

Agency Workers Directive-Briefing

The Directive is part of the series of pieces of legislation to protect “A-Typical workers”. The other two pieces were the Part Time Workers Directive and the Fixed Term Contractors Directive. Both of these Directives have been enacted into Irish legislation already.

The Agency Workers Directive has two main aspects, equality and removal of restrictions. The Directive must be enacted into Irish legislation by the 5th December 2011.

The Recruitment industry welcomes any legislation that will enhance the attractiveness of agency work to both clients and candidates.

There are two main potential consequences of the Directive that we have major concerns about.

- Increased costs - loss of competitiveness
- Increased red tape - reduced use of agency workers, job losses

The Directive broadly defines the elements that an agency worker is entitled to equality on and it leaves it up to the national governments to enact the specifics. The Directive refers to “pay”, but the national governments can determine what makes up pay. The American Chamber of Commerce did a sample survey of a number of members and found that if “pay” was broadly defined to include pensions, bonuses, share options etc, it would significantly increase cost of the two firms sampled by up to €10 million each. We would urge the Government to minimise to elements included in the definition of pay to minimise the impact of the Directive on the competitiveness of the users of agency workers.

The red tape associated with showing that a company has complied with employment legislation is already burdensome. The recently announced proposals to reform the various labour dispute bodies is welcome, but it is unlikely that it will greatly ease the burden of proof required. In the case of the Agency Worker Directive, there are three parties involved. One party, the agency, will be fully reliant on another party, the end client, to proof innocence. This will require additional information gathering and sharing and documentation to proof innocence in the event of a claim. In many cases the burden of red tape will out way the benefit of the shorter term assignments to clients. A survey in the UK conducted by the CBI showed a potential 25% reduction in the use of agency workers. If the same percentage reduction was to occur in Ireland it will lead to a loss of approx. 8,000 jobs.

The Government is in a position to mitigate the impact of the Directive and thereby reduce the job losses that might otherwise occur. This can be achieved by the following

- Minimise as much as possible, what is included in pay or other terms & conditions that an agency worker will be entitled to equal treatment on.
- Simplify the burden of proof required by an agency to show compliance with the Directive

- Seek a social partnership agreement on a derogation period before equal treatment applies
- Ensure joint liability between the employment agency and the end user, this will ensure that neither party can exploit the agency worker without direct implications for them.

All the evidence collected from around the world regarding the impact agency work has on an economy would lead to the conclusion that it is a vital sector. A well function flexible workforce improves competitiveness. This is one of the main reasons that the Directive has the removal of restrictions on the use of agency work as one of its key aims.

Usually the one of first sectors to start improving in any economy starts of come out of recession is the temporary agency work sector. We are starting to see signs of the industry emerging from a horrendous 3 years where more than 300 agencies went out of business and those that remained have reduced in size. We estimate that over 4,000 people employed directly by agencies have lost their jobs.

We would urge that everything that can be done to ensure that the industry grows should be done and that nothing that could hinder the development of the industry is implemented.

The temporary agency work industry is ultimately about one thing and that is employment. The more employment the better we do.

National Recruitment Federation key recommendations.

A clear and restricted definition of pay.

Pay is complex, if it includes many fringes or associated benefits, annual bonuses, free parking etc, then the calculation of pay for short term assignments is impossible. Temporary jobs will be lost.

A six month derogation or waiting period.

Genuine short term assignments need protection from the administrative and cost burden of the Directive.

Clear scoping of the compliance obligations of employer and agency.

Both parties need to know what they need to have done to demonstrate the adherence to the directive. Without this the Labour Courts will fill up with claimants exploiting the gap.

Clarity on liability.

If the worker isn't paid correctly, who is at fault? The Agency who pays them or the Employer who tells the Agency worker what to pay. Both have a key role therefore joint liability is the only fair recourse.

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