



Migrant Agency Workers in the UK

Summary

This report presents evidence of widespread mistreatment of migrant agency workers and demonstrates the importance of an EU Temporary Agency Worker Directive to promote equal treatment for *all* agency workers. The draft Directive is due to be discussed by the Council of Ministers on 5 December 2007 and the TUC is calling on the governments of member states to support progress on the directive.

This report looks at the treatment of migrant workers by employment agencies in the UK. Its focus is on the treatment of migrant workers from the states that have joined the EU from 2004 onwards.

The TUC considers that all agency workers are vulnerable in the UK labour market due to their employment status and their lack of tenure or notice rights. UK employment law distinguishes between 'employees' and 'workers'. Generally classified as workers rather than employees, agency workers lose out on important entitlements to unfair dismissal protection and redundancy payment entitlements. Migrant agency workers can be particularly vulnerable, as a limited knowledge of UK employment rights and advice agencies is often compounded by limited understanding of the English language. This makes it hard for these workers to establish what their rights are and to find support and advice to enforce their rights. This report illustrates the vulnerability of migrant agency workers to abuse through research carried out by and cases reported to the TUC. The report argues that migrant and UK agency workers would all benefit greatly from the protections enshrined in the EU Temporary Agency Workers Directive which is due to be discussed at the Council of Ministers on 5 December 2007.

The draft EU Temporary Agency Worker Directive

The draft EU Temporary Agency Worker Directive (TAWD) has failed to make progress since 2002 due to a failure to reach agreement in the Council of Ministers. The UK has led a blocking minority with Germany, Ireland and Denmark. The Portuguese Presidency is attempting to break the deadlock in negotiations. It is expected that the draft EU Temporary Agency Worker Directive will be debated at the Social Affairs Committee of the Council of Ministers on 5 December.

The equal treatment rights contained in the TAWD would provide vital protection to a group of workers whose position in the labour market is extremely vulnerable and open to exploitation by employers who adopt a 'here today, gone tomorrow' view of agency workers. The very insecure nature of agency work, with no tenure or notice rights makes it very difficult to plan for the future as responses to a recent TUC / YouGov survey (2007) revealed. This absence of long-term security makes it all the more important that agency workers do have some certainty when it comes to the terms and conditions of their engagement - including a clear entitlement to

equal treatment on the basic terms and conditions as a similar directly employed worker.

Migrant workers and agency employment in the UK

Workers from ethnic minority groups are more likely to be engaged in agency work in the UK. 19% of agency workers are from ethnic minorities compared with 13% of temporary workers as a whole and just 8% of all employees (Labour Force Survey data, Summer 2006). Research conducted for DEFRA in 2004, produced estimates of foreign national workers supplied via agencies in UK agriculture and horticulture and this estimated that 66% of such workers were foreign nationals, compared with 34% who were UK nationals.

In May 2004, ten new member states were admitted to the EU and the UK decided to allow citizens of these countries immediate access to the UK labour market. In 2007, Romania and Bulgaria also joined the EU, although restrictions on access to the UK labour market remain in force for these 2 new member states.

The TUC is concerned about the vulnerability of all agency workers in the UK, given the lack of equal treatment rights for this group of worker in current UK employment law. It is recognised that many EU member states, both old and new, have already introduced measures giving agency workers equal treatment rights, in advance of the passage of the EU Temporary Agency Work Directive.

Evidence of exploitation

Many migrant workers are employed through agencies or gangmasters and are at particular risk of poor treatment at the hands of contractors. Recent research published by the Health and Safety Executive (HSE, 2007) found that migrant workers are more likely to be working in sectors or occupations where there are health and safety concerns and that their status as new workers may place them at added risk. It found that few checks were made on migrant workers' skills and qualifications for undertaking the work they were doing. Even in cases where workers were performing skilled and potentially dangerous work like scaffolding, work was being offered to individuals who had no previous experience in the task. In food production and catering most workers were not tested for their knowledge of food hygiene and only a minority were offered training. Those working with chemicals generally had little knowledge of what they were composed of and formal training was not always sufficient, especially where technical language was used to explain the nature of the risk. Of the 200 migrants interviewed, a relatively high proportion (one in four) had either experienced an accident at work themselves, or had witnessed accidents involving migrant co-workers.

In 2004, the TUC published *'Propping up rural and small town Britain: Migrant workers from the new Europe'*. This report contained an analysis of people who had contacted the TUC for help with tax and employment matters. Around two thirds of workers (61%) contacting the TUC for help were from Poland with Slovaks

(13%) and Czechs (9%) the next two groups most likely to get in touch. According to the report there is much confusion and misunderstanding around the UK's system of tax, National Insurance, benefits and pension entitlement and many of the Eastern European workers who contacted the TUC complained of employer abuses, particularly at the hands of agencies. Some of the abuses included:

- Charging individuals to find them work (a practice that is illegal in the UK)
- Docking money from workers wages when paying them by cheque
- Paying lower hourly rates than initially promised
- Non payment for hours worked
- Excessive working time with inadequate breaks between shifts, overtime paid only at the standard rate
- Poor and substandard accommodation provided

Case studies:

Danute from Lithuania was working as an au pair on 1 May. She decided to look for other work but was refused jobs several times because she did not already have a National Insurance number. Having sought advice from the TUC, she was able to point out that her passport was sufficient identification to establish a right to work in the UK. She then found work with an agency who placed her in a large distribution depot in London, working on a contract for a major high street retailer. Although she was glad to leave her previous job, which was low paid and provided little independence, she immediately encountered problems. She was charged £5 per week for receiving payment by cheque. Her contract from the agency failed to specify an hourly rate, and she found that while she had been verbally offered £5.25 per hour, she was actually paid only the minimum wage of £4.85 (rate in force at the time).

Lech is one of a group of about 60 welders recruited from Poland by a Midlands engineering company making components for motor vehicles that has complained in the past of a local shortage of skills for the type of welding used. The welders are employed by an agency, which means that they are paid £1 per hour less than the permanent workforce, have little job security (some are already reported as having gone back to Poland), and are not included in pension arrangements. It is unclear to local unions why this should be if there is such a shortage of skills. Unions are also concerned that this casualisation of the job will deter local people from training in welding. Using the TUC's translated material on employment rights, local unions are approaching the workers to seek to recruit them and to ensure that parity of pay and conditions is being observed.

A 2005 Study by the TUC and COMPAS '*Forced Labour and Migration to the UK*' reported that nationals from the A8 states who must obtain registration cards for the first 12 months of their employment in the UK have reported that the combination of registration and lack of a National Insurance number (which can take several months to get) means that employers and agencies are offering work at significantly reduced pay, claiming that they will have to do a lot of bureaucratic work. This indicates that although now legally entitled to live and work in the UK

(having complied with the registration requirements) A8 nationals are not free from abuse or exploitation.

In February 2007, the TUC published a report *'Agency Workers: Counting the Cost of Flexibility'*. This report outlined the hidden costs of agency work – not just to the workers, but also to the customers of the services they provide and the providers and commissioners of these services. The report illustrated the problems that can arise, particularly where agency workers are used exploitatively and reported research into the impact on two sectors in particular: social care and catering and hospitality. The extracts that follow, illustrate the range of problems that migrant agency workers encounter:

In 2005, Queen Mary College, University of London in association with London Citizens, produced a report which looked at low paid employment in four sectors in the City of London. The report included interviews with workers employed in hotels and hospitality work in London.

The research found the sector to be dominated by employment of migrant workers, notably those from Eastern Europe (Poland and Lithuania in particular) and from Africa (Ghana particularly).

The research revealed that workers in the sector experienced the lowest pay rates of all the four sectors surveyed (the others were cleaning on London Underground, office cleaning and care work). Workers were often paid per room cleaned and some 17% earned below the minimum wage as a result. A further 17% earned the minimum wage (£4.85 adult rate at the time the research was carried out). The largest number of workers earned between £4.86 and £5.50 per hour, although this is above the NMW, it gives an annual salary of only £9,097 - £10,296 before tax and National Insurance. In London in 2005, this is hardly a living wage.

Subcontracting in the sector emerged as a key theme of the report. In particular, there were significant differences in pay and conditions of in-house and agency staff. One agency was reported as paying their Polish workers who were working in a luxury hotel in West London a derisory piece rate of £1.70 per room. This was in stark contrast to the wages paid to in-house staff in similar hotels, which ranged from £4.85 to £5.20 per hour.

Agency workers in the sector were also engaged on inferior terms and conditions. As the report noted:

'Agency workers in general also received no sick pay or paid holidays, nor were they paid for staying over to finish the heavy workload of up to 15 rooms that have to be cleaned in a day. Not surprisingly then, high labour turnover was a key feature of this sector. Over one half (51%) of all workers in hotels and hospitality had been with their current employer for just 12 months or less, which is the highest proportion of all sectors. It is also likely that the increase in the use of low-paid agency workers which we identified in a number of the hotels, will lead to the erosion of the benefits enjoyed by 'in-house' staff over time.'

Abuse of workers, often migrant workers, in the hotel and catering sectors has been reported elsewhere. In 2006, a Sky News reporter spent 6 days working undercover as a housekeeper for a Jury's Inn hotel in Southampton and was paid just £58 which worked out at an hourly rate of £1.50. The reporter was placed at the hotel through an employment agency Foremost Logistics Services. The staff worked an average of six hours per day cleaning rooms but at £1.80 per room, they would need to clean 17 rooms a day to earn more than the NMW. When confronted by Sky News, the agency apologised and said that they would pay the NMW. The only explanation for their failure to do so in the first place was that

there had been a *'serious communications collapse.'*

In April 2006, the Guardian Newspaper also ran a feature on abuse of migrant workers in the hotel sector. The article reported on the increasing reliance on migrant labour in the sector (accounting now for around 60% of the industry's workforce in the UK). The article revealed the 'upstairs, downstairs' life in some of the top hotels with workers being subjected to intensive working practices, poor pay and conditions and bullying and harassment. In particular:

- Long working hours, being required to work double shifts, no overtime pay
- No written employment contracts
- No sick pay or holiday pay – or 'rolled up' holiday pay arrangements which make it difficult for the worker to know if they are getting their legal minimum entitlement
- No breaks
- Delayed payments or unlawful deductions from pay
- Bullying
- Unfair dismissal

Jan Mokrzycki, chair of the Federation of Poles is quoted in the article, outlining the plight of Polish migrant workers in the sector:

'In the hospitality sector they're expected to overwork beyond their capacity – such as working 14 hours a day – and not get overtime pay. Most of them are employed by agencies that pay them much lower than the normal rate, some below the minimum. In such cases, agencies do not give payslips or register the workers, therefore forcing them to become illegal.'

The article reported on the outsourcing of staff, particularly housekeeping staff, in the sector and revealed how this is leading to a two-tier workforce in the sector, with a largely migrant workforce deployed through agencies and a diminishing in-house staff. The in-house staff are invariably on better pay rates and terms and conditions, but these are at risk due to the outsourcing and deployment of agency staff on far worse pay and conditions. This in itself provides a potential source of tension between the two groups of workers – a fact that unscrupulous employers are keen to exploit. The article also revealed a further form of exploitation, the requirement for staff to undertake 'training' or 'inductions days' without pay when they start their employment. Intimidation and easy dismissal of staff who complain is a feature of employment too and the poor working conditions and high levels of turnover make it difficult for trade unions to organise workers in the sector.

The Guardian article reported the specific case of the Kensington Close Hotel, which under new ownership promptly outsourced its permanent housekeeping staff to employment agency Calibre International, while the newly transferred staff had wages protected under TUPE regulations, the 40 or so newly recruited agency maids (Polish, Lithuanian, Romanian and Mongolian workers) were being paid a piece rate of £2.08 per room, but this subsequently fell to £1.40 - £1.60 per room. As a result some workers were earning less than the minimum wage. Others were earning just £20 per day, while trainee maids worked up to three days 'training' without pay. This outsourcing had created a two-tier system with migrant workers on worse terms used to undermine existing terms and conditions. Longstanding members of the housekeeping staff at the Kensington Close hotel reported that they had not had a pay rise in almost five years and felt that tactics such as delayed implementation of paying revised national minimum wage rates were designed to 'encourage' them to leave so that they could be replaced by migrant agency workers on even worse terms and conditions.

The exploitation of migrant workers in the hotel and catering sector was also reported by the public sector union UNISON in its submission to the Low Pay

Commission in September 2006. The union reported on research carried out through the London Citizens' organisation in the summer of 2006. This research entailed interviews with workers in London hotels, universities and museums. The majority of the workers were employed by private contractors or employment agencies that were contracted to provide cleaning, catering and security services. The workers were largely migrants (legal and undocumented) or from black / minority ethnic backgrounds.

The research revealed a catalogue of abuse and illegal practice. This included:

- fines for calling in sick
- deposits charged for name badges and locker keys (and not refunded when the items were returned)
- charges for meals in canteens – whether requested or eaten or not
- weekly charges to cash pay cheques
- Unpaid 'training' days and overtime
- Systematic under-recording of hours worked
- Pay slips impossible to understand or not provided at all.

The researchers also found that some agencies deliberately adopted a strategy of engaging 'irregular' immigrants who they then underpaid, or failed to pay at all and when the workers complained about this, they threatened to hand them over to the immigration authorities. Such arrangements serves only the agencies interests – the workers are exploited but are unable to complain as they face a 'double whammy' due to their illegal status – they are unlikely to be able to enforce their contractual terms, as their status and contract is illegal and are then likely to face deportation.

Citizens' Advice Bureaux Evidence

The following cases have been reported to Citizens' Advice Bureaux from around the country and featured in the TUC report 'Counting the Cost of Flexibility.'

CAB Eastern Region: female agency worker (Spanish) placed in hotel. Not being paid the minimum wage, only £3.35 per hour (£94 for 40 hour week). The hotel makes deductions for accommodation and food, although these deductions are not set out in any contract.

CAB North West Region: female agency worker, (Polish). Paid £300 to an agency in Poland for a referral to a UK agency to find her work in the UK. She is now working in a hotel on very low pay and has deductions for accommodation and food. She is still owed wages and when she tries to raise this says that she feels intimidated.

A 2005 TUC report '*Below the minimum: Agency workers and the minimum wage*' revealed that safeguards introduced in the 2003 Conduct of Employment Agencies and Employment Businesses Regulations 2003, were doing little to prevent the exploitation of agency workers by unscrupulous employment businesses. The report contained evidence of abuse of agency workers, in particular migrant workers, by some employment businesses or temp agencies routinely making deductions from the workers pay that took them below the minimum wage level in breach of national minimum wage legislation. Some employment agencies appeared to be consciously circumventing legislation requiring the workers express

consent to deductions, by inserting general clauses into contracts to the effect that *'the Company shall be entitled to deduct from salary or any other payments due to you in respect of your employment, any monies due from you to the company.'* Such clauses were then used to make deductions for transport, equipment, uniforms and meals. Migrant workers are especially vulnerable to this type of exploitation because of language difficulties and a lack of knowledge about UK employment rights. The following case studies taken from the report illustrate the type of problems migrant agency workers are facing:

A number of deductions were being made from the wages of a group of Portuguese workers employed by an agency, but there was nothing on their payslips to say why and for what the deductions were being made. In addition, the agency had made a deduction of £400 in respect of return flights home but the workers had no idea how the cost of the return journey was calculated, nor whether they will in fact receive their return flights from the agency when their assignments come to an end.

A group of workers from the Czech Republic signed up to what looked like an excellent working opportunity with a temp agency. They were quoted an attractive hourly rate for assignments and would have their accommodation needs met by the agency. On arrival in the UK, however, they were given a written statement that specified an hourly rate below the national minimum wage. With no English, no accommodation and no money to return home, they signed the agreement.

They then found that their take-home pay was even less than that specified in the agreement. In some instances, they would receive what barely amounted to pocket money and, on occasion, they would receive no payment at all after deductions.

Shortly after arrival in the UK, the workers had been told to hand over their passports so that the agency could register them under the Workers Registration Scheme. In some cases, the agency had failed to return the passports after 6 months, leaving the workers with little choice but to continue working for the agency.

Those workers who did protest about their treatment found themselves out of work and evicted from their accommodation. Some of them were threatened with physical assault.

How the European Temporary Workers Directive would help

The UK government often define the issue of vulnerability of agency workers as one of awareness and enforcement of existing rights. Whilst there certainly are well-documented abuses of agency workers existing legal rights in the UK (for example the right to be paid the national minimum wage and not to have unlawful deductions from pay made) the TUC believes this is only part of the problem.

The Directive would give agency workers in the UK the right to equal treatment with a comparable permanent employee on issues such as pay, working time and holidays, maternity rights and protection against discrimination. Progress needs to be made on the draft Directive so that unscrupulous employers can no longer use agency workers to undercut local pay rates and impose less favourable conditions

than those enjoyed by the permanent employees. This is a strategy that undermines labour market and community cohesion.

The Directive would also ensure that agency workers are informed of any vacant posts in the user undertaking to which the worker is supplied, and that agency workers are not prevented from applying and accepting such posts once their assignment comes to an end.

Further, the Directive would improve temporary agency workers' access to training and career development opportunities.

The TUC supports the introduction of equal treatment rights for agency workers from day one. Labour Force Survey statistics (2007) show that 72% of all UK agency workers would lose out on rights to equal treatment if a 12-month qualifying period were introduced, whilst over half (54%) would still lose out under a 6-month qualifying period.

Any qualifying period is likely to lead to employers using short term contracts to avoid the new rights, which would mean many agency workers would never actually benefit from new rights designed to protect them.