

**date:** 17 June 2005  
**embargo:** 00:01hrs Thursday 23 June 2005



# The EU Temp Trade: Temporary Agency Work across the European Union



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## Section one

# Introduction

In March 2002, following the breakdown in negotiations between the Social Partners, the European Commission adopted a proposal for a Directive on Temporary Agency Workers. The proposal set out the general principle of equal treatment, under which temporary agency workers would receive the same pay and basic working conditions as permanent workers carrying out the same or similar jobs in the company to which they were assigned.

However the European Union Council of Ministers has so far failed to reach agreement on the proposals, and the Directive has not progressed beyond a 1st Reading in the European Parliament.

Since the proposals were first introduced in 2002, the European Union has undergone a process of enlargement, with 10 Member States joining the EU in May 2004<sup>1</sup>.

In light of the continuing failure of Member States to reach agreement on proposals for a temporary agency work Directive, this report looks at the differing levels of legal protection afforded to temporary agency workers in the Member States of the European Union.

It looks in particular at the rights and protections enjoyed by temporary agency workers in the eight Eastern European Countries which joined the EU in May 2004, as compared with the rights and protections enjoyed by their counterparts in the UK.

As the report shows, many EU Member States, both old and new, have already introduced measures giving agency workers equal treatment rights. Whilst in some of those countries temporary agency work is still very much in its infancy, there is no evidence that this has had any adverse impact on the flexibility of their labour markets, or that employers have been deterred from hiring agency workers as a direct result.

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<sup>1</sup> The 10 Member States are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

## Section two

# Overview of the Temporary Agency Workers Directive

The aims behind the proposals for a Directive on the working conditions of temporary agency workers are to provide fair treatment for agency workers by establishing a common set of minimum protections and to encourage the spread of agency work and improve its quality. As pointed out in the Department of Trade and Industry's (DTI) Regulatory Impact Assessment, the enhanced working conditions provided for by the draft Directive would potentially increase the attractiveness of agency work, thereby increasing the pool of people wanting to undertake this type of employment. Temporary work agencies would thus be able to offer a wider range of qualifications and provide a highly selective response to the needs of client companies.

The draft Directive sets out the general principle of non-discrimination: for the duration of their assignment, the basic working and employment conditions of agency workers shall be at least those that would apply if they had been recruited directly by the company to occupy the same job.

Basic working and employment conditions include:

- pay
- working time rules, including overtime, work breaks, rest periods and night work
- holiday entitlements
- working conditions for pregnant women and nursing mothers
- protection of children and young people at work
- protection against discrimination on grounds of sex, race or ethnic origin, disabilities, religion, beliefs, age or sexual orientation.

The basic work and employment conditions covered by the Agency Workers Directive fall short of those afforded by the Fixed Term Workers Directive (FTWD). For example, the FTWD gave workers on temporary fixed term contracts the same access to benefits (including occupational pension schemes) and training as permanent staff and made it unlawful for such workers to waive their right to a redundancy payment.

The draft Temporary Agency Workers Directive provides that Member States may derogate from the non-discrimination principle only where there is a collective agreement in place, which gives adequate protection to agency workers.

Equal treatment rights in relation to pay need not apply where the agency worker's assignment lasts no longer than six weeks, or where the agency worker is employed by the agency on a permanent contract and is paid between assignments.

In addition to the non-discrimination principle, the proposed Directive contains important measures aimed at:

- improving agency workers' access to training opportunities to enhance their career development and employability;
- ensuring that agency workers are informed of any vacant posts in the company to which they are assigned in order to facilitate their transition to permanent employment.

The Directive is subject to the co-decision procedure, meaning that both the European Parliament and the Council of Ministers must agree to the proposals. So far the Council of Ministers has failed to reach consensus, with a number of Member States - including the UK, Denmark, Germany, Ireland, Poland and Slovakia - blocking the Directive's progress. Particular points of contention centre on:

- the 'qualifying period' - i.e. the length of time the agency worker must have spent on a particular assignment before which 'equal pay' rights can apply. Business organisations and the UK Government have called for a qualifying period of more than six weeks, whilst trade unions and some Member States, including France and Belgium, have called for no qualifying period at all; and
- the requirement to review restrictions on the use of agency workers periodically and to remove those restrictions which are no longer necessary or justified, with particular reference to the protection of workers, health and safety and the need to ensure that proper functioning of the labour market.

## The TUC's position

The TUC supports the proposals for a EU Directive on Temporary Agency Work. We believe that agency workers should be provided with the same rights now enjoyed by part-time and fixed term workers.

Various studies examining temporary agency work in the EU<sup>2</sup> have shown that compared with other staff, temporary agency workers, have less control over the type of work they do and how they do it; receive less training and have

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<sup>2</sup> See for example, Temporary agency work in the European Union by Donald Storrie

## Overview of the Temporary Agency Workers Directive

fewer career development opportunities; have a higher rate of workplace accidents and are less well-informed about safety; do more shift work and have less job security.

Temporary agency workers also lose out in terms of pay. Although there are some examples of temporary agency workers earning higher rates than permanent staff, typically agency workers receive lower wages for similar work, coupled with exclusion from bonuses and benefits awarded to other employees.

A report by the European Foundation for the Improvement of Living and Working Conditions, published in 2002, found that the average weekly income of agency workers was just 68% of the average weekly income for all employees in the UK.

The DTI's Regulatory Impact Assessment (RIA) estimated that non-discrimination in pay would benefit agency workers by £366 million per year and that agency workers would benefit from increased holiday pay and annual leave by £118 million.

The RIA also makes the link between improved training for agency workers and improved productivity for client companies, as well as improved skills for agency workers leading to better rates for agencies.

The TUC believes that a strong Temporary Agency Workers Directive, setting minimum standards for the treatment of agency workers across the EU, will enhance the quality of agency work and improve the skills base of the whole workforce, making agency work a more attractive proposition for both employers and workers.

An EU wide set of minimum standards would create a level playing field, helping to ensure that reputable agencies which offer genuine flexibility and good working conditions continue to thrive, whilst rogue agencies which exploit the current vulnerability of agency workers are driven out of the market.

The TUC is opposed to the use of any qualifying period for equal treatment rights to apply to agency workers, including for pay and other basic employment conditions. Any qualifying period would likely lead to a levelling down of protections in those Member States which already guarantee equal treatment rights for agency workers from day one.

Further, a qualifying period would act as a loophole that unscrupulous employers could use to avoid providing basic rights at work. According to figures from the 2004 Labour Force Survey, 74% of all UK agency workers would lose out on rights to equal treatment if a 12 months qualifying period were introduced, whilst 53% would lose out under a 6 months qualifying period.

Any qualifying period would give unscrupulous agencies and employers a loophole to avoid compliance, by using a succession of short contracts or assignments. This happened when the UK originally introduced a qualifying period of thirteen weeks for entitlement to paid annual leave, in implementing the Working Time Directive.

In Slovakia, where there is a six month qualifying period before equal treatment rights apply, trade unions report that the typical length of an agency worker's contract is less than six months.

Section three

# Temporary Agency Work across the EU

There is little cumulative data available pointing to trends in temporary agency work (TAW), post EU enlargement in May 2004.

Pre- enlargement, figures produced by the International Confederation of Temporary Agency Work Businesses (CIETT) showed that temporary work agencies in the EU employed over seven million workers – 1.9% of the EU working population – in 2001.

## The 'old' Member States (the EU-15)

The table below shows the number of temporary agency workers and their percentage of the total employed population in the 15 Member States pre May 2004.

**Table 1**

Member State	Number of temporary agency workers	Temporary agency workers as a percentage of total employment
Austria (1999)	24,277	0.7%
Belgium (1999)	62,661	1.6%
Ireland (1999)	9,000	0.6%
Luxembourg (1999)	6,065	3.5%
Portugal (1999)	45,000	1.0%
Denmark (2001)	30,565	1.1%
Netherlands (2001)	169,000	2.8%
Spain (2001)	110,000	0.7%
Finland (2002)	12,620	0.5%
France (2002)	570,000	2.7%
Germany (2002)	336,295	0.9%
Italy (2002)	89,532	0.36%
UK (2002)	*600,000	2.6%
Sweden (2003)	28,696	0.7%
Greece	Data not available	Data not available

Source: European Foundation for the Improvement of Living and Working Conditions

\*Source: DTI estimate, January 2003

## Trends in Temporary Agency Work in the EU-15

Research carried out by the European Foundation for the Improvement of Living and Working Conditions (EFILWC) in 2001 provides a useful snapshot of general trends in TAW across the EU-15:

- On average, temporary agency workers tend to be much younger than other workers. For example, in Spain 84% of all temporary agency workers were under the age of 34, with 47.2% being younger than 25 years old. In the UK the average age of agency workers was 32, with 31% of agency workers under the age of 25 and in Germany, the average age of temporary agency workers was 37.5 years compared with 41.4 years among employees in the total economy. The same pattern was repeated in Denmark, Finland, France and Sweden.
- Temporary agency workers generally have a lower level educational attainment than the average worker. 5.7% of all German temporary agency workers did not have a school-leaving qualification, compared with 1.5% of workers in the total labour force. Additionally, only 13.2% of temporary agency workers held a university degree, whereas the percentage was 20.8% in the total labour force. In Spain, only 6.8% of all temporary agency workers had a university degree whilst 38% had not gone on to achieve further qualifications completing compulsory education. A similar trend was apparent in Finland, France, Netherlands and Sweden.
- Although agency work is often claimed to be a stepping-stone into permanent employment for 'disadvantaged' groups such as working mothers, the unemployed and ex-offenders, there is little empirical evidence to support this claim. Across Europe, between a third and two-thirds of temporary agency workers move on to permanent jobs within two years but these are most likely to be highly employable, educated workers aged 25 - 34 who have not been unemployed in the last five years.
- There is no general trend regarding gender distribution in the TAW sector. In the UK and Sweden, for example, the gender distribution was evenly divided. In Germany, 76% of temporary agency workers were men; as were 70% in France and 57.2% in Spain. In Denmark and Finland, women made up 70% and 55% respectively of the temporary agency workforce.
- Whilst agency workers are mainly represented in industry and construction, they are increasingly to be found in the service and public sectors.
- The main reason for workers to engage in TAW is to find permanent employment, with work-life balance or diversity of work being generally of secondary importance. However, 2004 Labour Force Survey statistics from the UK revealed that only 28% of agency workers positively chose TAW over a permanent job.

## Temporary agency work across the EU

Table 2, below, gives brief details, where available, of national rules and regulations on parity between agency workers and comparable permanent

## Temporary Agency Work across the EU

workers in terms of pay and some or all employment conditions; on restrictions on the use of TAW; and on licensing requirements.

The table shows that 14 out of 20<sup>3</sup> EU Member States have already introduced legislation giving temporary agency workers the same pay as directly employed workers doing the same or similar jobs. In a further two Member States - Finland and Sweden - legally binding collective agreements assure that temporary agency workers receive working terms and conditions (including pay) which are comparable to those of directly employed workers.

The table also shows that only 4 out of 24 EU Member States<sup>4</sup> do not currently have licensing requirements for temporary work agencies. The Netherlands, which had abolished its licensing scheme in 1998, has recently re-introduced a business permit requirement, in an attempt to “combat the large scale fraud which plagues the temporary employment branch”<sup>5</sup>.

**Table 2**

Member State	Parity	Licence required	Restrictions on use of TAW
Austria	Yes	Yes	Very few
Belgium	Yes	Yes	Restricted to cover for absent employees, temporary workload peaks and special work.
Cyprus	N/a*	N/a	N/a
Czech Republic	Yes	Yes	Some
Denmark	Yes (following arbitration award)	No	None
Estonia	N/a	Yes	N/a
France	Yes	Yes	Restricted to cover for absent employees, temporary workload peaks and inherently temporary work.
Finland	Pay and conditions generally regulated by collective agreements	No	Some imposed by collective agreements
Germany	Yes	Yes	A few restrictions, but not extensive.
Greece	N/a	Yes	N/a
Hungary	No	Yes	Very few: cannot be used to replace striking workers.
Ireland	No	Yes	None
Italy	Yes	Yes	Restricted to cover for absent

<sup>3</sup> No information on parity was available for Cyprus, Estonia, Greece, Lithuania and Malta

<sup>4</sup> No information on licensing arrangements was available for Cyprus

<sup>5</sup> Dutch Ministry of Social Affairs and Employment

employees and temporary workload peaks. Cannot be used to carry out dangerous work; to replace striking workers; or where collective redundancies have been made in the previous 12 months.

Latvia	Yes	Yes	Restricted to non-permanent jobs outside company's normal activity, workload peaks and seasonal work.
Lithuania	N/a	Yes	N/a
Luxembourg	Yes	Yes	Restricted to specific, non-permanent jobs outside company's normal areas of activity.
Malta	N/a	Yes	N/a
Netherlands	Yes	Recently re-introduced	Few
Poland	Yes	Yes	Restricted to seasonal, period and ad hoc tasks or to cover for absent employee. Cannot be used where collective redundancies were made in previous 6 months.
Portugal	Yes	Yes	Restricted to cover for absent employees; to fill temporary vacancies; to cope with temporary or exceptional increases in workload; and to short-lived or seasonal tasks.
Slovakia	Yes (after 6 months)	Yes	None
Slovenia	Yes	Yes	Cannot be used to replace striking workers; to do dangerous jobs; where collective redundancies have been made in the preceding 12-month period; and in other cases defined in sectoral collective agreements.
Spain	Yes	Yes	Restricted to cover for absent employee, temporary workload peaks specific work and 'market circumstances'.
Sweden	Pay and conditions regulated by wide-ranging national collective agreements	No	Very few
UK	No	No	Very few: cannot be used to replace striking workers.

\* N/a = information not available

## Temporary Agency Work across the EU

### Temporary agency work in the 'new' Eastern European Member States

In the majority of the Eastern European Accession Countries (the 'A8'), the phenomenon of temporary agency work is relatively new. In Slovakia, for example, TAW has only been permitted by law since February 2004.

Consequently, data concerning the use of temporary agency work is sometimes difficult to come by.

#### **Czech Republic**

The Czech Republic introduced laws in October 2004, defining temporary agency work and seeking to assure equal treatment on pay for temporary agency workers, with permanent workers in the client company.

#### **Equal treatment**

- The employment agency and the client company must ensure that the agency worker's working conditions and pay are comparable with those of the client company's employees doing the same or similar work.
- Should the agency worker's pay or working conditions be worse, the responsibility falls on the agency to procure equal treatment. The agency worker has a right to enforce his/her claims arising from such poorer conditions against the employment agency.

#### **Licensing arrangements**

- Employment agencies must obtain a licence from the Ministry of Labour and Social Affairs and cannot charge job seekers for their services.

#### **Employment status**

- Agency workers are employees of the employment agency.

#### **Restrictions**

- The employment agency may not assign the same employee to carry out work for the same client company for a period exceeding 12 consecutive calendar months. Exceptions to this rule are where the agency worker requests that the assignment continue beyond 12 months, or where the assignment is to provide cover for maternity or parental leave.

Certain aspects of the new laws are targeted specifically at the recruitment of students by employment agencies:

- agencies must make social and health insurance contributions for student workers;
- work performed by students may count towards entitlement to unemployment benefit after graduation;

- temporary workers have the right to sickness benefits;
- agencies cannot recruit students to perform specific jobs of work, but must draw up a 'traditional' contract limited to a maximum of 20 hours a week.

## **Hungary**

Temporary agency work accounts for just 0.2% of the labour market and was first regulated by Hungarian labour law in 2001.

### **Equal treatment**

- As is the case in the UK, there is no legal stipulation that agency workers should be paid the same wages as employees in comparable jobs at the user company, and some case studies have shown that agency workers earn 10%-20% less than permanent workers in the same jobs at the same workplaces.

### **Licensing arrangements**

- Agencies are required to be registered and licensed, and the Hungarian Labour Inspectorate is entitled to investigate both the agencies and the client companies to check on unlawful practices.

### **Restrictions**

- the only restriction on the use of agency workers is during strike action, when companies are not permitted to make use of TAW to replace striking workers.

### **Employment status**

- Temporary agency workers are employed by the agency on either open-ended or fixed-term contracts, neither of which may include a probation period. An open-ended contract may be brought to an end by giving the agency worker 15 – 30 days notice, depending on length of service.

The regulatory regime for TAW is fairly liberal and there are some notable similarities with the UK:

- the agency remains responsible for paying the worker even if the user company fails to pay the agreed fee in due time;
- agreements purporting to prevent the agency worker from entering into an employment contract with the user company (once the contract with the agency expires) - or requiring the worker to pay a fee before doing so – are null and void.

Transition rates from temporary agency work to permanent work are low, largely because of the transfer fees charged by agencies. Typically, these are equivalent to the cost of a one or two-month assignment.

## **Latvia**

## Temporary Agency Work across the EU

### Equal treatment

- TAW in Latvia appears to be governed by the same rules which apply to fixed-term contracts - or 'contracts for a specified period of time'.
- The same provisions which apply to a permanent employee apply to employees who have concluded fixed-term contracts. This includes all working conditions and employment provisions provided for by Latvian regulatory enactments, as well as by those collective agreements which have been recognised as generally binding.

### Licensing arrangements

- Agencies are licensed and inspected by the State Employment Agency. At present, the licence is renewable annually.
- Placement or temporary work agencies may charge workers a fee for their services.

### Restrictions

TAW is restricted to:

- seasonal work;
- replacement of an employee who is absent or suspended from work;
- casual work not usually performed in the particular workplace;
- short-term increases in production;
- emergency work to prevent any damaging consequences caused by exceptional circumstances.

According to a 2003 report by the European Foundation for the Improvement of Living and Working Conditions (EFILWC)<sup>6</sup>, 7% of Latvian workers were on a temporary agency work contract in 2001, but this figure is probably inflated by the number of placements made by the State Employment Service. In Latvia, the State Employment Service, which is responsible for implementing national policy on unemployment reduction, also acts as a job placement agency.

### Poland

The temporary agency market in Poland has experienced strong growth in the past few years and stood at an estimated 4% of total employment in 2001<sup>7</sup>. The use of TAW is seen primarily as part of the solution to Poland's high levels of unemployment, the perception being that a temporary job could provide a path of entry or re-entry into the core group of the labour market.

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<sup>6</sup> *Working conditions in the acceding and candidate countries*

<sup>7</sup> According to EFILWC statistics. Fixed term contracts represented 12% of total employment

In 2003, the Polish Parliament adopted the Temporary Agency Work Act, defining TAW and setting rules on its use and on the employment conditions of agency workers. Prior to 2003, attempts to regulate TAW were piecemeal and the new legislation was passed in response to the burgeoning market.

### **Equal treatment**

The 2003 Act essentially guarantees temporary agency workers a status equal to that of the permanent employees of the company to which they are assigned, for the duration of their assignment:

- During the period of employment with the user employer, the temporary agency worker may not be treated less favourably as regards the working conditions and other employment conditions than the client company's workers employed in the same or similar position.
- Temporary agency workers whose assignment will last more than six weeks are entitled to the same access to any training organised by the client company to improve worker qualifications, as the client company's own employees.

In terms of pay, the client company must inform the temporary work agency in writing about the pay for the work to be entrusted to the temporary worker, as stipulated by the pay regulations in force at the client company's enterprise.

### **Licensing arrangements**

- Employment agencies must register with and obtain a licence from the minister charged with labour affairs

### **Restrictions**

- Temporary agency workers cannot be assigned to carry out work which is particularly dangerous in nature and cannot be assigned to replace striking workers.
- The combined amount of time worked with a single client company by a temporary agency worker over a 36-month period cannot exceed 12 months.
- Employers who have carried out collective redundancies in the previous six months cannot make use of TAW.
- The user company cannot retain its own employees on temporary agency work contracts.

TAW is defined as performance for the client company of:

- seasonal tasks, periodic tasks, or ad hoc tasks;
- tasks whose timely performance by the client company's permanent staff would be impossible; or
- tasks normally falling within the ambit of a temporarily absent employee of the client company.

## Temporary Agency Work across the EU

### Employment status

- The temporary work agency employs the temporary agency worker on the basis of fixed-term employment contracts or 'contracts for completion of a specific task'.
- Fixed term contracts may be terminated earlier than provided for by either of the parties giving three days' notice if the period covered by the contract does not exceed 2 weeks, or one week's notice if the contract has been concluded for a period of more than 2 weeks.

### Slovakia

Temporary agency work is in its infancy in Slovakia, where it is seen mainly as a tool for helping the unemployed back into the labour market more quickly. Legislation regulating TAW was introduced in February 2004.

### Equal treatment

- Agency workers are entitled to receive a comparable basic wage to that of permanent workers employed by the client company, although bonuses or other additional payments made to core employees need not be paid to agency workers.
- The right to equal pay applies only to assignments lasting more than six months, and only where there is no collective agreement in place which provides the agency worker with adequate protection. Trade unions report that agency workers are often hired for periods of less than six months as a result, and that their wages are often close to the minimum wage during those six months.

### Licensing arrangements

- Under the new laws, agencies must obtain a licence from the Centre for Labour, Social Affairs and Family, and provide their services free of charge. The licence is valid for a maximum of five years, though it may be renewed. An agency may have its licence revoked for breaching the regulations.
- The licence application must include the territories/countries in which the agency intends to operate and a list of the jobs offered by the agency.

### Restrictions

- Use of temporary agency work is not restricted in any sector or area of the labour market.

### Employment status

- Agency workers must sign an employment contract with the agency in which the agency guarantees them temporary employment at a client company and specifies the terms and conditions of employment.

Other employment conditions of temporary agency workers regulated by the legislation include:

- working time;
- health and safety issues, including employees' compensation in case of occupational injury or disease;
- wage protection in case of the agency's insolvency;
- protection of maternity and parental rights; and
- the right to collective bargaining.

### **Slovenia**

Until 1999, when the Slovene Parliament passed regulations allowing for the licensing of temporary work agencies, TAW did not exist legally in Slovenia. In 2002, a new Law on Labour Relations was passed, which introduced and regulated temporary agency work. The aim was on the one hand to increase the flexibility of the Slovene labour market, and on the other to provide adequate protection for temporary agency workers.

### **Equal treatment**

- The rate of pay should be comparable to that of permanent workers doing the same or similar jobs in the client company.
- The contract must also provide for the worker to be paid a rate of compensation if the assignment is terminated earlier than agreed, and for any periods during which the worker is not assigned to a company. The compensation must not be below 70% of the national minimum wage.
- The worker's holiday entitlement during the assignment will depend on the provisions of the agreement between the agency and the client company.

### **Licensing arrangements**

- A licence must be obtained from the minister responsible for labour affairs. Licenses are initially granted for one year, but may become indefinite where the agency has operated under licence for at least five years and recorded no rule violations. The licence may be withdrawn without notice in cases of violation of the regulations.
- Criteria for granting a licence include the number of people registered as unemployed with the relevant regional public employment services and the number of agencies already holding a licence in a given area.

### **Restrictions**

Slovene law imposes a number of restrictions on the use of agency workers. The agency must not assign any workers:

- to replace workers on strike;
- to do dangerous jobs (as defined by EU Directives);
- when the client company has dismissed a large number of workers in the

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preceding 12-month period; and

- in other cases which may be defined in sectoral collective agreements.

The duration of assignments is also limited by law: the agency may not assign the same worker to a user company continuously - or with breaks of up to one month - for a period longer than one year for the same type of work.

### Employment status

- Temporary agency workers are employed by the agency under an open-ended or fixed-term contract of employment. The contract must state the worker's rate of pay and allowances, which will depend on the actual hours worked, taking into account the collective agreements and general laws applying to the client company.
- A contract of employment between the worker and the agency cannot be terminated before the agreed assignment period has expired, even if the client company no longer needs the worker.

### Estonia

The use of TAW in Estonia is very limited, but growing. At present less than 0.2% of Estonia's total labour force is employed on a TAW contract.

Agencies require a licence to operate.

### Lithuania

Agencies must be licensed in order to operate and cannot charge workers for their services.

The Lithuanian Labour Code stipulates that a person shall exercise the right to work either by concluding an employment contract directly with an employer, or through the mediation of an employment agency.

Until recently there was little scope for private employment agencies to operate in Lithuania. All employers were required to register any job vacancies with the State run Labour Exchange which provides a 'placement' service for the unemployed.

Agency workers form about 0.4% of the working population.

## Section four

# TAW in the UK

There is no right to equal treatment for agency workers in the UK.

Agency work in the UK is primarily regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Business Regulations 2003.

The legislation:

- Makes it unlawful for an agency to withhold pay even if a worker cannot produce a timesheet.
- Requires agencies to specify, in their agreement with the work-seeker, whether or not the worker is an employee of the agency.
- Requires agencies to obtain information about any health and safety risks and the steps that the hirer is taking to prevent or control those risks.
- Requires agencies to inform workers of either the rate of pay payable to the worker, or the minimum rate of pay.
- Requires agencies to provide details of when the worker will be paid and the amount of paid holiday that will be given.
- Limits the circumstances in which agencies may charge work-seekers a fee for their services.
- Introduces additional requirements in relation to temp-to-permanent fees.
- Makes it unlawful for an agency to knowingly supply workers to provide cover for employees taking part in industrial action.

Agencies do not require a licence to operate. The Employment Agency Standards Inspectorate (EAS) has the power to investigate complaints and to undertake random checks on employment agencies.

The EAS has the power to prosecute where wilful or deliberate breaches of the regulations have occurred or where serious harm has resulted from an agency's failure to meet the standards. In the most serious cases the EAS may seek a Prohibition Order from an employment tribunal, which requires an agency to cease business.

In the five years between 1999 and 2004 the EAS prosecuted just 24 temporary employment agencies and banned 7 individuals from operating as employment agencies<sup>8</sup>.

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<sup>8</sup> House of Commons Hansard Written Answers for 11 February 2004

## The Regulation of TAW in the UK

In most EU Member States the agency worker is, in law, an employee of the temporary work agency and enjoys the same or similar protections and rights as any other employee. There is no requirement under UK law for agency workers to be employed either by the agency or by the client company. Most agency workers in the UK are **not** employed by the agency or by the client company.

In the UK, employment rights and protections are directly linked to a worker's employment status; i.e. they depend largely on whether or not the worker is classed as an employee. Only workers who are classed as employees are entitled to the full range of employment rights, including protection from unfair dismissal.

'Atypical' workers who are not classed as employees - including most workers on a temporary agency work contract - are treated differently from, and usually at a disadvantage compared to, employees.

Although UK courts have on occasion found there to be an implied contract of employment either between the agency and the worker or between the worker and the client company, this is rare. Agency workers in the UK are often left without many of the basic rights and protections which are afforded to employees.

The reality for many agency workers in the UK is that they lose out on sick pay, receive little or no vocational training and have no access to occupational pension schemes.

### Case Studies

#### **Permanently temporary**

David\* has been on assignment with the same company for over 9 years. He was placed through a large recruitment agency. Despite numerous promises of being able to work permanently for the company, this has never materialised. In David's 9 years, he has had several roles within the company. David has been denied access to training and feels that he has become trapped where he is.

David is aware that he has a reasonable case to argue that he is already legally an employee of the company (albeit "without the rights and the perks"), but is reluctant to follow through officially as he could land himself "unemployed and unemployable".

David's role has now been advertised internally but David has been told that he is not allowed to apply for it. David's annual performance reviews show that he is perfectly capable of doing the job he is not allowed to apply for.

David says that the company has often taken advantage of his desperation to remain in the job by asking him to work extra unpaid hours. David feels that

he cannot argue his case with the company as he is “easily disposable”, being just an agency worker. In short, he says, the company treat him as an agency worker when it suits, while demonstrating a master / servant relationship at most other times.

### **Agency workers need not apply**

Larry\* has been working for a large public sector employer for over two years, through an employment agency. His contract has been renewed “over and over again”. Larry was recently told that the job he has been doing is to be advertised internally and that because he is a temporary agency worker he cannot apply for the job. Larry says that he has shown a long term commitment to the department and is now being discriminated against for being a temp: “Surely there has been a need for somebody in the post I am working in now as I have been doing it for so long. It means I have missed out on pension schemes, sick pay and pay rises for over two years”.

### **Happy holidays**

Rita\* worked for a large employment agency. The holiday year ran from 1 October to 30 September but Rita did not realise this. She telephoned her agency during the first week of October to claim for any holiday that she had accrued and was told she was too late. She was told that the total amount payable would have been over £100. She asked them (as it was only one week late) if something could be done and was told no.

Rita is currently temping through another agency and recently found out that her basic hourly rate was about £2 less than a permanent member of staff would get for doing the same job.

### **Down and out**

Chris\* worked as a temp in a factory in the West Midlands. Due to lifting heavy boxes and using the barcode gun, Chris developed pain in her wrist. Her doctor diagnosed a torn ligament. The factory then told the agency to replace Chris. Chris now has no job and does not know if her wrist injury is permanent. The agency has told Chris that she will be paid statutory sick pay, but she will not be contacted for work again.

\* All names have been changed.

## Section five

# TAW and the Services Directive

The European Commission has published proposals for a Directive on Services in the Internal Market, aimed at improving the free flow of services within the EU, by removing some of the barriers that prevent businesses in the services sector from operating across Europe.

As the draft Directive currently stands it will apply to the provision of labour market services, including temporary agency work, and will effectively lead to the deregulation of the temporary agency work market. The TUC believes that Temporary Agency Work should be excluded from the scope of the Services Directive for the reasons set out below.

One of the most controversial aspects of the current proposals is the 'country of origin' principle, whereby a service provider would be subject only to the laws of the country in which it is established and not the laws of the 'host' country in which it provides cross-border services.

Application of the country of origin principle to cross-border services providers is potentially an open invitation for abuse. The concern is that instead of promoting fair competition on the basis of level playing fields, the application of the country of origin principle to areas where labour law across the EU is not harmonised or standardised – such as temporary agency work – will lead to so-called 'social dumping' by encouraging services providers to establish in the EU Member States with the lowest protection of workers' rights.

Further, the draft Directive specifically prohibits Member States from applying any national laws or regulations relating to authorisation or registration, such as licences and permits, to cross-border service providers.

This raises fears of a 'race to the bottom' scenario, in which those Member States with stricter licensing systems and operating rules for temporary work agencies dismantle those regulations, in order to avoid placing their national companies at a perceived competitive disadvantage compared to cross-border services providers.

In the UK, this would put at risk the newly created Gangmasters' Licensing Authority, due to become operational in 2006. The Authority was set up in response to the tragic deaths of 23 migrant cockle pickers at Morecambe Bay and will have powers to issue and withdraw operating licences to all employers of temporary workers in the agricultural and horticultural sector. It will be unlawful for unlicensed gangmasters to supply temporary workers to 'labour

users' in the sector and for labour users to make use of unlicensed gangmasters.

The 'country of origin' principle and the specific provisions relating to the posting of workers in the current proposals for the Services Directive also appear inconsistent with the Posted Workers Directive. Under the proposed Directive, it is the Member State of Origin (MSO) and not the Member State to which the worker is posted, which will have responsibility for enforcing rules and regulations relating to posted workers. It is unclear how the MSO would become aware of any infringements. The Member State to which the worker is posted cannot impose any conditions on the company posting the worker to hold and keep employment records or documents in its territory, or to comply with any regulatory provisions.

This imposes severe limits on the powers of Member States to enforce and monitor their own national regulations in relation to posted workers and undermines the effectiveness of enforcement mechanisms designed to ensure compliance with laws relating to the employment and working conditions of posted workers.

The draft Directive is currently being debated in the European Parliament against the backdrop of a report compiled by Rapporteur, Evelyne Gebhardt. The report proposes several amendments to the Directive, including an explicit statement on the face of the Directive that the Directive shall have no effect whatsoever on labour law – including collective agreements and other legislation applicable to employment. In addition to the Gebhardt report, a research report commissioned by Rapporteur Anne Van Lancker, argues for the exclusion of industrial relations, employment and labour law from the scope of the Directive.

The TUC believes that the liberalisation of the temporary agency work market Directive, without adequate harmonised measures in place in all Member States to protect the pay and conditions of temporary agency workers, will have a serious and detrimental effect on agency workers. The TUC welcomes the proposals in both reports to explicitly exclude labour market services from the scope of the Services Directive.

## Section six

# Conclusion

The UK lags behind most EU Member States in the rights and protections that it affords agency workers. The majority of EU Member States have introduced provisions requiring equal treatment for agency workers on pay and at least some, if not all, working conditions. Further, in most EU countries - again excluding the UK - employment agencies are subject to robust licensing conditions.

Even in the Scandinavian countries, where TAW is largely deregulated, national legally enforceable collective agreements apply, guaranteeing agency workers considerable income parity:

- 14 out of 20 EU Member States have already introduced legislation giving temporary agency workers the same pay as directly employed workers doing the same or similar jobs. In a further two Member States - Finland and Sweden - legally binding collective agreements assure that temporary agency workers receive working terms and conditions (including pay) which are comparable to those of directly employed workers.
- Only 4 out of 24 EU Member States do not currently have licensing requirements for temporary work agencies. The Netherlands, which had abolished its licensing scheme in 1998, has recently re-introduced a business permit requirement, because of concerns about widespread abuses by some temporary employment agencies.

In France, Italy, the Netherlands and Portugal, collective agreements and/or laws on temporary agency work include regulations on training, such as entitling agency workers to an assessment of their training needs, or obliging temporary work agencies to spend a fixed share of their total billings on training agency workers.

Without an effective EU Directive on Temporary Agency Workers, there is a risk that Member States might seek to dismantle some of the protections which they currently afford to agency workers.

As our case studies show, in the UK a lack of proper rights and protections means that agency workers:

- have little job security and, even in cases where they have worked for the same employer for a number of years, may suddenly find themselves out of a job, without any compensation or further assignment on the horizon;
- can feel “trapped” by the lack of training opportunities, rather than able to move into rewarding, permanent employment;

- are often paid less than permanent employees doing the same or similar work.

Since May 2004, the UK has seen a steady inflow of workers from the new EU Member States<sup>9</sup>, many through temporary employment agencies. Employers' organisations agree that migrant workers from the A8 countries are a valuable resource for UK businesses, helping to address some of the UK's skills shortages.

Yet, the experience of all too many migrant agency workers, who fall into the hands of disreputable agencies, is one of virtual forced labour and appalling living conditions. These abuses undermine the proper functioning and reputation of the sector as a whole.

Better funding of the enforcement body, the Employment Agency Standards Inspectorate, and a proper licensing system which would weed out rogue operators, are part of the solution, but not the whole story.

Lack of parity with directly employed workers in terms of pay and working conditions, coupled with a lack of training and career progression opportunities consistently places agency workers in the UK at an unjustified disadvantage and devalues the skills base – and therefore the competitive advantage – of the UK workforce as a whole.

With the Services Directive currently being debated in Europe, and the potential deregulation of the temporary agency market, it is all the more important to adopt a strong Temporary Agency Workers Directive, setting out basic rights and protections for agency workers across the EU, and for that Directive to be expressly excluded from the scope of the Services Directive.

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<sup>9</sup> Home Office statistics show that, between May and September 2004, 90,950 workers registered for the Workers' Registration Scheme, under which workers from the A8 countries are permitted to work in the UK.







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