

# Temporary and Agency Workers (Equal Treatment) Bill

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# B I L L

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Provide for the protection of temporary and agency workers; to require the principle of equal treatment to be applied to temporary and agency workers; to make provision about the enforcement of rights of temporary and agency workers; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## 1 Equal treatment of agency workers

- (1) An agency worker has the right not be treated by the employment business, or employment agency, or by the end user less favourably in respect of his basic working and employment conditions than a comparable direct worker is or would be treated. 5
- (2) Subsection (1) above applies only if—
  - (a) the treatment is on the ground that the worker is an agency worker, and
  - (b) the treatment is not justified on objective grounds.
- (3) In determining whether the right conferred by subsection (1) has been breached, the pro rata temporis principle applies where appropriate. 10

## 2 Comparable direct workers

- (1) For the purposes of this Act, a direct worker is a comparable direct worker in relation to an agency worker if, at the time when the treatment that is alleged to be less favourable to the agency worker takes place—
  - (a) the other party to the direct worker's contract is the end user in respect of the agency worker; 15
  - (b) both the direct worker and the agency worker are engaged in the same or broadly similar work, having regard, where relevant, to whether they have a similar level of seniority, qualification and skills; and
  - (c) the direct worker works or is based at the same establishment as the agency worker or, where there is no comparable direct worker working or based at that establishment who satisfies the requirements of 20

paragraphs (a) and (b), works or is based at a different establishment and satisfies those requirements.

- (2) For the purposes of subsection (1), it is immaterial whether the direct worker's contract is of open-ended or fixed duration.
- (3) Where no real comparable direct worker can be identified, a tribunal considering a complaint under section 1(1) shall consider how a comparable direct worker satisfying the requirements of subsection (1) would have been treated having regard to all the circumstances of the case, including –
- (a) any relevant collective agreements;
  - (b) the terms and conditions of direct workers;
  - (c) the usual practices of the employment business, or employment agency, and the end user; and
  - (d) the treatment of other direct workers or other former direct workers, as may be relevant.
- 3 Access to direct employment and protection from unfair treatment**
- (1) An end user shall inform all agency workers provided to him of any vacancies for work as a direct worker in his undertaking.
- (2) Any clause of any contract between an employment business, or employment agency, and –
- (a) an agency worker, or
  - (b) an end user,
- is void and of no effect insofar as it prohibits, prevents, or has the effect of preventing, an agency worker becoming a direct worker of the end user.
- (3) An agency worker who is an employee within the meaning of section 230(1) of the 1996 Act and who is dismissed (whether by the end user or the employment business, or employment agency) shall be regarded as unfairly dismissed for the purposes of Part 10 of the 1996 Act if the reason (or if more than one, the principal reason) for the dismissal is a reason specified in subsection (5).
- (4) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, of the end user or the employment business, or employment agency, done on a ground specified in subsection (5).
- (5) The reasons or, as the case may be, the grounds are –
- (a) that the agency worker –
    - (i) brought proceedings against the end user or the employment business, or employment agency, under this Act;
    - (ii) gave evidence or information in connection with such proceedings brought by any person;
    - (iii) otherwise did anything under this Act in relation to the end user or the employment business, or employment agency;
    - (iv) alleged that the end user or the employment business, or employment agency, had infringed this Act; or
    - (v) refused (or proposed to refuse) to forgo a right conferred on him by this Act, or
  - (b) that the end user or employment business believes or suspects that the agency worker has done or intends to do any of the things mentioned in paragraph (a).

- (6) Subsection (4) does not apply where the detriment in question amounts to a dismissal within the meaning of Part 10 of the 1996 Act which falls within subsection (3).

#### 4 Complaints to employment tribunals, enforcement etc

- (1) The Secretary of State shall by regulations provide for the enforcement before an employment tribunal of the rights afforded to agency workers by sections 1(1), 3(1) and 3(4), the said regulations to include provision for –
- (a) the right to present a complaint to an employment tribunal;
  - (b) joint and several liability for any compensation ordered by the employment tribunal as between the employment business and the end user in respect of complaints under sections 1(1) and 3(4);
  - (c) the territorial extent of the rights;
  - (d) secondary liability;
  - (e) the applicability of the rights to special classes of employment;
  - (f) the necessary and consequential amendment of legislation.
- (2) The regulations providing for enforcement under subsection (1) may include provision for –
- (a) the appointment of a regulatory authority with suitable duties and powers for the purpose of enforcing the rights afforded to agency workers by sections 1(1), 3(1) and 3(4);
  - (b) the appointment of statutory officers with suitable duties and powers for the purpose of enforcing the rights afforded to agency workers by sections 1(1), 3(1) and 3(4);
  - (c) alternative dispute resolution, including the referral of proceedings brought before an employment tribunal for a period not exceeding 28 days, or longer with the agreement of the parties.
- (3) For the purposes of sections 3(3), 3(4) and 111 of the 1996 Act, both the employment business, or employment agency, and the end user –
- (a) shall be deemed to be the employer of the agency worker; and
  - (b) shall have joint and several liability for any award of compensation that might be ordered in respect of such a complaint.
- (4) Section 203 of the 1996 Act (restrictions on contracting out) shall apply in relation to this Act as if the provisions of this Act were contained in the 1996 Act.

#### 5 Interpretation

In this Act –

“the 1996 Act” means the Employment Rights Act 1996 (c. 18);

“agency worker” means any person who is supplied by an employment business, or employment agency, to do work for another person (“the end user”) under a contract or other arrangements made between the employment business, or employment agency, and the end user;

“basic working and employment conditions” means working and employment conditions relating to –

- (a) the duration of working time, rest periods, night work, paid holidays and public holidays;
- (b) pay, including sick pay;

- (c) work done by pregnant women and nursing mothers, children and young people; and
- (d) action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation; 5
- “comparable direct worker” shall have the meaning set out in section 2;
- “direct worker” means an individual, not being an agency worker, who has entered into or has worked under –
- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking, or employment agency, carried on by the individual; 10 15
- “employment” means employment under a contract of services or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;
- “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them; 20 25
- “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity; 30
- “end user” shall have the meaning ascribed within the definition of “agency worker” within this section;
- “joint and several liability” shall be construed with reference to the Civil Liability (Contribution) Act 1978 (c. 47);
- “the pro rata temporis principle” means that where a comparable direct worker receives or is entitled to receive pay or any other benefit, an agency worker is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable direct worker. 35 40

## 6 Short title, commencement and extent

- (1) This Act may be cited as the Temporary and Agency Workers (Equal Treatment) Act 2008.
- (2) Subject to subsection (3), the provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different purposes. 45
- (3) The day or days specified by the Secretary of State under subsection (2) shall not be later than 1 October 2009.

- (4) This Act extends to England, Wales, Scotland and Northern Ireland.

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To provide for the protection of temporary and agency workers; to require the principle of equal treatment to be applied to temporary and agency workers; to make provision about the enforcement of rights of temporary and agency workers; and for connected purposes.

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