

Update

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L.N. 128 of 2024 - Temporary Agency Workers Regulations, 2024

The regulations shall enter into force on the 1st January, 2025 and shall apply to:

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

(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.

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 user undertaking shall not be considered as the employer of the temporary agency worker.

The regulations shall not apply:

(a) to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme; and

(b) in each of the cases where a licence is not required under the Employment Agencies Regulations.

In the event of any difference in the basic working and employment conditions applicable in any individual contract or in any collective agreement applicable by virtue of the employment relationship arising between the temporary agency worker and the temporary work agency and those applicable at a user undertaking, the most favourable basic working and employment conditions shall prevail and be applicable to the temporary agency worker.

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.

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The term "basic working and employment conditions" means such conditions as limitedly relate to:

- (a) rate of remuneration;
- (b) the duration of working time;
- (c) overtime;
- (d) rest breaks;
- (e) rest periods;
- (f) night work;
- (g) statutory annual leave entitlements;
- (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

"rate of remuneration" means remuneration or earnings payable to the worker by such worker's employer, that are, the basic wage, any statutory cost of living increase any statutory bonuses, statutory allowances, 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.

The equal pay for work of equal value principle does not apply

- (a) if temporary agency workers are assigned with different user undertakings in order to perform their work; and, or
- (b) any such temporary agency workers are not assigned with any user undertaking when any such difference arises in comparison with other temporary agency workers who are so assigned

If the rate of remuneration and, or basic working and employment conditions of the temporary agency worker are more favourable than those of a comparable employee of the user undertaking, the rate of remuneration and, or basic working and conditions of the temporary agency worker shall prevail and be applicable to the temporary agency worker and employees engaged directly by the user undertaking shall have no right to claim a breach of the principle of work of equal value or on the basis of discriminatory treatment.

If the rate of remuneration and, or the basic working and employment conditions of the temporary agency worker are less favourable than those of a comparable employee of the user undertaking, the rate of remuneration and, or the basic working and employment conditions of the comparable employee of the user undertaking shall prevail and be applicable to the temporary agency worker, whereupon every measure shall be taken to ensure that the rate of remuneration and, or basic working and employment conditions are adjusted accordingly. In default, temporary agency workers shall have a right to file a claim against their employer for failing to comply with this obligation

If the temporary agency workers or employees within a user undertaking be covered by collective agreements where any such agreement provides more favourable rates of remuneration and, or basic working and employment conditions than another, the collective agreement with the most favourable rates of remuneration and, or basic working and employment conditions shall prevail and be applicable to the temporary agency workers

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

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. Moreover, 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 inconsideration for concluding a contract of employment with a user undertaking or for the assignment to a user undertaking.

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.

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.

The temporary agency worker is to be included in the calculations for determining thresholds for the purposes of worker representation, for the purposes of information and consultation rights and for the purpose of determining a collective redundancy/

A temporary agency worker has the right to request a written declaration with the reason for differential treatment and the user undertaking shall provide such within twenty-one (21) days from the date of the request.

The temporary agency worker may within 4 months file a complaint to the Industrial Tribunal alleging that the temporary work agency has breached law.

The regulations shall also apply to any outsourcing agency and its employees, where the outsourcing agency assigns employees to user undertakings to work there temporarily, by being physically present at the premises of the user undertaking or working remotely, under the supervision, direction and control of the outsourcing agency.

Any reference to temporary agency workers shall be construed as also referring to employees of outsourcing agencies.

This Legal Notice repeals the previous one.

Any person contravening the provisions of the 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).