

SUBSIDIARY LEGISLATION 452.106**TEMPORARY AGENCY WORKERS REGULATIONS**

5th December, 2011

LEGAL NOTICE 461 of 2010.

1. (1) The title of these regulations is the Temporary Agency Workers Regulations. Citation, scope and commencement.

(2) The object of these regulations is to give effect to the relevant provisions of Directive 2008/104/EC of the European Parliament and of the Council.

(3) These regulations shall come into force on the 5th December 2011.

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Employment and Industrial Relations Act; Cap. 452.

"assignment" means the period during which the temporary agency worker is placed at the user undertaking to work temporarily under its supervision and direction;

"temporary agency worker" means a worker who has entered into a contract of employment or an employment relationship with a temporary work agency and who is assigned, whether on a regular or on an irregular basis, to a user undertaking to work temporarily under its supervision and direction;

"temporary work agency" means any natural or legal person who enters into contracts of employment or employment relationships with temporary agency workers and who assigns, whether on a regular or on an irregular basis, the temporary agency workers to user undertakings to work there temporarily under their supervision and direction, whether or not such activity is the main or ancillary activity of the temporary work agency;

"user undertaking" means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily.

(2) Subject to the provisions of sub-regulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) These regulations apply to: Scope.

(a) workers who have entered into a contract of employment or an employment relationship with a temporary work agency, whether on an indefinite, a whole-time, a part-time or a fixed term basis, who are assigned, whether on a regular or on an irregular basis, to user undertakings to work temporarily under their supervision and direction:

Provided that unless otherwise specified in a contract of employment, a temporary agency worker shall be presumed to have entered into an indefinite contract of employment or an indefinite employment relationship with a temporary work agency;

- (b) public and private undertakings engaged in economic activities, whether or not they are operating for gain, which are temporary work agencies or which perform the same functions as temporary work agencies, whether as a main or as an ancillary function or which are user undertakings.

(2) For all intents and purposes of the Act, any regulations made thereunder and under any other law, the temporary work agency shall be considered the employer of the temporary agency worker, and such temporary agency worker shall be considered the employee of the said temporary work agency, and the provisions contained therein shall apply *mutatis mutandis* to such a contract of employment or employment relationship, and that notwithstanding anything to the contrary, the user undertaking shall not be considered as the employer of the temporary agency worker.

(3) These regulations shall not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

(4) These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in any individual contract or in any collective agreement.

Equal treatment.

4. (1) Without prejudice to the provisions of regulation 5, the basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job, by virtue of the Act, or any regulations issued thereunder or under any other legislation or by virtue of any applicable collective agreement.

(2) For the purposes of these regulations, the term "basic working and employment conditions" means such conditions as limitedly relate to:

- (a) pay;
- (b) the duration of working time;
- (c) overtime;
- (d) rest breaks;
- (e) rest periods;
- (f) night work;
- (g) annual leave;
- (h) public holidays;
- (i) the protection of pregnant women, women who have just given birth or who are breastfeeding;

- (j) the protection of children and young people; and
- (k) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation.

(3) For the purposes of sub-regulation (2)(a), "pay" means remuneration or earnings payable to the worker by his employer, that is, the basic wage, any statutory cost of living increase payable under the Act or under any other law, any statutory bonuses and allowances payable under the Act or under any other law, the payment for overtime work at the applicable rate, payment in respect of public holidays, payment in respect of annual leave, payment in respect of maternity leave and any applicable shift allowances.

5. (1) Insofar as it relates to pay, regulation 4 shall not have effect in relation to a temporary agency worker who has an indefinite contract of employment or an indefinite employment relationship with a temporary work agency and is paid by the temporary work agency between assignments.

Indefinite contracts providing for pay between assignments.

(2) With regards to a temporary agency worker who is not paid by the temporary agency in between assignments, regulation 4, insofar as it relates to pay, shall not apply for the first four weeks of an assignment if an assignment lasts fourteen weeks or more:

Provided that if the temporary agency worker is subsequently replaced, the temporary agency employee assigned as a replacement will have equal treatment regarding pay from the first day of the assignment.

6. (1) The user undertaking shall inform the temporary agency worker assigned to it of any vacant posts in the user undertaking so as to give such worker the same opportunity as other workers in that undertaking to find permanent employment.

Access to employment.

(2) The information mentioned in sub-regulation (1) shall be displayed in a suitable place in the user undertaking and shall be given in a timely manner in order to allow the worker to apply for the vacancy.

(3) Any clause in any contract or agreement prohibiting or having the effect of preventing the conclusion of a contract of employment or of an employment relationship between a user undertaking and a temporary agency worker shall be null and void.

7. (1) No payments or charges shall be demanded or levied on any temporary agency worker by the temporary employment agency in consideration for recruitment by a user undertaking or in consideration for concluding a contract of employment with a user undertaking.

No payment to be demanded.

(2) No deductions shall be made from the wages of a temporary agency worker by the temporary employment agency whether in consideration of the circumstances mentioned in sub-regulation (1) or in consideration of other circumstances, except and in so far as

such deductions are permissible under the Act and the regulations issued thereunder.

Training and
access to facilities.

8. Without prejudice to regulation 4:

- (a) the temporary agency worker shall be given access to the amenities or collective facilities in the user undertaking, in particular any canteen, child care facilities and transport services, under the same conditions as workers who have been employed directly by the user undertaking, unless the difference in treatment is justified by objective reasons;
- (b) the temporary agency worker shall be entitled to participate in vocational training programmes provided by or on behalf of the user undertaking in the same manner as workers who have been employed directly by the user undertaking, unless the difference in treatment is justified by objective reasons:

Provided that these rights do not prejudice the right of the temporary agency worker to have access to such facilities at the temporary work agency and to participate in any training programme provided by the temporary work agency between assignments.

Representation
rights.

S.L. 452.85
S.L. 452.96

S.L. 452.80

Information to
worker
representatives.
S.L. 452.96

9. The temporary agency worker, only in so far as the temporary work agency is concerned, is to be included in the calculations for determining thresholds for the purposes of worker representation, for the purposes of information and consultation rights in terms of article 38 of the Act, of the Transfer of Business (Protection of Employment) Regulations, and of the Employee (Information and Consultation) Regulations, and for the purpose of determining a collective redundancy in terms of article 37 of the Act and the Collective Redundancies (Protection of Employment) Regulations.

10. Without prejudice to the Act and to the regulations made thereunder, and in particular to the Employee (Information and Consultation) Regulations, the user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing workers in terms of the Act and of regulations issued thereunder.

Right to receive a
written statement.

11. (1) It shall be the duty of the temporary work agency to provide a written statement to a temporary agency worker who requests such statement in writing and who considers that the agency may have treated him in a manner which infringes a right conferred on him by regulation 4 of these regulations.

(2) Such statement shall state the reasons for any difference in treatment and shall be provided within twenty-one days from the date of the request.

(3) A written statement made in terms of this regulation shall be admissible as evidence in any proceedings under these regulations.

12. (1) The temporary agency worker may present a complaint to the Industrial Tribunal that the temporary work agency has infringed a right conferred on him by these regulations. Complaints to the Industrial Tribunal.

(2) Subject to the provisions of sub-regulation (3), the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within a period of four months, beginning from the date of the less favourable treatment.

(3) Where the worker presents a complaint under this regulation and the agency claims that the treatment is justified on objective grounds, it shall be incumbent on the agency to prove that the less favourable treatment is so justified on objective grounds.

13. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than five hundred euro (€500) and not exceeding two thousand and three hundred and twenty-nine euro (€2,329). Penalties.
