>The auditor will carry out a file sampling exercise to ensure that you are carrying out all the appropriate suitability checks on work-seekers before placement.</p> <p>We will look at files of work-seekers who have registered within the last two years and have worked within the last six months.</p> <p>Original documentation should always be seen and copies taken for the file.</p> | <p>We will seek evidence that the following checks have been made:</p> <ul style="list-style-type: none"> • identity checks; • right to work in the UK checks; • DBS and Update Service checks, where necessary; • proof of address; • CV/application form on file; • qualifications, where necessary; • at least two written references, where necessary; • copies of contracts that you have agreed with work-seekers on a work-seeker's file and that these contracts have been agreed with work-seekers before you provide any work-finding services. |

Please note: Audits are carried out on the basis that the Agency Workers Regulations (AWR) apply to the supply of workers, unless you confirm that the AWR do not apply to any/all of your activities. During audits the REC will carry out a number of checks on key working processes that relate to the AWR in order to check that members have an awareness of the AWR and have a few key working practices in place. However, the REC will not check the actual application of the AWR and the audit will not in any way provide a guarantee that you are fully compliant with the AWR.

REC REPORTING REQUIREMENTS

Following the initial onsite audit we will provide an audit report and the agency will need to provide a written response and provide copies of documentation where necessary.

If the agency fails on 1 or more of 6 key areas (listed below) this will trigger the need for a re-audit before the agency can be awarded.

If we obtain information during the audit cycle or at the next audit find that previous audit findings have not been implemented (this may mean that they have been changed or not implemented properly) we will reserve the right to refer the agency to the REC's Professional Standards Committee.

What are the six key areas?

- **File sampling** – a failure to carry out any of the following checks on a work-seeker prior to placing them with a client – identity check, Enhanced DBS check (where applicable), further checks as required (for individuals who have lived/worked outside the UK), professional qualifications, references and right to work in the UK.
- **DBS/Update Service** – a failure to implement REC policy in this area relating to both new registrations and on an ongoing basis i.e. at least annual checks via the Update Service/new DBS checks (some agencies are still in the process of “migrating” workers to the new regime but there should be evidence that you are “migrating” the workers with an approximate end date as to when all will be migrated across)
- **Written assignment details to work-seekers** – a failure to have such a process in place
- **Induction and training for staff** – a failure to have a structured and substantial induction and training programme in place.
- **Guidelines that make standards of practice clear to staff** – a failure to have any written guidelines/operating processes in place.

What happens after the audit?

After the audit your auditor will send you a report and a contract assessment which will set out any guidance or action points. Where there are action points you will be required to respond providing evidence of how these have been actioned. Please do ensure that you respond within the requested timescales usually 10 working days. Throughout you will work with the REC compliance team to ensure that all actions are completed and meet the audit criteria. We will ensure that we provide you with whatever guidance or advice needed to help you pass your audit.

When responding to your audit you should do so using the audit report sent to you ensuring that you respond to every action point in both the report and the contract assessment. There is an additional column on the report where you should provide your response along with details of any documentation you are submitting as evidence. Please do not change the formatting of the report and when sending documents please ensure that they are in a format that is easy to access for example Word/Excel/Powerpoint/PDF.

Please note that we will be unable to proceed with the audit until your response meets the above requirements.