



The case for organising
agency workers
Dispelling the myths



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Introduction

This briefing paper is aimed at assisting you in both understanding and combating the exploitation of agency workers, especially at this crucial time with the temporary and agency workers directive having been implemented alongside our 100% campaigning activities.

- Union narrative on agency working – from cause (why) to action (what we need to do)
- Provision of an agency working bullet point summary, referring specifically to:
 - ▶ Why employers use agency workers
 - ▶ Why they say they use agencies
 - ▶ What we can do

Trade unions and agency working

Why it matters, what is its cause and how we respond

If we are to develop real power at work to deliver at the bargaining table then this must be built upon organised labour. In a UK and Irish context, membership density is a key indicator as to the power of the Union at the workplace.

We do not win many negotiations by weight of argument – we win by the collective strength we hold in a workplace and as a Union – the biggest in Britain and Ireland. The first priority of the Union official is to build and maintain density in their allocation through the development and maintenance of effective workplace structures – shop stewards. It is by building such structures that we deliver for workers at the bargaining table – the core function of any trade union.

We cannot hope to deliver at the bargaining table if we exclude workers from our organisation – intentionally or not.

We have to organise agency workers at their place of work in the same way that we would look to organise permanent workers. If we fail, the ability of a casualised workforce to **fatally damage organisation** and therefore bargaining power is increased beyond measure. The ability of employers to hold down wages, issue redundancy notices and change the conditions of work, is amplified if we allow casualisation to take a grip and fail to create a single workplace organisation catering and representing all workers.

The increasing globalisation of capital and the opening up of borders within the EU, for all its potentially progressive merits, has been driven not by any other reason than to allow capital an ever greater grip, by-passing the regulatory traditions of western nations and embedding a permanent pool of commodified, surplus labour within developed economies. This is the backdrop to a renewed rise in agency working - casualisation.

This is not new - but simply a continuation of the maintenance of profit through the exploitation of labour. We are forced to face the reality that the root cause of agency working lies far deeper than the demands of the local employer, and that it is an issue of such importance that we must take co-ordinated action as a union to deal with it.

Many people hoped and believed that the agency worker regulations that came into force on October 1st would prove to be a final settlement on agency working. The promise of equality for all workers on the basis of work undertaken, allowed many to believe that the job of the Union negotiator was redundant on this issue. In fact it is quite the opposite – the bargaining table remains as ever the only place where real equality can be delivered and where the undercutting of mainly indigenous permanent workers and the exploitation of mainly migrant agency workers can be stamped out.

The inadequate provisions of the original regulations have been further eroded by the Governments inclusion of the so-called Swedish derogation. This loop-hole is no more than an avoidance mechanism. Employers and agencies have been given freedom to collude and evade – parity pay for agency workers following twelve weeks employment is now redundant where agencies chose to employ workers on bogus permanent contracts. There will be little or no protection for the agency worker and the undercutting of permanent work is designed to continue as before.

Our response must be a unified and regulated bargaining strategy. The absolute minimum has to be the closure of the loophole provided by the Swedish Derogation wherever we have collective bargaining.

If we do not act decisively we will end up in a potentially worse position than ever, as negotiations become more complex and the systems employed by employers more sophisticated. But more than this we need to incorporate as a central bargaining demand, day one equality with regard to terms and conditions for all workers regardless of employment status.

The scale of the problem – undercutting within our collective agreements

■ Ford Staff

The 100% "buy-in" and "planning" sessions have uncovered over 1,000 agency workers employed across two sites. This is occurring within employers covered by national agreements.

■ Wincanton, Swindon (M&S contract)

The grocery retail logistics organising campaign has uncovered over 450 agency workers employed by Wincanton at Swindon. Another example of casualisation occurring in a so-called traditional trade union industry.

■ Marfrig (Moy Park)

Prior to the meat organising campaign over 800 agency workers were employed across two sites within one of our top two bargaining groups in Northern Ireland.

Agency working – bullet point summary of common arguments and responses

Why employers use agency labour

- They want a casual and peripheral workforce to “hire and fire” and for whom they have limited responsibility.
 - ▶ In many cases it would cost employers less in the short term to employ a permanent workforce – employers just want to avoid regulations and collective bargaining arrangements.
 - ▶ Unite investigations show that in the majority of cases the cost of introducing “parity” for agency workers is relatively low.

- In many unionised sectors employers want a more compliant workforce outside the scope of collective bargaining.
 - ▶ Attempts to change working practices are often started by using agency workers. For example, changes to shift patterns and overtime regimes.

Inoculation: Understanding and confronting common employer arguments

The section below details some key employer arguments and examples of responses that have been commonly used across a variety of sectors.

What the employers argue in defence of agency working

“We are doing this for you”

- We cannot afford to pay permanent workers the wages we do – we all need cheap agency workers to survive.
 - ▶ Employing agency workers means that it is less likely that permanent workers will be made redundant.
 - ▶ We could just shut the site and relocate if we have to pay everybody the same.

Response

- Agency workers are usually more expensive to employ. If you made them permanent you can save money.
- Having more agency workers is not going to secure permanent employment. If we lose business we are all at risk. We need a trained and motivated workforce to safeguard the business.
- If you decide to try and shut the site it won't be because you had to pay agency workers the same as permanent workers. We don't believe it will cost that much. Let us see your figures.

“It's not us it's the market”

- Procurement practices of our customers and fluctuating market demand require us to have a pool of temporary labour.

- Seasonal fluctuations in demand mean that we have to use agency workers.
 - ▶ We would like to offer permanent jobs but we cannot guarantee work for people and therefore it is better to use agency workers.

Response

- Temporary working may be required but on what scale and when? This should be part of the negotiations and agreed jointly.
- Temporary workers do not have to be employed by agencies. You could employ temporary workers direct, save the cost of using an agency and they would be included in the collective agreement. You can still pay temporary workers the same rate.
- Even if you want to use agencies you can still pay workers the rate. We don't believe it will cost that much. Let us see your figures.

"We'd love to but it's the public sector cuts"

- We are making redundancies because of the cuts.
 - ▶ We have to use agency workers to backfill roles.

Response

- What is the cost of using agencies? You could keep workers on rather than making redundancies and then using agencies. We want to see how much this is costing.

"Workers like being employed by an agency"

- They get flexibility, can decide when not to work and it can be great for people with carer responsibilities.
 - ▶ We have asked workers here to go permanent and they have told us they don't want to be tied down.

Response

- Not true. Research shows that the vast majority of casual workers in most industries want to be permanently employed.

“It actually costs us more to employ agency workers, why would we do that unless we needed to?”

- There is just no way we can increase permanent employment, our contract might end soon.

Response

- We do not believe that it must be a “good thing” just because it costs you more!
- The reason you use agency working is to avoid your responsibilities as an employer.
- We are not willing to accept a permanent two-tier labour force on the basis that we may lose business in the future.
- A trained and motivated permanent workforce will help us sustain the organisation.

What the employers will argue in favour of introducing new Starter / Training Rates

“We need to introduce / review rates for new entrants due to the cost of the agency worker legislation”

- We want to consider extending / introducing rates for new entrants – in particular increasing the time period over which they apply (IE: from 8/12 weeks to 6 months or 1 year).
 - ▶ If successful the employer could then effectively extend the 12 week rule (from which point agency workers are supposed to be entitled to “parity” pay) by using a reduced value starter rate for the purpose of comparison with permanent workers.

Response

- We are not going to negotiate a way for you to get round the legislation. Agency workers (excluding Swedish Derogation) will be entitled to “parity” from 12 weeks under the legislation - we want “parity” from day one.

What the employers will argue in favour of introducing the Swedish Derogation

“If we do not introduce the derogation then permanent jobs / the site will go”

- We will have to pay agency workers more after twelve weeks and there is only so much money on the table.

Response

- We will not agree to the Swedish Derogation being part of negotiations.
- Agency workers are usually more expensive to employ. If you made them permanent you can save money.
- We do not believe that paying “parity” will cost you that much. Let us see the figures.

“If we do not introduce the derogation permanent workers will have to take a pay cut / pay freeze to pay for it”

- You can have the regulations without the derogation but you will have to pay for it.

Response

- That is not acceptable.
- Agency workers are usually more expensive to employ. If you made them permanent you can save money.
- We do not believe that paying “parity” will cost you that much. Let us see the figures.

The Unite response

Agency working is an attack on union organisation and terms and conditions.

- Agency working and the new casualisation are a direct attack on our ability to regulate the workplace.

- Without incorporating agency workers into our organisation we cannot build power and therefore can not deliver at the bargaining table.

The employer argument on “cost”

- We have to demand a reduction in agency working and for those affected to be transferred to permanent employment. In most cases the employer would save money by reducing agency working.
- We should request the cost data that the employers are using and send to central office for analysis. Many employers intentionally use “wrong” assumptions when calculating cost to make “parity” appear cost prohibitive.

Development of a unified bargaining strategy

- We cannot afford to give mixed messages to employers on an issue of this importance.
- Development of a progressive bargaining strategy adopted by the whole union and monitored to ensure delivery.
- Whilst the immediate issue is to prevent the implementation of a loophole in regulations, our bargaining strategy has to be wider.
- The overarching objective has to be the elimination of agency working as a threat to organisation and terms and conditions.

Incorporating agency workers into collective agreements

- The introduction of so-called “minimum standards agreements” for agency workers, providing parity of terms and conditions with permanent workers are a start point for negotiations.
- Putting agency working on the bargaining table for negotiation will be a major step in some areas and send a clear message of intent.



Framework agreement for non-directly (Labour Provider) employed workers between (Supplier Name) (Inc. Subsidiaries) and Unite the union.

1. Objective

- 1.1 Good industrial relations are a joint responsibility and need the continuing co-operation of all parties – management, trade union and individual workers. This agreement is designed to encourage and assist that co-operation.
- 1.2 Wherever there are local arrangements that are superior to this Agreement there shall be no diminution.

2. Principle

- 2.1 The company reiterates its commitment to provide permanent employment where possible. The framework agreement and the application of the provisions will be subject to consultation and mutual agreement of the signatory trade union.

3. Preamble

- 3.1 Where the need is recognised to use non-direct workers the following procedures and practices will apply.

4. Representation

- 4.1 The Company agrees to the release of union representatives for the purpose of representation and the carrying out of duties and activities associated with this agreement.
- 4.2 The Company agrees to release union representatives to attend and make representations at induction meetings involving workers employed by Labour Providers

5. Information

- 5.1 There will be regular communication with the signatory union regarding labour forecast against business need. This will take place quarterly.

6. Providers

- 6.1 Any labour provider used will have successfully completed an audit by the GLA.
- 6.2 The company will take very seriously any breach of key code conditions by any contracted labour provider and will strongly consider sanctions where appropriate
- 6.3. The service level agreement (SLA) between the labour provider and the Company should reflect the recommended minimum standards
- 6.4 Contracts issued to the worker, along with other key documents, by the labour provider, should be understood by the worker (1). Where a worker's first language is not English, these documents should be provided in their first language alongside English translation.
- 6.5 The opportunity for the worker exercising their right to opt-out of the 48 hour provision of the Working Time Regulations should not be a condition of engagement and, therefore, should not be incorporated into the contract.(2)
- 6.6 The SLA should make clear that the Company is responsible for health and safety, providing relevant Information, instruction, training and clothing to ensure health and safety at work.(3)
- 6.7 The provider should advise temporary workers of their right to be accompanied (4) by a union official or work colleague at grievance and disciplinary hearings arranged by either the provider or the Company.
- 6.8 Deductions from wages other than tax and NI should be deducted with the consent of the worker after the net wage figure has been calculated and agreed with the reason for the deduction shown on the wage slip.(5)
- 6.9 Workers to be provided with an itemised pay statement at or before the time at which the wages are paid.(6)
- 6.10 There should be no discrimination in hiring, hours of work, compensation, access to training or retirement based on gender, race, ethnic or national origin, religion, age, marital status, sexual orientation, union membership or political affiliation.(7)

- 6.11 The company will not accept harassment or bullying including physical abuse, threat of physical abuse, sexual or other harassment, verbal abuse or other forms of intimidation. The company accepts its legal responsibilities and where discipline is required there will be a fair and lawful process.(8)
- 6.12 The Company should provide the signatory trade union with the name and other relevant contact details of the providers of temporary labour.
- 6.13 Any contracted labour provider will be willing to provide reasonable access to the signatory trade union.
- 6.14 No contracted labour provider will discourage or intimidate workers in regard to trade union membership or activity.

7. The Workers

- 7.1 The practice of some labour providers issuing contracts for services and thus deeming their workers to be self-employed effectively denies them basic employment protection rights. This practice is unacceptable.
- 7.2 The Company undertakes to ensure that workers engaged on temporary contracts are afforded full employment protection rights and are issued with contracts of employment rather than a contract for services.
- 7.3 Where the contract of a Labour Provider is terminated and a new or existing Labour Provider enlisted to take over the contract, the Company will make every effort to ensure that the workers employed on the original contract will be re-engaged by the enlisted Labour Provider.

8. Training

- 8.1 Specialist training should be provided for line managers and union representatives in order to meet the needs of both the migrant and indigenous workforce. Training will be held with the aim of creating a non discriminatory environment.

9. Terms and Conditions

- 9.1 Common terms and conditions with direct workers, agreements and representation will apply.

10. Temporary – Permanent Employment

10.1 On completion of 12 weeks work there will be a joint review of the workers employment (those employed by labour providers). Local management and trade union representatives will positively consider the merits of permanent contracts for those workers. There is an expectation that normal practice will result in the transfer of workers to permanent contracts.

11. Disputes

11.1 Labour provider workers will never be used to the detriment of the permanent workforce in the event of an industrial dispute.

Signed on behalf of

UNITE THE UNION: _____ Date: _____

Signed on behalf of

(SUPPLIERS NAME): _____ Date: _____

Footnotes

- 1 Employment Rights Act 1996 s1(6)
- 2 Code of Practice for labour providers to agriculture & the fresh produce trade s4.7
- 3 Code of Practice for labour providers to agriculture & the fresh produce trade, s3.4
- 4 Employment Relations Act 1999, s13(1)(b)
- 5 Code of Practice s4.5
- 6 Employment Rights Act 1996
- 7 Race Relations Act, Sex Discrimination Act, Disability Discrimination Act, Employment Equality (religious belief and sexual orientation) Regulations.
- 8 Code of Practice s4.8

Signed by Sharon Graham _____



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