

## **TEMPORARY AGENCY WORK DIRECTIVE FREQUENTLY ASKED QUESTIONS - KEY ISSUES**

**THIS DOCUMENT IS FOR USE ONLY AS A REFERENCE DOCUMENT  
FOR GENERAL GUIDANCE AND DOES NOT AMOUNT TO A LEGAL  
INTERPRETATION, AS THE BILL TO GIVE EFFECT TO THE DIRECTIVE  
HAS NOT YET BEEN ENACTED.**

### **1. Why is legislation being introduced?**

The legislation is being introduced to give effect to the EU Directive on Temporary Agency Work which applies to all Member States with effect from 5 December 2011. The Directive aims to protect Temporary Agency Workers and in so doing applies the principle of equal treatment to their basic working and employment conditions e.g. pay, annual leave etc. in the same way as if those workers were directly recruited by the Hirer to do the same job.

### **2. When will the legislation be enacted?**

A Bill to give effect to the Directive is being finalised and will be published in December, 2011 **effective from 5 December, 2011** with enactment of legislation expected in early 2012.

### **3. What happens on 5 December, 2011?**

With effect from 5 December, 2011, all Temporary Agency Workers are entitled to equal treatment in pay and basic working conditions as if they were directly recruited to the same job by the Hirer.

Equal treatment in this context extends to the following range of issues:

- (a) Basic pay,
- (b) Shift premium,
- (c) Piece rates,
- (d) Overtime premium
- (e) Unsocial hours premium,
- (f) Sunday premium where a Sunday is worked and a premium is normally paid to a directly recruited employee,
- (g) Working time,
- (h) Rest periods,
- (i) Rest breaks,
- (j) Night work,

- (k) Annual leave
- (l) Public holidays.
- (m) Access to collective facilities and amenities (e.g. canteen, childcare and transport facilities)
- (n) Access to information on vacancies in the Hirer company.

An Agency worker is entitled to equal treatment on each of these conditions of employment for the duration of his or her assignment i.e. s/he must receive at least the same entitlement that would apply if s/he were recruited directly by the Hirer to occupy the same job.

#### **4. How is “pay” defined?**

- (a) Basic pay,
- (b) Shift premium,
- (c) Piece rates,
- (d) Overtime premium
- (e) Unsocial hours premium,
- (f) Sunday premium where a Sunday is worked and a premium is normally paid to a directly recruited employee,

This is an exhaustive list in the Bill to be published.

#### **5. What is excluded from the definition of pay in the Bill?**

Everything that is not included in Q4 above. For example, the following elements of a possible remuneration /reward package are excluded from the definition of pay in the Bill:

- (a) Occupational pension schemes
- (b) Financial participation schemes
- (c) Sick pay schemes
- (d) Benefit in kind
- (e) Bonuses

#### **6. What are “basic working and employment conditions?”**

- (a) Pay (as per question 4 above)
- (b) Working time,
- (c) Rest periods,
- (d) Rest breaks,
- (e) Night work,
- (f) Annual leave

(g) Public holidays.

**7. What entitlement will Agency workers have to access collective facilities and amenities?**

Temporary Agency Workers should be provided with access under the same terms as directly recruited workers to collective facilities and amenities of the Hirer. Typically, this could extend to access to any or all of the following:

- (a) Canteen or other similar facilities;
- (b) Child care facilities;
- (c) Access to transport services.

This is the only element of the Directive where there can be “objective justification” for less favourable treatment of Temporary Agency Workers. In other words there must be a good reason for treating the Agency worker less favourably and a Hirer should be able to provide robust evidence to support that reason.

**8. Who does the Directive apply to?**

It applies to Temporary Agency Workers who are employed by an employment Agency under a contract of employment and are assigned to work temporarily for, and under the direction and supervision of a Hirer.

**9. Who does the Directive not apply to?**

The Directive does not apply to:

- (a) Self employed persons i.e. persons who are in business on their own account and who are placed by an Employment Agency.
- (b) Managed Service contracts i.e. persons who work under the supervision and direction of the Agency which employs them - not under the supervision and direction of the company where they work.
- (c) In respect of **pay** only, the Directive does not apply to an Agency worker who has a permanent contract of employment with the Agency and is paid between assignments. All other

elements of equal treatment outlined in the Directive will apply in that circumstance.

**10. What does the Directive mean for a Temporary Work Agency?**

- (a) An Agency supplying Temporary Agency Workers to a Hirer should ensure, in consultation with the Hirer, that the appropriate pay and basic working conditions are applied so as to ensure that Agency workers are treated as if they had been directly recruited to the same job.

As is currently the case, the Agency remains the employer of an Agency worker.

**11. What does the Directive mean for a Hirer?**

- (a) An Hirer who hires Agency workers through a temporary work agency should provide the Agency with sufficient up-to-date information on basic pay and employment conditions so that the Agency, as employer, can satisfy itself that an Agency Worker is getting equal treatment, as if they had been recruited directly to the same job.
- (b) The Hirer is responsible for ensuring that all Temporary Agency Workers can access collective facilities and amenities (See Question 7 above) and access information on job vacancies.

**12. What does the Directive mean for an Agency Worker?**

- (a) From 5 December, 2011 a Temporary Agency Worker will qualify for equal treatment in respect of pay and basic working conditions as outlined above in Questions 4- 7.
- (b) Temporary Agency Workers can only be denied access to collective facilities if there is an "objective justification" on the part of the Hirer. (See Q 7 above)
- (c) Temporary Agency Workers are entitled to access information on job vacancies in the Hirer undertaking in the same way as a permanent employee.
- (d) If a Temporary Agency Worker has a permanent contract of employment in place with the temporary work Agency and is

paid between assignments, then the Pay elements of equal treatment of the Directive are not applicable.

**13. Does the Directive apply to new and existing Temporary Agency Workers?**

From the 5<sup>th</sup> of December, 2011, existing agency workers who are working in a Hirer undertaking regardless of the date of assignment are entitled to equal treatment from 5 December, 2011.

New assignments on or after the 5<sup>th</sup> December, 2011, are entitled to equal treatment from the date of their assignment.

**14. Is there a "lead-in" or qualifying period before equal treatment applies?**

No. Equal treatment applies from "day 1" of the assignment. Other countries may have such qualifying periods but in Ireland's case, it could only have been agreed under the terms of the Directive by National Social Partners and this did not happen.

**15. In the event that a temporary agency worker is entitled to an increase in pay arising from the Directive that takes effect from 5 December 2011, when will this increase be paid?**

In this event, the entitlement to the increased level of payment will apply from 5 December 2011. In the first instance, the agency worker should engage with the employment agency (employer) to find out how it is proposed to deal with this operationally. Given varying arrangements in companies as regards frequency of payment, payroll dates and the particular time of year etc. this is likely to vary in each case.

**16. In the event that a temporary agency worker is entitled to equal treatment but does not receive it what should they do?**

In the first instance, the agency worker should engage with the employment agency (employer) to find out how it is proposed to deal with this issue. If this does not provide a satisfactory outcome, issues regarding redress for agency workers will be addressed in the legislation to be published in December 2011 and enacted as early as possible in 2012.

**17. How does the 5 December 2011 date impact on annual leave entitlements that a temporary agency worker becomes entitled to as a result of the equal treatment provisions in the Directive?**

The entitlement to any differential in annual leave entitlements takes effect only from 5 December, 2011. Therefore, if a temporary agency work becomes entitled to increased annual leave entitlements as a result of the Directive, this will relate to the period from 5 December 2011 onwards.

Any leave accrued prior to 5 December but taken after that date can be paid at the pre 5 December rate.

**18. Could the definition of pay change between 5 December 2011 and the time of enactment of legislation giving effect to the Directive?**

The Directive requires the application of basic working and employment conditions and, in defining the components of pay, the Minister has sought to provide as much clarity as possible in this regard without prejudice to the fact that legislation to give effect to the Directive has yet to be passed in the Oireachtas.

**19. Does the Directive cover the situation whereby a direct recruit may be paid less than a temporary agency worker?**

No. The Directive seeks to establish a minimum standard i.e. equal treatment - as defined - for temporary agency workers on the assumption that such workers may be treated less favourably than direct recruits. Legislation to give effect to the Directive will seek only to establish that in respect of basic working and employment conditions, agency workers are treated as if they were directly recruited by the hirer to do the same job.

**20. Who is responsible for ensuring equal treatment?**

As employer, the Employment Agency has primary responsibility for ensuring that equal treatment applies for the Agency worker. However, this is dependent on the Agency being provided with sufficient up-to-date information by the Hirer.

In practice, the Agency will have to show that it obtained or took reasonable steps to obtain relevant information from the Hirer about its basic working and employment conditions and treated the Agency worker accordingly.

If you require further information on employment rights, please contact NERA on 1890 80 80 90 or [www.employmentrights.ie](http://www.employmentrights.ie)