

Work Voice Pay:

AGENCY WORKERS TEMPLATE



**National Organising & Leverage
Department**

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Work Voice Pay

Work, Voice, Pay is the cornerstone of our Union's industrial strategy. At Unite we know that it is only by delivering at the workplace that we remain relevant to working people. It is our success or failure at the bargaining table that we are ultimately judged on.

I am delighted that our research consistently proves that Unite negotiations secure better pay deals for working people. But we are determined to help further improve delivery for our members at the workplace. At its core this pledge focuses on what our Union does best:

- Securing good jobs and decent **work**
- Making sure workers have a strong and effective **voice**
- Getting decent **pay** and conditions

As part of this programme Unite is producing a range of Work, Voice, Pay templates and guides to assist you, our shop stewards and representatives, in your critical work on behalf of our members. I hope that this Agency Workers Template will help you formulate the arguments and table the demands that working people deserve.

Len McCluskey

Len McCluskey

Agency Working – An Issue that Matters

Agency working and other casualisation tactics used by employers are a direct attack upon Unite organisation, terms and conditions and the right of Unite members to regulate their workplace. To build collective strength and real bargaining power, Unite Shop Stewards/Reps must organise all workers in the workplace regardless of employment status whether they are directly employed or indirectly employed agency workers. Agency workers must be organised in their place of work in the same way we would permanent workers. Failure to organise agency workers will inevitably lead to a casualised workforce and diminished bargaining power.

The importance of the bargaining power of workers acting as a collective cannot be stressed enough. As we all know, where there is little or no union employers have free reign to impose whatever working conditions they want such as:

- Wage restraint
- Zero hours contracts
- Changes to terms and conditions of employment

By increasing union density in the workplace we build collective power, the power to negotiate on:

- Pay and benefits
- Terms and conditions
- Health and safety in the workplace

Collective strength means the involvement of all workers – with no worker left behind.

CORE AIMS FOR UNITE SHOP STEWARDS/REPS TACKLING AGENCY WORKING

ATTACKING EMPLOYERS ARGUMENTS ON COST

- Shop Stewards/Reps must demand a reduction in agency working and for current agency workers to be transferred to permanent employment. Always remind the employer that in most cases they will actually save money by reducing agency working.
- Shop Stewards/Reps should request the cost data that the employers are using to inform their decisions. Many employers intentionally use 'wrong' assumptions when calculating the cost of parity for agency workers so as to make it prohibitive.

INCORPORATING AGENCY WORKERS INTO YOUR COLLECTIVE AGREEMENT

- Unite Shop Stewards/Reps cannot afford to send out mixed messages to employers. The employer should be in no doubt about Unite's opposition to agency working in the workplace. To this end, all workers must be covered by one collective bargaining agreement, regardless of employment status. Any dilution of this agreement will undermine bargaining power.
- Ensure that agency workers are also covered by your facilities agreement. Agency workers should have the right to time off with pay to:
 - meet with union representatives (Shop Stewards/Reps, Officers and Organisers etc) to discuss issues relevant to the workplace
 - participate in union elections
 - and have access to services provided by a Union Learning rep

- All Shop Stewards/Reps must be alert to any attempt by the employer to circumvent the Agency Worker Regulations (AWR) by using the Swedish Derogation (refer to page 7).
- Introduce a 'minimum standards agreement' for agency workers (refer to page 13), providing parity of terms and conditions with permanent workers.
- are a starting point for negotiations with the employer.

Agency Worker Regulations

The Agency Worker Regulations (AWR) came into force on 1 October 2011. Many hoped that these regulations would be the final settlement on agency working, promising equality for all workers based upon the work carried out. However, the reverse has been true with employers exploiting agency workers to undermine wages and workplace power. The bargaining table remains the only place where the undercutting of permanent workers and the exploitation of agency workers can be stamped out.

The inadequate provisions of the original regulations were particularly eroded by the Government's inclusion of the so-called 'Swedish Derogation'. Employers have been given the freedom to collude and evade parity pay for agency workers. The right for agency workers to be paid the same rate as permanent workers following twelve weeks employment is now redundant where agencies choose to employ workers on bogus 'permanent contracts'.

All Unite Shop Stewards/Reps with collective bargaining should seek as an absolute minimum the closure of the loophole provided by the 'Swedish Derogation'. Failure to close this loophole will undermine your collective agreements. Negotiations with employers will become more complex and the systems employed by employers more sophisticated with the aim of undermining the bargaining power of all workers, permanent workers and agency workers.

THE SWEDISH DEROGATION

The 'Swedish Derogation' clause exempts an employment Agency from having to pay the worker the same rate of pay as permanent staff, as long as the Agency directly "employs" the individual worker on a so called permanent contract and guarantees to pay them the times they cannot find them work. Agency workers should earn 50 per cent of their average pay or the national minimum wage rates (whichever is higher) when they are not a worker. But the agency can also place the worker within another employer or lay them off after 4 weeks.

WHY EMPLOYERS' USE AGENCY LABOUR

The Ability to Hire and Fire at Will

A lot of employers want a casual and peripheral workforce they can 'hire and fire' at will and for whom they have minimal 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.

To Ensure a Compliant Workforce

In many unionised sectors employers want a more compliant workforce outside the scope of collective bargaining.

- Attempts to change working practices often start by using agency workers (for example, changes to shift patterns and overtime regimes).
- The employer's ultimate aim is for the number of workers not covered by collective bargaining to be large enough to undermine your negotiations as Shop Stewards/Reps and diminish the bargaining strength of the union.

INOCULATION: UNDERSTANDING AND CONFRONTING COMMON EMPLOYER ARGUMENTS

EMPLOYERS' ARGUMENTS 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/workplace and relocate if we have to pay everybody the same.

Unite Responses

- Agency workers are usually more expensive to employ. If you made them permanent you could save money.
- Having more agency workers is not going to secure permanent employment. If the company loses business we are all at risk. The employer needs a trained, motivated workforce to safeguard its 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. Unite does not believe it will cost as much as the employer says – show us the 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.

Unite Responses

- Temporary working may be required but on what scale and when? This should be part of the negotiations and agreed jointly between the employer and the union.
- Temporary workers do not have to be employed by agencies. Employ temporary workers direct; these workers can be included in the collective agreement and the employer can save the cost of using an employment agency.
- Even if you want to use agencies you can still pay workers the same rate as those workers directly employed. Unite does not believe it will cost that much – let us see the 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.

Unite Responses

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

'Workers like being employed by an agency'

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

Unite Response

- Not true. Research shows that the vast majority of agency and 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'

- The current economic climate means that we must have flexibility in all areas to stay competitive.
- There is no way we can increase permanent employment, our contract might end soon.

Unite Responses

- Unite does 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.
- Unite is not willing to accept a permanent two-tier labour force on the basis that we may only lose business in the future.
- A trained and motivated permanent workforce will help us sustain the organisation.

EMPLOYER ARGUMENTS FOR 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 (i.e. from 8/12 weeks to 6 months or a year).
- If successful in this bid the employer could effectively extend the 12 week rule (from which point agency workers are supposed to be entitled to 'parity' pay with permanent workers).

Unite Response

- Unite will not negotiate a way for the employer to get round legislation. Agency workers (excluding Swedish Derogation) will be entitled to 'parity' from 12 weeks under the Agency Worker Regulations (AWR) – Unite demands 'parity' from day one.

EMPLOYER ARGUMENTS FOR INTRODUCING THE SWEDISH DEROGATION

'If we don't introduce the Swedish Derogation then permanent jobs go and we may even have to close our site'.

- We will have to pay agency workers more after 12 weeks and there is only so much money on the table.

Unite Response

- Unite will not agree to the 'Swedish Derogation' being part of any negotiations.
- Agency workers are usually more expensive to employ – save money by making them permanent.

- Unite does not believe that paying agency workers 'parity' will cost the employer much more than the current wage bill – show us the figures.

'If we do not introduce the derogation permanent workers will have to take a pay cut/pay freeze'

- You can have the Agency Worker Regulations (AWR) without the 'Swedish Derogation' but the workforce will have to pay for it.

Unite Response

- This is not acceptable and flies in the face of any commitment from the employer to work towards good relations and cooperation with its workers.
- Agency workers are usually more expensive to employ – save money by making them permanent.
- Unite does not believe that paying agency workers 'parity' will cost the employer much more than the current wage bill – show us the figures.



Framework Agreement for Agency Workers

FRAMEWORK AGREEMENT FOR NON-DIRECTLY (LABOUR PROVIDER NAME) EMPLOYED WORKERS BETWEEN (SUPPLIER NAME) (INC. SUBSIDIARIES) and the UNITE THE UNION

OBJECTIVE

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.

PRINCIPLE

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.

PREAMBLE

3. Preamble

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

REPRESENTATION

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

INFORMATION

5. Information

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

PROVIDERS

6. Providers

- 6.1 Any labour provider used will have successfully completed an audit by the Gangmasters Licensing Authority (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 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. 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 contract¹.
- 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 work².
- 6.7 The provider should advise temporary workers of their right to be accompanied³ 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 slip⁴.

- 6.9 Workers to be provided with an itemised pay statement at or before the time at which the wages are paid⁵.
- 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 affiliation⁶.
- 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 process⁷.
- 6.12 The Company should provide the signatory trade union with the name and other relevant contact details of the labour providers.
- 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.

¹ Code of Practice for labour providers to agriculture & the fresh produce trade s4.7

² Code of Practice for labour providers to agriculture & the fresh produce trade, s3.4

³ Employment Relations Act 1999, s13(1)(b)

⁴ Code of Practice s4.5

⁵ Employment Rights Act 1996

⁶ Race Relations Act, Sex Discrimination Act, Disability Discrimination Act, Employment Equality (religious belief and sexual orientation) Regulations.

⁷ Code of Practice s4.8

THE WORKERS

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.

TRAINING

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.

TERMS AND CONDITIONS

9. Terms and Conditions

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

TEMPORARY – PERMANENT EMPLOYMENT

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 contract.

DISPUTES

11. Disputes

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

Signed on behalf of
UNITE THE UNION: _____ Date: _____

Signed on behalf of
(EMPLOYERS NAME): _____ Date: _____

Useful Links

- ▶ AGENCY WORKERS – workSMART
<https://worksmart.org.uk/work-rights/atypical-workers/agencyworkers>
- ▶ Equal treatment for agency workers – TUC
<https://www.tuc.org.uk/workplace-issues/basic-rightswork/categories-workers/03-agency-workers/equal-treatmentagency>

Appendix 1: Extract from the DHL Pay and Conditions 3 Year Agreement 2013/14/15

Staffline agency workers undertaking in-plant warehousing and line-feed support to DHL at Castle Bromwich, Halewood and Solihull.

- A three years' agreement with a 1 January 2013 anniversary date.
- With effect from 1 January 2013, for those employees that commenced service prior to 1 January 2010, basic pay will be increased by 4.5%. Employees whose service commenced after 1 January 2010 will continue to be paid in accordance with the New Starter Agreement and current rates are set out at Appendix 2 to this document. New Starters will convert onto the standard DHL base rate in accordance with the provisions of the New Starter Agreement.
- In 2013 only, an unconsolidated lump sum of £350 will be paid.
- In accordance with the New Starter Agreement, the revised DHL rates for 2014 and 2015 will flow through into the New Starter calculation rate.
- With effect from 2014, agency workers will be paid an annual unconsolidated holiday bonus of £315 (gross) payable shortly in advance of the summer shutdown.
- As soon as is practicable, and by 1 January 2014 at the latest, the ratio of DHL directs to agency workers will increase to 90:10. DHL Shop stewards and site management will meet monthly to review progress. The ratio is established against known steady state on a site by site basis and temporary labour increases or reductions will be smoothed out to ensure the calculation is based on steady state.
- With effect from 10 September 2013, in-plant new starters (whether agency or DHL) will move through the annual increments based on their personal joining anniversary.

Appendix 2: Extract from Jaguar Land Rover Employee Bulletin December 2014

Employee Bulletin



To hourly-paid employees of Jaguar Land Rover, salaried employees of Jaguar (A-D) and Land Rover (A-C)

December 2014

Jaguar Land Rover Pay & Conditions Negotiations

RECOMMENDED OFFER

Unanimously recommended by the Jaguar JNC, Land Rover JNC and Jaguar SJNC

The offer is made up of a **4.5% pay increase** in Year 1 and a one-off lump sum payment of **£825**.

New starter rates have been enhanced with rates now reaching **100%**.

The deal is worth 8.4% of basic salary to a Production Operator in Year 1.

MANUFACTURING AGENCY AGREEMENT

Effective January 1, 2015, an Agency Agreement will be introduced. The agreement will be based on 90% of the RTO figure being composed of core employees, and the remaining workforce composed of agency support. Jaguar Land Rover fixed-term contracts will be offered where core headcount falls below the agreed 90%, subject to business requirements, acceptable attendance, conduct and performance.

Agency employees will continue to progress through the appropriate pay increments at 12-month intervals

and in the event of an agency employee reaching the 100% rate of pay, subject to business requirements, acceptable attendance, conduct and performance, they will be offered permanent Jaguar Land Rover contracts.

Current agency employees, who were assigned to Jaguar Land Rover before January 1, 2015, will be unaffected and will continue to progress towards a fixed-term contract after one year, and then to a permanent contract after a further year, subject to business requirements, acceptable attendance, conduct and performance.



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