

## Abuse of agency workers growing following insertion of 'Swedish Derogation' into Regulations

The Agency Workers Regulations have finally been introduced following many years of campaigning by the trade union movement – and offer some limited protection to workers used by employers in place of direct employment. The AWR took effect from 1 October 2011 but workers still have to work 12 weeks in the same role with an employer before obtaining rights to;

- equal pay including; shift premia, overtime, unsocial hours and performance bonuses
- holiday entitlement including; the amount of leave, accrual and bank holidays
- equal treatment on working time issues
- rights to attend anti-natal appointments and to alternative work for pregnancy related reasons or suspension on full pay where none is available

Agency workers are entitled to equal treatment in relation to collective facilities; canteen, transport services, common room, crèche from day one of employment.

**Agency workers still have no statutory rights to;** company sick pay, pension payments, redundancy pay, contractual maternity or paternity pay or service related bonuses. These are only secured by agreement between the union and employer.

### Some progress but a long way to go!

There are many and varied reasons why we have seen a growing use of agency, alongside temporary, casual and part time contracts - in nearly every sector of our economy over recent years, many with union agreement to meet a spike in demand or workload but most to assist employers in reducing costs, often supported in an effort to protect permanent, full time jobs.

- **In many cases Unite officers and representatives have negotiated equal terms from day one of employment, ensuring that the use of such contracts is not used to undermine either permanent or agency workers.**

With the AWR coming into effect the Tory government could not resist an opportunity to support its big business backers by undermining rights to equal pay. Supporting the derogation (opt out) the government has provided a loophole which excludes agency workers from equal pay rights where the agency worker is paid between contracts as an employee of the agency itself. This is what is known as the 'Swedish Derogation'.

### Wouldn't being an employee be a good thing?

In normal circumstances employment status would be a good thing and would bring with it job security and a range of employment protections. However, in this case it is an opportunity for a hirer to work with agencies in an organised way to avoid any responsibility to pay equal pay, even after 12 weeks employment. **This is because 'employees' of an agency are excluded from the right to equal pay.**

In reality, **this means that an agency worker who works alongside a permanent employee earning £10 ph could continue to be paid the National Minimum Wage currently £6.08 ph (over 21 years) for the whole of their assignment.**

Further, while the AWR state that the worker must be employed on a permanent contract by the agency to avoid equal pay, in reality the agency will determine the terms of the contract; introducing hours of between 2 and 48 per week and pay between the NMW and for example, £10 ph depending on the assignment. At the end of the assignment they then have to pay 50% of pay or the NMW for four weeks before sacking them.

**Case study:** an agency provides an employee to your workplace; you are paid £10 ph but the agency only pays £6.08, the NMW. You all work for forty hours a week saving your employer a minimum of £156.80 (less agency fees) for each worker over each week of the assignment.

- After 11 months your employer informs the agency that they no longer want the worker. The agency then transfers them to another job for four hours a week for four weeks, also paid at NMW. At the end of this contract no further work can be found.

The agency can now simply sack the worker by giving four weeks' notice, paid at £6.08 for four hours a week – a total sum of £97.28.

- **The above saves thousands for your employer, prevents the agency worker getting equal pay for eleven months and limits the dismissal costs of the agency to less than £100!**

## How could this work in practice?

Unscrupulous employers have always used loop-holes to avoid their responsibilities and they will act no differently in respect of agency workers unless we stop them.

The case study opposite exposes the reality for many agency workers being exploited by the loophole.

## That's outrageous, we must stop it!

It is outrageous and without a firm position being taken by our representatives to stop it, it could happen in your workplace now.

- **Unite representatives should refuse to accept agency workers employed on anything less than equal terms with permanent employees from day one.**
- Unite has produced a '**Bargaining Guide for Officers and Representatives**' that explains the AWR's and options for negotiation at each stage. Make sure you get your copy from your local office today and assistance from your officer.
- The best protection for all workers is collective strength. We must **organise them as a central part of the Unite family.**

Where industrial circumstances prevent the above actions, we must try to secure minimum protections in the agency contract using our own leverage and that of your employer over the employing agency;

- hours and pay in the agency contract that reflect normal hours and rates for the workplace / sector
- pay between assignments equal to the total they would have normally received on assignment
- the right to only be offered work based on their skills, qualifications and experience and at an appropriate pay rate
- the right to organise them into Unite and negotiate a collective agreement

The above will limit any opportunity for your employer and the agency to exploit the full derogation in the Regulations and offer some limited protection to employees.

**Organising and protecting the interests of agency and other vulnerable groups of workers is not just the right thing to do as trade unionists, anything less is naively working against your own interests!**